

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 40. Alcohol, etc., used as fuel

(a) General rule

For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of—

- (1) the alcohol mixture credit,
- (2) the alcohol credit,
- (3) in the case of an eligible small ethanol producer, the small ethanol producer credit, plus
- (4) the cellulosic biofuel producer credit.

(b) Definition of alcohol mixture credit, alcohol credit, and small ethanol producer credit

For purposes of this section, and except as provided in subsection (h)—

(1) Alcohol mixture credit

(A) In general

The alcohol mixture credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol used by the taxpayer in the production of a qualified mixture.

(B) Qualified mixture

The term “qualified mixture” means a mixture of alcohol and gasoline or of alcohol and a special fuel which—

- (i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or
- (ii) is used as a fuel by the taxpayer producing such mixture.

(C) Sale or use must be in trade or business, etc.

Alcohol used in the production of a qualified mixture shall be taken into account—

- (i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and
- (ii) for the taxable year in which such sale or use occurs.

(D) Casual off-farm production not eligible

No credit shall be allowed under this section with respect to any casual off-farm production of a qualified mixture.

(2) Alcohol credit

(A) In general

The alcohol credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol which is not in a mixture with gasoline or a special fuel (other than any denaturant) and which during the taxable year—

- (i) is used by the taxpayer as a fuel in a trade or business, or
- (ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person’s vehicle.

(B) User credit not to apply to alcohol sold at retail

No credit shall be allowed under subparagraph (A)(i) with respect to any alcohol

which was sold in a retail sale described in subparagraph (A)(ii).

(3) Smaller credit for lower proof alcohol

In the case of any alcohol with a proof which is at least 150 but less than 190, paragraphs (1)(A) and (2)(A) shall be applied by substituting “45 cents” for “60 cents”.

(4) Small ethanol producer credit

(A) In general

The small ethanol producer credit of any eligible small ethanol producer for any taxable year is 10 cents for each gallon of qualified ethanol fuel production of such producer.

(B) Qualified ethanol fuel production

For purposes of this paragraph, the term “qualified ethanol fuel production” means any alcohol which is ethanol which is produced by an eligible small ethanol producer, and which during the taxable year—

- (i) is sold by such producer to another person—

(I) for use by such other person in the production of a qualified mixture in such other person’s trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person, or

- (ii) is used or sold by such producer for any purpose described in clause (i).

(C) Limitation

The qualified ethanol fuel production of any producer for any taxable year shall not exceed 15,000,000 gallons (determined without regard to any qualified cellulosic biofuel production).

(D) Additional distillation excluded

The qualified ethanol fuel production of any producer for any taxable year shall not include any alcohol which is purchased by the producer and with respect to which such producer increases the proof of the alcohol by additional distillation.

(5) Adding of denaturants not treated as mixture

The adding of any denaturant to alcohol shall not be treated as the production of a mixture.

(6) Cellulosic biofuel producer credit

(A) In general

The cellulosic biofuel producer credit of any taxpayer is an amount equal to the applicable amount for each gallon of qualified cellulosic biofuel production.

(B) Applicable amount

For purposes of subparagraph (A), the applicable amount means \$1.01, except that such amount shall, in the case of cellulosic biofuel which is alcohol, be reduced by the sum of—

- (i) the amount of the credit in effect for such alcohol under subsection (b)(1) (with-

out regard to subsection (b)(3)) at the time of the qualified cellulosic biofuel production, plus

(ii) in the case of ethanol, the amount of the credit in effect under subsection (b)(4) at the time of such production.

(C) Qualified cellulosic biofuel production

For purposes of this section, the term “qualified cellulosic biofuel production” means any cellulosic biofuel which is produced by the taxpayer, and which during the taxable year—

(i) is sold by the taxpayer to another person—

(I) for use by such other person in the production of a qualified cellulosic biofuel mixture in such other person’s trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such cellulosic biofuel at retail to another person and places such cellulosic biofuel in the fuel tank of such other person, or

(ii) is used or sold by the taxpayer for any purpose described in clause (i).

The qualified cellulosic biofuel production of any taxpayer for any taxable year shall not include any alcohol which is purchased by the taxpayer and with respect to which such producer increases the proof of the alcohol by additional distillation.

(D) Qualified cellulosic biofuel mixture

For purposes of this paragraph, the term “qualified cellulosic biofuel mixture” means a mixture of cellulosic biofuel and gasoline or of cellulosic biofuel and a special fuel which—

(i) is sold by the person producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the person producing such mixture.

(E) Cellulosic biofuel

For purposes of this paragraph—

(i) In general

The term “cellulosic biofuel” means any liquid fuel which—

(I) is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and

(II) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545).

(ii) Exclusion of low-proof alcohol

Such term shall not include any alcohol with a proof of less than 150. The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(F) Allocation of cellulosic biofuel producer credit to patrons of cooperative

Rules similar to the rules under subsection (g)(6) shall apply for purposes of this paragraph.

(G) Registration requirement

No credit shall be determined under this paragraph with respect to any taxpayer unless such taxpayer is registered with the Secretary as a producer of cellulosic biofuel under section 4101.

(H) Application of paragraph

This paragraph shall apply with respect to qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2013.

(c) Coordination with exemption from excise tax

The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such alcohol solely by reason of the application of section 4041(b)(2), section 6426, or section 6427(e).

(d) Definitions and special rules

For purposes of this section—

(1) Alcohol defined

(A) In general

The term “alcohol” includes methanol and ethanol but does not include—

(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

(ii) alcohol with a proof of less than 150.

(B) Determination of proof

The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(2) Special fuel defined

The term “special fuel” includes any liquid fuel (other than gasoline) which is suitable for use in an internal combustion engine.

(3) Mixture or alcohol not used as a fuel, etc.

(A) Mixtures

If—

(i) any credit was determined under this section with respect to alcohol used in the production of any qualified mixture, and

(ii) any person—

(I) separates the alcohol from the mixture, or

(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of alcohol in such mixture.

(B) Alcohol

If—

(i) any credit was determined under this section with respect to the retail sale of any alcohol, and

(ii) any person mixes such alcohol or uses such alcohol other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of such alcohol.

(C) Small ethanol producer credit

If—

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B), then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such alcohol.

(D) Cellulosic biofuel producer credit

If—

(i) any credit is allowed under subsection (a)(4), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(6)(C), then there is hereby imposed on such person a tax equal to the applicable amount (as defined in subsection (b)(6)(B)) for each gallon of such cellulosic biofuel.

(E) Applicable laws

All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A), (B), (C), or (D) as if such tax were imposed by section 4081 and not by this chapter.

(4) Volume of alcohol

For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 2 percent of the volume of such alcohol (including denaturants).

(5) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(6) Special rule for cellulosic biofuel producer credit

No cellulosic biofuel producer credit shall be determined under subsection (a) with respect to any cellulosic biofuel unless such cellulosic biofuel is produced in the United States and used as a fuel in the United States. For purposes of this subsection, the term “United States” includes any possession of the United States.

(7) Limitation to alcohol with connection to the United States

No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term “United States” includes any possession of the United States.

(e) Termination

(1) In general

This section shall not apply to any sale or use—

(A) for any period after December 31, 2010, or

(B) for any period before January 1, 2011, during which the rates of tax under section 4081(a)(2)(A) are 4.3 cents per gallon.

(2) No carryovers to certain years after expiration

If this section ceases to apply for any period by reason of paragraph (1) or subsection (b)(6)(H), no amount attributable to any sale or use before the first day of such period may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart) to any taxable year beginning after the 3-taxable-year period beginning with the taxable year in which such first day occurs.

(3) Exception for cellulosic biofuel producer credit

Paragraph (1) shall not apply to the portion of the credit allowed under this section by reason of subsection (a)(4).

(f) Election to have alcohol fuels credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election

An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election

An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(g) Definitions and special rules for eligible small ethanol producer credit

For purposes of this section—

(1) Eligible small ethanol producer

The term “eligible small ethanol producer” means a person who, at all times during the taxable year, has a productive capacity for alcohol (as defined in subsection (d)(1)(A) without regard to clauses (i) and (ii)) not in excess of 60,000,000 gallons.

(2) Aggregation¹ rule

For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

(3) Partnership, S corporations, and other pass-thru entities

In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

(4) Allocation

For purposes of this subsection, in the case of a facility in which more than 1 person has

¹ So in original. Probably should be “Aggregation”.

an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

(5) Regulations

The Secretary may prescribe such regulations as may be necessary—

(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of alcohol during the taxable year, or

(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

(6) Allocation of small ethanol producer credit to patrons of cooperative

(A) Election to allocate

(i) In general

In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(ii) Form and effect of election

An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) Treatment of organizations and patrons

(i) Organizations

The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

(ii) Patrons

The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(iii) Special rules for decrease in credits for taxable year

If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return of the organization for such year, an amount equal to the excess of—

(I) such reduction, over

(II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) Reduced credit for ethanol blenders

(1) In general

In the case of any alcohol mixture credit or alcohol credit with respect to any sale or use of alcohol which is ethanol during calendar years 2001 through 2010—

(A) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting “the blender amount” for “60 cents”,

(B) subsection (b)(3) shall be applied by substituting “the low-proof blender amount” for “45 cents” and “the blender amount” for “60 cents”, and

(C) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting “the blender amount” for “60 cents” and “the low-proof blender amount” for “45 cents”.

(2) Amounts

For purposes of paragraph (1), the blender amount and the low-proof blender amount shall be determined in accordance with the following table:

In the case of any sale or use during calendar year:	The blender amount is:	The low-proof blender amount is:
2001 or 2002	53 cents	39.26 cents
2003 or 2004	52 cents	38.52 cents
2005, 2006, 2007, or 2008.	51 cents	37.78 cents
2009 through 2010	45 cents	33.33 cents.

(3) Reduction delayed until annual production or importation of 7,500,000,000 gallons

(A) In general

In the case of any calendar year beginning after 2008, if the Secretary makes a determination described in subparagraph (B) with respect to all preceding calendar years beginning after 2007, the last row in the table in paragraph (2) shall be applied by substituting “51 cents” for “45 cents”.

(B) Determination

A determination described in this subparagraph with respect to any calendar year is a determination, in consultation with the Administrator of the Environmental Protection Agency, that an amount less than 7,500,000,000 gallons of ethanol (including cellulosic ethanol) has been produced in or imported into the United States in such year.

(Added Pub. L. 96-223, title II, §232(b)(1), Apr. 2, 1980, 94 Stat. 273, §44E; amended Pub. L. 97-34, title II §207(c)(3), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97-354, §5(a)(2), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97-424, title V, §511(b)(2), (d)(3), Jan. 6, 1983, 96 Stat. 2170, 2171; renumbered §40 and amended Pub. L. 98-369, div. A, title IV, §§471(c), 474(k), title IX, §§912(c), (f), 913(b), July 18, 1984, 98 Stat.

826, 832, 1007, 1008; Pub. L. 100-203, title X, § 10502(d)(1), Dec. 22, 1987, 101 Stat. 1330-444; Pub. L. 101-508, title XI, § 11502(a)-(f), Nov. 5, 1990, 104 Stat. 1388-480 to 1388-482; Pub. L. 104-188, title I, § 1703(j), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 105-178, title IX, § 9003(a)(3), (b)(1), June 9, 1998, 112 Stat. 502; Pub. L. 108-357, title III, §§ 301(c)(1)-(4), 313(a), Oct. 22, 2004, 118 Stat. 1461, 1467; Pub. L. 109-58, title XIII, § 1347(a), (b), Aug. 8, 2005, 119 Stat. 1056; Pub. L. 110-234, title XV, §§ 15321(a)-(b)(2), (3)(B), (c)-(e), 15331(a), 15332(a), May 22, 2008, 122 Stat. 1512-1516; Pub. L. 110-246, § 4(a), title XV, §§ 15321(a)-(b)(2), (3)(B), (c)-(e), 15331(a), 15332(a), June 18, 2008, 122 Stat. 1664, 2274-2278; Pub. L. 110-343, div. B, title II, § 203(a), Oct. 3, 2008, 122 Stat. 3833.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 40, added Pub. L. 92-178, title VI, § 601(a), Dec. 10, 1971, 85 Stat. 553; amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to allowance as a credit of expenses of work incentive programs, prior to repeal by Pub. L. 98-369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833.

Another prior section 40 was renumbered section 37 of this title.

AMENDMENTS

2008—Pub. L. 110-246, § 15321(b)(3)(B), inserted “, etc.,” after “Alcohol” in section catchline.

Subsec. (a)(4). Pub. L. 110-246, § 15321(a), added par. (4).
Subsec. (b)(4)(C). Pub. L. 110-246, § 15321(e), inserted “(determined without regard to any qualified cellulosic biofuel production)” after “15,000,000 gallons”.

Subsec. (b)(6). Pub. L. 110-246, § 15321(b)(1), added par. (6).

Subsec. (d)(3)(C). Pub. L. 110-246, § 15321(c)(2)(A), substituted “Small ethanol producer” for “Producer” in heading.

Subsec. (d)(3)(D). Pub. L. 110-246, § 15321(c)(1), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (d)(3)(E). Pub. L. 110-246, § 15321(c)(2)(B), substituted “(C), or (D)” for “or (C)”.

Pub. L. 110-246, § 15321(c)(1), redesignated subpar. (D) as (E).

Subsec. (d)(4). Pub. L. 110-246, § 15332(a), substituted “2 percent” for “5 percent”.

Subsec. (d)(6). Pub. L. 110-246, § 15321(d), added par. (6).

Subsec. (d)(7). Pub. L. 110-343 added par. (7).

Subsec. (e)(2). Pub. L. 110-246, § 15321(b)(2)(A), inserted “or subsection (b)(6)(H)” after “by reason of paragraph (1)”.

Subsec. (e)(3). Pub. L. 110-246, § 15321(b)(2)(B), added par. (3).

Subsec. (h)(2). Pub. L. 110-246, § 15331(a)(1), in table, substituted “2005, 2006, 2007, or 2008” for “2005 through 2010”, struck out period after “37.78 cents”, and inserted last row reading “2009 through 2010”, “45 cents”, and “33.33 cents.”

Subsec. (h)(3). Pub. L. 110-246, § 15331(a)(2), added par. (3).

2005—Subsec. (g)(1), (2), (5)(A). Pub. L. 109-58, § 1347(a), substituted “60,000,000” for “30,000,000”.

Subsec. (g)(6)(A)(ii). Pub. L. 109-58, § 1347(b), inserted at end “Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).”

2004—Subsec. (c). Pub. L. 108-357, § 301(c)(1), substituted “section 4041(b)(2), section 6426, or section

6427(e)” for “subsection (b)(2), (k), or (m) of section 4041, section 4081(c), or section 4091(c)”.

Subsec. (d)(4). Pub. L. 108-357, § 301(c)(2), reenacted heading without change and amended text of par. (4) generally, substituting provisions relating to determination of the number of gallons of alcohol with respect to which a credit is allowable under subsec. (a) for provisions relating to determination of the number of gallons of alcohol with respect to which a credit is allowable under subsec. (a) or the percentage of any mixture which consists of alcohol under section 4041(k) or 4081(c).

Subsec. (e)(1)(A). Pub. L. 108-357, § 301(c)(3)(A), substituted “2010” for “2007”.

Subsec. (e)(1)(B). Pub. L. 108-357, § 301(c)(3)(B), substituted “2011” for “2008”.

Subsec. (g)(6). Pub. L. 108-357, § 313(a), added par. (6).

Subsec. (h)(1). Pub. L. 108-357, § 301(c)(4)(A), substituted “2010” for “2007” in introductory provisions.

Subsec. (h)(2). Pub. L. 108-357, § 301(c)(4)(B), substituted “through 2010” for “, 2006, or 2007” in table.

1998—Subsec. (e)(1). Pub. L. 105-178, § 9003(a)(3), substituted “December 31, 2007” for “December 31, 2000” in subpar. (A) and “January 1, 2008” for “January 1, 2001” in subpar. (B).

Subsec. (h). Pub. L. 105-178, § 9003(b)(1), reenacted heading without change and amended text of subsec. (h) generally. Prior to amendment, text read as follows: “In the case of any alcohol mixture credit or alcohol credit with respect to any alcohol which is ethanol—

“(1) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting ‘54 cents’ for ‘60 cents’;

“(2) subsection (b)(3) shall be applied by substituting ‘40 cents’ for ‘45 cents’ and ‘54 cents’ for ‘60 cents’; and

“(3) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting ‘54 cents’ for ‘60 cents’ and ‘40 cents’ for ‘45 cents’.”

1996—Subsec. (e)(1)(B). Pub. L. 104-188 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “for any period before January 1, 2001, during which the Highway Trust Fund financing rate under section 4081(a)(2) is not in effect.”

1990—Subsec. (a)(2). Pub. L. 101-508, § 11502(a)(1), substituted “, plus” for period at end.

Subsec. (a)(3). Pub. L. 101-508, § 11502(a)(2), added par. (3).

Subsec. (b). Pub. L. 101-508, § 11502(e)(2), which directed the insertion of “, and except as provided in subsection (h)” in introductory provisions without specifying the location of such insertion, was executed after “section” to reflect the probable intent of Congress.

Pub. L. 101-508, § 11502(b)(3), substituted “, alcohol credit, and small ethanol producer credit” for “and alcohol credit” in heading.

Subsec. (b)(4), (5). Pub. L. 101-508, § 11502(b)(1), (2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(3)(C), (D). Pub. L. 101-508, § 11502(d)(1), (2), added subpar. (C), redesignated former subpar. (C) as (D), and substituted “subparagraph (A), (B), or (C)” for “subparagraph (A) or (B)”.

Subsec. (e). Pub. L. 101-508, § 11502(f), amended subsec. (e) generally, substituting present provisions for provisions prohibiting the applicability of this section to any sale or use after Dec. 31, 1992, and prohibiting carryovers to any taxable year beginning after Dec. 31, 1994.

Subsec. (g). Pub. L. 101-508, § 11502(c), added subsec. (g).

Subsec. (h). Pub. L. 101-508, § 11502(e)(1), added subsec. (h).

1987—Subsec. (c). Pub. L. 100-203 substituted “, section 4081(c), or section 4091(c)” for “or section 4081(c)”.

1984—Pub. L. 98-369, § 471(c), renumbered section 44E of this title as this section.

Subsec. (a). Pub. L. 98-369, § 474(k)(1), substituted “For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of” for “There shall be al-

lowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of” in introductory provisions.

Subsec. (b)(1)(A), (2)(A). Pub. L. 98-369, §912(c)(1), substituted “60 cents” for “50 cents”.

Subsec. (b)(3). Pub. L. 98-369, §912(c), substituted “45 cents” for “37.5 cents” and “60 cents” for “50 cents”.

Subsec. (c). Pub. L. 98-369, §913(b), substituted “(b)(2), (k), or (m)” for “(b)(2) or (k)”.

Pub. L. 98-369, §474(k)(2), substituted “the credit determined under this section” for “the credit allowable under this section”.

Subsec. (d)(1)(A)(i). Pub. L. 98-369, §912(f), substituted “coal (including peat)” for “coal”.

Subsec. (d)(3)(A). Pub. L. 98-369, §912(c), substituted “60 cents” for “50 cents” and “45 cents” for “37.5 cents”.

Subsec. (d)(3)(A)(i). Pub. L. 98-369, §474(k)(3), substituted “credit was determined” for “credit was allowable”.

Subsec. (d)(3)(B). Pub. L. 98-369, §912(c), substituted “60 cents” for “50 cents” and “45 cents” for “37.5 cents”.

Subsec. (d)(3)(B)(i). Pub. L. 98-369, §474(k)(3), substituted “credit was determined” for “credit was allowable”.

Subsec. (e). Pub. L. 98-369, §474(k)(4), redesignated subsec. (f) as (e). Former subsec. (e), which had placed a limitation based on the amount of tax, was struck out.

Subsec. (e)(2). Pub. L. 98-369, §474(k)(5), substituted “section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart)” for “subsection (e)(2)”.

Subsec. (f). Pub. L. 98-369, §474(k)(6), added subsec. (f). Former subsec. (f) redesignated (e).

1983—Subsec. (b)(1)(A), (2)(A). Pub. L. 97-424, §511(d)(3)(A), substituted “50 cents” for “40 cents”.

Subsec. (b)(3). Pub. L. 97-424, §511(d)(3), substituted “50 cents” for “40 cents” and “37.5 cents” for “30 cents”.

Subsec. (c). Pub. L. 97-424, §511(b)(2), substituted “subsection (b)(2) or (k) of section 4041 or section 4081(c)” for “section 4041(k) or 4081(c)” after “reason of the application of”.

Subsec. (d)(3)(A), (B). Pub. L. 97-424, §511(d)(3), substituted “50 cents” for “40 cents” and “37.5 cents” for “30 cents”.

1982—Subsec. (d)(5). Pub. L. 97-354 substituted “Pass-thru in the case of estates and trusts” for “Pass-through in the case of subchapter S corporations, etc.” in par. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

1981—Subsec. (e)(2)(A). Pub. L. 97-34 substituted “15” for “7” in two places, and “14” for “6” in one place.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title II, §203(d), Oct. 3, 2008, 122 Stat. 3834, provided that: “The amendments made by this section [amending this section and sections 40A, 6426, and 6427 of this title] shall apply to claims for credit or payment made on or after May 15, 2008.”

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110-234, title XV, §15321(g), May 22, 2008, 122 Stat. 1514, and Pub. L. 110-246, §4(a), title XV, §15321(g), June 18, 2008, 122 Stat. 1664, 2276, provided that: “The amendments made by this section [amending this section and sections 40A and 4101 of this title] shall apply to fuel produced after December 31, 2008.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a)

of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110-234, title XV, §15331(c), May 22, 2008, 122 Stat. 1516, and Pub. L. 110-246, §4(a), title XV, §15331(c), June 18, 2008, 122 Stat. 1664, 2278, provided that: “The amendments made by this section [amending this section and section 6426 of this title] shall take effect on the date of the enactment of this Act [June 18, 2008].”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110-234, title XV, §15332(c), May 22, 2008, 122 Stat. 1516, and Pub. L. 110-246, §4(a), title XV, §15332(c), June 18, 2008, 122 Stat. 1664, 2278, provided that: “The amendments made by this section [amending this section and section 6426 of this title] shall apply to fuel sold or used after December 31, 2008.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-58, title XIII, §1347(c), Aug. 8, 2005, 119 Stat. 1056, provided that: “The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005].”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title III, §301(d), Oct. 22, 2004, 118 Stat. 1463, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6426 of this title and amending this section and sections 4041, 4081, 4083, 4101, 6427, and 9503 of this title] shall apply to fuel sold or used after December 31, 2004.

“(2) REGISTRATION REQUIREMENT.—The amendment made by subsection (b) [amending section 4101 of this title] shall take effect on April 1, 2005.

“(3) EXTENSION OF ALCOHOL FUELS CREDIT.—The amendments made by paragraphs (3), (4), and (14) of subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].

“(4) REPEAL OF GENERAL FUND RETENTION OF CERTAIN ALCOHOL FUELS TAXES.—The amendments made by subsection (c)(12) [amending section 9503 of this title] shall apply to fuel sold or used after September 30, 2004.”

Pub. L. 108-357, title III, §313(b), Oct. 22, 2004, 118 Stat. 1468, provided that: “The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-178, title IX, §9003(b)(3), June 9, 1998, 112 Stat. 503, provided that: “The amendments made by this subsection [amending this section and sections 4041, 4081, and 4091 of this title] shall take effect on January 1, 2001.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11502(h) of Pub. L. 101-508 provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to alcohol produced, and sold or used, in taxable years beginning after December 31, 1990.

“(2) The amendments made by subsection (g) [amending provisions not classified to the Code] shall apply to articles entered or withdrawn from warehouse on or after January 1, 1991.”

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10502(e) of Pub. L. 100-203 provided that: “The amendments made by this section [enacting sections 4091 to 4093 of this title, amending this section and sections 4041, 4081, 4101, 4221, 6206, 6416, 6421, 6427, 6652, 9502, 9503, and 9508 of this title, and enacting provisions set out as notes under sections 4091 and 9502 of this title] shall apply to sales after March 31, 1988.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(k) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 912(g) of Pub. L. 98-369 provided that: “The amendments made by this section [amending this section and sections 4041, 4081, and 6427 of this title] shall take effect on January 1, 1985.”

Amendment by section 913(b) of Pub. L. 98-369 effective Aug. 1, 1984, see section 913(c) of Pub. L. 98-369, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendments by section 511(b)(2), (d)(3) of Pub. L. 97-424 effective Apr. 1, 1983, see section 511(h) of Pub. L. 97-424, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to unused credit years ending after Sept. 30, 1980, see section 209(c)(2)(C) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE

Section 232(h)(1), (4) of Pub. L. 96-223, as amended by Pub. L. 97-448, title II, §202(e), Jan. 12, 1983, 96 Stat. 2396, provided that:

“(1) The amendments made by subsections (b) and (c) [enacting sections 44E [now 40] and 86 of this title and amending sections 55, 381, 383, 4081, and 6096 of this title] shall apply to sales or uses after September 30, 1980, in taxable years ending after such date.

“(4) Notwithstanding paragraph (1), the provisions of section 44E(d)(4)(B) [now 40(d)(4)(B)] of such Code, as added by this section, shall take effect on April 2, 1980.”

§ 40A. Biodiesel and renewable diesel used as fuel

(a) General rule

For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

- (1) the biodiesel mixture credit, plus
- (2) the biodiesel credit, plus
- (3) in the case of an eligible small agri-biodiesel producer, the small agri-biodiesel producer credit.

(b) Definition of biodiesel mixture credit, biodiesel credit, and small agri-biodiesel producer credit

For purposes of this section—

(1) Biodiesel mixture credit

(A) In general

The biodiesel mixture credit of any taxpayer for any taxable year is \$1.00 for each

gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

(B) Qualified biodiesel mixture

The term “qualified biodiesel mixture” means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

- (i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or
- (ii) is used as a fuel by the taxpayer producing such mixture.

(C) Sale or use must be in trade or business, etc.

Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

- (i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and
- (ii) for the taxable year in which such sale or use occurs.

(D) Casual off-farm production not eligible

No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

(2) Biodiesel credit

(A) In general

The biodiesel credit of any taxpayer for any taxable year is \$1.00 for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

- (i) is used by the taxpayer as a fuel in a trade or business, or
- (ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person’s vehicle.

(B) User credit not to apply to biodiesel sold at retail

No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

(3) Certification for biodiesel

No credit shall be allowed under paragraph (1) or (2) of subsection (a) unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

(4) Small agri-biodiesel producer credit

(A) In general

The small agri-biodiesel producer credit of any eligible small agri-biodiesel producer for any taxable year is 10 cents for each gallon of qualified agri-biodiesel production of such producer.

(B) Qualified agri-biodiesel production

For purposes of this paragraph, the term “qualified agri-biodiesel production” means any agri-biodiesel which is produced by an eligible small agri-biodiesel producer, and which during the taxable year—