

108TH CONGRESS
2D SESSION

S. 2110

To amend the Internal Revenue Code of 1986 to extend the Highway Trust Fund provisions through March 31, 2004, and to add the volumetric ethanol excise tax credit (VEETC), and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2004

Mr. GRASSLEY (for himself and Mr. BAUCUS) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to extend the Highway Trust Fund provisions through March 31, 2004, and to add the volumetric ethanol excise tax credit (VEETC), and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Surface Transpor-
5 tation Extension Act of 2004”.

6 **SEC. 2. EXTENSION OF AUTHORIZATION FOR USE OF TRUST**

7 **FUNDS FOR OBLIGATIONS UNDER TEA-21.**

8 (a) HIGHWAY TRUST FUND.—

1 (1) IN GENERAL.—Paragraph (1) of section
2 9503(e) of the Internal Revenue Code of 1986 is
3 amended—

4 (A) in the matter before subparagraph (A),
5 by striking “March 1, 2004” and inserting
6 “April 1, 2004”,

7 (B) by striking “or” at the end of subpara-
8 graph (E),

9 (C) by striking the period at the end of
10 subparagraph (F) and inserting “, or”,

11 (D) by inserting after subparagraph (F),
12 the following new subparagraph:

13 “(G) authorized to be paid out of the
14 Highway Trust Fund under the Surface Trans-
15 portation Extension Act of 2004.”, and

16 (E) in the matter after subparagraph (G),
17 as added by this paragraph, by striking “Sur-
18 face Transportation Extension Act of 2003”
19 and inserting “Surface Transportation Exten-
20 sion Act of 2004”.

21 (2) MASS TRANSIT ACCOUNT.—Paragraph (3)
22 of section 9503(e) of such Code is amended—

23 (A) in the matter before subparagraph (A),
24 by striking “March 1, 2004” and inserting
25 “April 1, 2004”,

1 (B) in subparagraph (C), by striking “or”
 2 at the end of such subparagraph,

3 (C) in subparagraph (D), by inserting “or”
 4 at the end of such subparagraph,

5 (D) by inserting after subparagraph (D)
 6 the following new subparagraph:

7 “(E) the Surface Transportation Extension
 8 Act of 2004,” and

9 (E) in the matter after subparagraph (E),
 10 as added by this paragraph, by striking “Sur-
 11 face Transportation Extension Act of 2003”
 12 and inserting “Surface Transportation Exten-
 13 sion Act of 2004”.

14 (3) EXCEPTION TO LIMITATION ON TRANS-
 15 FERS.—Subparagraph (B) of section 9503(b)(5) of
 16 such Code is amended by striking “March 1, 2004”
 17 and inserting “April 1, 2004”.

18 (b) AQUATIC RESOURCES TRUST FUND.—

19 (1) SPORT FISH RESTORATION ACCOUNT.—
 20 Paragraph (2) of section 9504(b) of the Internal
 21 Revenue Code of 1986 is amended by striking “Sur-
 22 face Transportation Extension Act of 2003” each
 23 place it appears and inserting “Surface Transpor-
 24 tation Extension Act of 2004”.

1 (2) BOAT SAFETY ACCOUNT.—Subsection (c) of
2 section 9504 of such Code is amended—

3 (A) by striking “March 1, 2004” and in-
4 sserting “April 1, 2004”, and

5 (B) by striking “Surface Transportation
6 Extension Act of 2003” and inserting “Surface
7 Transportation Extension Act of 2004”.

8 (3) EXCEPTION TO LIMITATION ON TRANS-
9 FERS.—Paragraph (2) of section 9504(d) of such
10 Code is amended by striking “March 1, 2004” and
11 inserting “April 1, 2004”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the date of the enactment
14 of this Act.

15 (d) TEMPORARY RULE REGARDING ADJUST-
16 MENTS.—During the period beginning on the date of the
17 enactment of the Surface Transportation Extension Act
18 of 2003 and ending on March 31, 2004, for purposes of
19 making any estimate under section 9503(d) of the Internal
20 Revenue Code of 1986 of receipts of the Highway Trust
21 Fund, the Secretary of the Treasury shall treat—

22 (1) each expiring provision of paragraphs (1)
23 through (4) of section 9503(b) of such Code which
24 is related to appropriations or transfers to such
25 Fund to have been extended through the end of the

1 24-month period referred to in section
 2 9503(d)(1)(B) of such Code, and

3 (2) with respect to each tax imposed under the
 4 sections referred to in section 9503(b)(1) of such
 5 Code, the rate of such tax during the 24-month pe-
 6 riod referred to in section 9503(d)(1)(B) of such
 7 Code to be the same as the rate of such tax as in
 8 effect on the date of the enactment of the Surface
 9 Transportation Extension Act of 2003.

10 **SEC. 3. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT AND**
 11 **EXTENSION OF ALCOHOL FUELS INCOME TAX**
 12 **CREDIT.**

13 (a) IN GENERAL.—Subchapter B of chapter 65 of the
 14 Internal Revenue Code of 1986 (relating to rules of special
 15 application) is amended by inserting after section 6425
 16 the following new section:

17 **“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL**
 18 **MIXTURES.**

19 “(a) ALLOWANCE OF CREDITS.—There shall be al-
 20 lowed as a credit against the tax imposed by section 4081
 21 an amount equal to the sum of—

22 “(1) the alcohol fuel mixture credit, plus

23 “(2) the biodiesel mixture credit.

24 “(b) ALCOHOL FUEL MIXTURE CREDIT.—

1 “(1) IN GENERAL.—For purposes of this sec-
2 tion, the alcohol fuel mixture credit is the product
3 of the applicable amount and the number of gallons
4 of alcohol used by the taxpayer in producing any al-
5 cohol fuel mixture for sale or use in a trade or busi-
6 ness of the taxpayer.

7 “(2) APPLICABLE AMOUNT.—For purposes of
8 this subsection—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the applicable amount is 52
11 cents (51 cents in the case of any sale or use
12 after 2004).

13 “(B) MIXTURES NOT CONTAINING ETH-
14 ANOL.—In the case of an alcohol fuel mixture
15 in which none of the alcohol consists of ethanol,
16 the applicable amount is 60 cents.

17 “(3) ALCOHOL FUEL MIXTURE.—For purposes
18 of this subsection, the term ‘alcohol fuel mixture’
19 means a mixture of alcohol and a taxable fuel
20 which—

21 “(A) is sold by the taxpayer producing
22 such mixture to any person for use as a fuel,

23 “(B) is used as a fuel by the taxpayer pro-
24 ducing such mixture, or

1 “(C) is removed from the refinery by a
2 person producing such mixture.

3 “(4) OTHER DEFINITIONS.—For purposes of
4 this subsection—

5 “(A) ALCOHOL.—The term ‘alcohol’ in-
6 cludes methanol and ethanol but does not in-
7 clude—

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

10 “(ii) alcohol with a proof of less than
11 190 (determined without regard to any
12 added denaturants).

13 Such term also includes an alcohol gallon equiv-
14 alent of ethyl tertiary butyl ether or other
15 ethers produced from such alcohol.

16 “(B) TAXABLE FUEL.—The term ‘taxable
17 fuel’ has the meaning given such term by sec-
18 tion 4083(a)(1).

19 “(5) TERMINATION.—This subsection shall not
20 apply to any sale, use, or removal for any period
21 after December 31, 2010.

22 “(c) BIODIESEL MIXTURE CREDIT.—

23 “(1) IN GENERAL.—For purposes of this sec-
24 tion, the biodiesel mixture credit is the product of
25 the applicable amount and the number of gallons of

1 biodiesel used by the taxpayer in producing any bio-
2 diesel mixture for sale or use in a trade or business
3 of the taxpayer.

4 “(2) APPLICABLE AMOUNT.—For purposes of
5 this subsection—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), the applicable amount is 50
8 cents.

9 “(B) AMOUNT FOR AGRI-BIODIESEL.—In
10 the case of any biodiesel which is agri-biodiesel,
11 the applicable amount is \$1.00.

12 “(3) BIODIESEL MIXTURE.—For purposes of
13 this section, the term ‘biodiesel mixture’ means a
14 mixture of biodiesel and diesel fuel (as defined in
15 section 4083(a)(3)), determined without regard to
16 any use of kerosene, which—

17 “(A) is sold by the taxpayer producing
18 such mixture to any person for use as a fuel,

19 “(B) is used as a fuel by the taxpayer pro-
20 ducing such mixture, or

21 “(C) is removed from the refinery by a
22 person producing such mixture.

23 “(4) CERTIFICATION FOR BIODIESEL.—No
24 credit shall be allowed under this section unless the
25 taxpayer obtains a certification (in such form and

1 manner as prescribed by the Secretary) from the
2 producer of the biodiesel which identifies the product
3 produced and the percentage of biodiesel and agri-
4 biodiesel in the product.

5 “(5) OTHER DEFINITIONS.—Any term used in
6 this subsection which is also used in section 40A
7 shall have the meaning given such term by section
8 40A.

9 “(6) TERMINATION.—This subsection shall not
10 apply to any sale, use, or removal for any period
11 after December 31, 2006.

12 “(d) MIXTURE NOT USED AS A FUEL, ETC.—

13 “(1) IMPOSITION OF TAX.—If—

14 “(A) any credit was determined under this
15 section with respect to alcohol or biodiesel used
16 in the production of any alcohol fuel mixture or
17 biodiesel mixture, respectively, and

18 “(B) any person—

19 “(i) separates the alcohol or biodiesel
20 from the mixture, or

21 “(ii) without separation, uses the mix-
22 ture other than as a fuel,

23 then there is hereby imposed on such person a
24 tax equal to the product of the applicable

1 amount and the number of gallons of such alco-
2 hol or biodiesel.

3 “(2) APPLICABLE LAWS.—All provisions of law,
4 including penalties, shall, insofar as applicable and
5 not inconsistent with this section, apply in respect of
6 any tax imposed under paragraph (1) as if such tax
7 were imposed by section 4081 and not by this sec-
8 tion.

9 “(e) COORDINATION WITH EXEMPTION FROM EX-
10 CISE TAX.—Rules similar to the rules under section 40(c)
11 shall apply for purposes of this section.”.

12 (b) REGISTRATION REQUIREMENT.—Section 4101(a)
13 of the Internal Revenue Code of 1986 (relating to registra-
14 tion) is amended by inserting “and every person producing
15 or importing biodiesel (as defined in section 40A(d)(1))
16 or alcohol (as defined in section 6426(b)(4)(A))” after
17 “4081”.

18 (c) ADDITIONAL AMENDMENTS.—

19 (1) Section 40(c) of the Internal Revenue Code
20 of 1986 is amended by striking “section 4081(c), or
21 section 4091(c)” and inserting “section 4091(c), sec-
22 tion 6426, section 6427(e), or section 6427(f)”.

23 (2) Section 40(d)(4)(B) of such Code is amend-
24 ed by striking “or 4081(c)”.

25 (3) Section 40(e)(1) of such Code is amended—

1 (A) by striking “2007” in subparagraph
2 (A) and inserting “2010”, and

3 (B) by striking “2008” in subparagraph
4 (B) and inserting “2011”.

5 (4) Section 40(h) of such Code is amended—

6 (A) by striking “2007” in paragraph (1)
7 and inserting “2010”, and

8 (B) by striking “, 2006, or 2007” in the
9 table contained in paragraph (2) and inserting
10 “through 2010”.

11 (5) Section 4041(b)(2)(B) of such Code is
12 amended by striking “a substance other than petro-
13 leum or natural gas” and inserting “coal (including
14 peat)”.

15 (6) Paragraph (1) of section 4041(k) of such
16 Code is amended to read as follows:

17 “(1) IN GENERAL.—Under regulations pre-
18 scribed by the Secretary, in the case of the sale or
19 use of any liquid at least 10 percent of which con-
20 sists of alcohol (as defined in section
21 6426(b)(4)(A)), the rate of the tax imposed by sub-
22 section (c)(1) shall be the comparable rate under
23 section 4091(c).”.

24 (7) Section 4081 of such Code is amended by
25 striking subsection (e).

1 (8) Paragraph (2) of section 4083(a) of such
2 Code is amended to read as follows:

3 “(2) GASOLINE.—The term ‘gasoline’—

4 “(A) includes any gasoline blend, other
5 than qualified methanol or ethanol fuel (as de-
6 fined in section 4041(b)(2)(B)), partially ex-
7 empt methanol or ethanol fuel (as defined in
8 section 4041(m)(2)), or a denatured alcohol,
9 and

10 “(B) includes, to the extent prescribed in
11 regulations—

12 “(i) any gasoline blend stock, and

13 “(ii) any product commonly used as
14 an additive in gasoline (other than alco-
15 hol).

16 For purposes of subparagraph (B)(i), the term ‘gas-
17 oline blend stock’ means any petroleum product
18 component of gasoline.”.

19 (9) Section 6427 of such Code is amended by
20 inserting after subsection (d) the following new sub-
21 section:

22 “(e) ALCOHOL OR BIODIESEL USED TO PRODUCE
23 ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS
24 FUELS.—Except as provided in subsection (k)—

1 “(1) USED TO PRODUCE A MIXTURE.—If any
2 person produces a mixture described in section 6426
3 in such person’s trade or business, the Secretary
4 shall pay (without interest) to such person an
5 amount equal to the alcohol fuel mixture credit or
6 the biodiesel mixture credit with respect to such mix-
7 ture.

8 “(2) USED AS FUEL.—If alcohol (as defined in
9 section 40(d)(1)) or biodiesel (as defined in section
10 40A(d)(1)) or agri-biodiesel (as defined in section
11 40A(d)(2)) which is not in a mixture described in
12 section 6426—

13 “(A) is used by any person as a fuel in a
14 trade or business, or

15 “(B) is sold by any person at retail to an-
16 other person and placed in the fuel tank of such
17 person’s vehicle,

18 the Secretary shall pay (without interest) to such
19 person an amount equal to the alcohol credit (as de-
20 termined under section 40(b)(2)) or the biodiesel
21 credit (as determined under section 40A(b)(2)) with
22 respect to such fuel.

23 “(3) COORDINATION WITH OTHER REPAYMENT
24 PROVISIONS.—No amount shall be payable under
25 paragraph (1) with respect to any mixture with re-

1 spect to which an amount is allowed as a credit
2 under section 6426.

3 “(4) TERMINATION.—This subsection shall not
4 apply with respect to—

5 “(A) any alcohol fuel mixture (as defined
6 in section 6426(b)(3)) or alcohol (as so defined)
7 sold or used after December 31, 2010, and

8 “(B) any biodiesel mixture (as defined in
9 section 6426(c)(3)) or biodiesel (as so defined)
10 or agri-biodiesel (as so defined) sold or used
11 after December 31, 2006.”.

12 (10) Subsection (f) of section 6427 of such
13 Code is amended to read as follows:

14 “(f) AVIATION FUEL USED TO PRODUCE CERTAIN
15 ALCOHOL FUELS.—

16 “(1) IN GENERAL.—Except as provided in sub-
17 section (k), if any aviation fuel on which tax was im-
18 posed by section 4091 at the regular tax rate is used
19 by any person in producing a mixture described in
20 section 4091(c)(1)(A) which is sold or used in such
21 person’s trade or business, the Secretary shall pay
22 (without interest) to such person an amount equal to
23 the excess of the regular tax rate over the incentive
24 tax rate with respect to such fuel.

1 “(2) DEFINITIONS.—For purposes of paragraph
2 (1)—

3 “(A) REGULAR TAX RATE.—The term ‘reg-
4 ular tax rate’ means the aggregate rate of tax
5 imposed by section 4091 determined without re-
6 gard to subsection (c) thereof.

7 “(B) INCENTIVE TAX RATE.—The term
8 ‘incentive tax rate’ means the aggregate rate of
9 tax imposed by section 4091 with respect to
10 fuel described in subsection (c)(2) thereof.

11 “(3) COORDINATION WITH OTHER REPAYMENT
12 PROVISIONS.—No amount shall be payable under
13 paragraph (1) with respect to any aviation fuel with
14 respect to which an amount is payable under sub-
15 section (d) or (l).

16 “(4) TERMINATION.—This subsection shall not
17 apply with respect to any mixture sold or used after
18 September 30, 2007.”.

19 (11) Paragraphs (1) and (2) of section 6427(i)
20 of such Code are amended by inserting “(f),” after
21 “(d),”.

22 (12) Section 6427(i)(3) of such Code is amend-
23 ed—

1 (A) by striking “subsection (f)” both
2 places it appears in subparagraph (A) and in-
3 serting “subsection (e)(1)”,

4 (B) by striking “gasoline, diesel fuel, or
5 kerosene used to produce a qualified alcohol
6 mixture (as defined in section 4081(c)(3))” in
7 subparagraph (A) and inserting “a mixture de-
8 scribed in section 6426”,

9 (C) by adding at the end of subparagraph
10 (A) the following new flush sentence:

11 “In the case of an electronic claim, this sub-
12 paragraph shall be applied without regard to
13 clause (i).”,

14 (D) by striking “subsection (f)(1)” in sub-
15 paragraph (B) and inserting “subsection
16 (e)(1)”,

17 (E) by striking “20 days of the date of the
18 filing of such claim” in subparagraph (B) and
19 inserting “45 days of the date of the filing of
20 such claim (20 days in the case of an electronic
21 claim)”, and

22 (F) by striking “ALCOHOL MIXTURE” in
23 the heading and inserting “ALCOHOL FUEL AND
24 BIODIESEL MIXTURE”.

1 (13) Section 6427(o) of such Code is amend-
2 ed—

3 (A) by striking paragraph (1) and insert-
4 ing the following new paragraph:

5 “(1) any tax is imposed by section 4081, and”,

6 (B) by striking “such gasohol” in para-
7 graph (2) and inserting “the alcohol fuel mix-
8 ture (as defined in section 6426(b)(3))”,

9 (C) by striking “gasohol” both places it
10 appears in the matter following paragraph (2)
11 and inserting “alcohol fuel mixture”, and

12 (D) by striking “GASOHOL” in the heading
13 and inserting “ALCOHOL FUEL MIXTURE”.

14 (14) Section 9503(b)(1) of such Code is amend-
15 ed by adding at the end the following new flush sen-
16 tence:

17 “For purposes of this paragraph, taxes received
18 under sections 4041 and 4081 shall be determined
19 without reduction for credits under section 6426.”.

20 (15) Section 9503(b)(4) of such Code is amend-
21 ed—

22 (A) by adding “or” at the end of subpara-
23 graph (C),

1 (B) by striking the comma at the end of
 2 subparagraph (D)(iii) and inserting a period,
 3 and

4 (C) by striking subparagraphs (E) and
 5 (F).

6 (16) Section 9503(c)(2)(A)(i)(III) of such Code
 7 is amended by inserting “(other than subsection (e)
 8 thereof)” after “section 6427”.

9 (17) Section 9503(e)(2) of such Code is amend-
 10 ed by striking subparagraph (B) and by redesignig-
 11 nating subparagraphs (C), (D), and (E) as subpara-
 12 graphs (B), (C), and (D), respectively.

13 (18) The table of sections for subchapter B of
 14 chapter 65 of such Code is amended by inserting
 15 after the item relating to section 6425 the following
 16 new item:

“Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.”.

17 (19) TARIFF SCHEDULE.—Headings
 18 9901.00.50 and 9901.00.52 of the Harmonized Tar-
 19 iff Schedule of the United States (19 U.S.C. 3007)
 20 are each amended in the effective period column by
 21 striking “10/1/2007” each place it appears and in-
 22 serting “1/1/2011”.

23 (d) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Except as otherwise pro-
 25 vided in this subsection, the amendments made by

1 this section shall apply to fuel sold or used after
2 September 30, 2004.

3 (2) REGISTRATION REQUIREMENT.—The
4 amendment made by subsection (b) shall take effect
5 on April 1, 2005.

6 (3) EXTENSION OF ALCOHOL FUELS CREDIT.—
7 The amendments made by paragraphs (3), (4), and
8 (19) of subsection (c) shall take effect on the date
9 of the enactment of this Act.

10 (4) REPEAL OF GENERAL FUND RETENTION OF
11 CERTAIN ALCOHOL FUELS TAXES.—The amend-
12 ments made by subsection (c)(15) shall apply to fuel
13 sold or used after September 30, 2003.

14 (e) FORMAT FOR FILING.—The Secretary of the
15 Treasury shall describe the electronic format for filing
16 claims described in section 6427(i)(3)(B) of the Internal
17 Revenue Code of 1986 (as amended by subsection
18 (c)(12)(C)) not later than September 30, 2004.

19 **SEC. 4. BIODIESEL INCOME TAX CREDIT.**

20 (a) IN GENERAL.—Subpart D of part IV of sub-
21 chapter A of chapter 1 of the Internal Revenue Code of
22 1986 (relating to business related credits) is amended by
23 inserting after section 40 the following new section:

1 **“SEC. 40A. BIODIESEL USED AS FUEL.**

2 “(a) GENERAL RULE.—For purposes of section 38,
3 the biodiesel fuels credit determined under this section for
4 the taxable year is an amount equal to the sum of—

5 “(1) the biodiesel mixture credit, plus

6 “(2) the biodiesel credit.

7 “(b) DEFINITION OF BIODIESEL MIXTURE CREDIT
8 AND BIODIESEL CREDIT.—For purposes of this section—

9 “(1) BIODIESEL MIXTURE CREDIT.—

10 “(A) IN GENERAL.—The biodiesel mixture
11 credit of any taxpayer for any taxable year is
12 50 cents for each gallon of biodiesel used by the
13 taxpayer in the production of a qualified bio-
14 diesel mixture.

15 “(B) QUALIFIED BIODIESEL MIXTURE.—
16 The term ‘qualified biodiesel mixture’ means a
17 mixture of biodiesel and diesel fuel (as defined
18 in section 4083(a)(3)), determined without re-
19 gard to any use of kerosene, which—

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

23 “(ii) is used as a fuel by the taxpayer
24 producing such mixture.

25 “(C) SALE OR USE MUST BE IN TRADE OR
26 BUSINESS, ETC.—Biodiesel used in the produc-

1 tion of a qualified biodiesel mixture shall be
2 taken into account—

3 “(i) only if the sale or use described
4 in subparagraph (B) is in a trade or busi-
5 ness of the taxpayer, and

6 “(ii) for the taxable year in which
7 such sale or use occurs.

8 “(D) CASUAL OFF-FARM PRODUCTION NOT
9 ELIGIBLE.—No credit shall be allowed under
10 this section with respect to any casual off-farm
11 production of a qualified biodiesel mixture.

12 “(2) BIODIESEL CREDIT.—

13 “(A) IN GENERAL.—The biodiesel credit of
14 any taxpayer for any taxable year is 50 cents
15 for each gallon of biodiesel which is not in a
16 mixture with diesel fuel and which during the
17 taxable year—

18 “(i) is used by the taxpayer as a fuel
19 in a trade or business, or

20 “(ii) is sold by the taxpayer at retail
21 to a person and placed in the fuel tank of
22 such person’s vehicle.

23 “(B) USER CREDIT NOT TO APPLY TO BIO-
24 DIESEL SOLD AT RETAIL.—No credit shall be
25 allowed under subparagraph (A)(i) with respect

1 to any biodiesel which was sold in a retail sale
2 described in subparagraph (A)(ii).

3 “(3) CREDIT FOR AGRI-BIODIESEL.—In the
4 case of any biodiesel which is agri-biodiesel, para-
5 graphs (1)(A) and (2)(A) shall be applied by sub-
6 stituting ‘\$1.00’ for ‘50 cents’.

7 “(4) CERTIFICATION FOR BIODIESEL.—No
8 credit shall be allowed under this section unless the
9 taxpayer obtains a certification (in such form and
10 manner as prescribed by the Secretary) from the
11 producer or importer of the biodiesel which identifies
12 the product produced and the percentage of biodiesel
13 and agri-biodiesel in the product.

14 “(c) COORDINATION WITH CREDIT AGAINST EXCISE
15 TAX.—The amount of the credit determined under this
16 section with respect to any biodiesel shall be properly re-
17 duced to take into account any benefit provided with re-
18 spect to such biodiesel solely by reason of the application
19 of section 6426 or 6427(e).

20 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
21 poses of this section—

22 “(1) BIODIESEL.—The term ‘biodiesel’ means
23 the monoalkyl esters of long chain fatty acids de-
24 rived from plant or animal matter which meet—

1 “(A) the registration requirements for
2 fuels and fuel additives established by the Envi-
3 ronmental Protection Agency under section 211
4 of the Clean Air Act (42 U.S.C. 7545), and

5 “(B) the requirements of the American So-
6 ciety of Testing and Materials D6751.

7 “(2) AGRI-BIODIESEL.—The term ‘agri-bio-
8 diesel’ means biodiesel derived solely from virgin oils,
9 including esters derived from virgin vegetable oils
10 from corn, soybeans, sunflower seeds, cottonseeds,
11 canola, crambe, rapeseeds, safflowers, flaxseeds, rice
12 bran, and mustard seeds, and from animal fats.

13 “(3) MIXTURE OR BIODIESEL NOT USED AS A
14 FUEL, ETC.—

15 “(A) MIXTURES.—If—

16 “(i) any credit was determined under
17 this section with respect to biodiesel used
18 in the production of any qualified biodiesel
19 mixture, and

20 “(ii) any person—

21 “(I) separates the biodiesel from
22 the mixture, or

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

1 then there is hereby imposed on such person a
2 tax equal to the product of the rate applicable
3 under subsection (b)(1)(A) and the number of
4 gallons of such biodiesel in such mixture.

5 “(B) BIODIESEL.—If—

6 “(i) any credit was determined under
7 this section with respect to the retail sale
8 of any biodiesel, and

9 “(ii) any person mixes such biodiesel
10 or uses such biodiesel other than as a fuel,
11 then there is hereby imposed on such person a
12 tax equal to the product of the rate applicable
13 under subsection (b)(2)(A) and the number of
14 gallons of such biodiesel.

15 “(C) APPLICABLE LAWS.—All provisions of
16 law, including penalties, shall, insofar as appli-
17 cable and not inconsistent with this section,
18 apply in respect of any tax imposed under sub-
19 paragraph (A) or (B) as if such tax were im-
20 posed by section 4081 and not by this chapter.

21 “(4) PASS-THRU IN THE CASE OF ESTATES AND
22 TRUSTS.—Under regulations prescribed by the Sec-
23 retary, rules similar to the rules of subsection (d) of
24 section 52 shall apply.

1 “(e) TERMINATION.—This section shall not apply to
2 any sale or use after December 31, 2006.”.

3 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
4 NESS CREDIT.—Section 38(b) of the Internal Revenue
5 Code of 1986 (relating to current year business credit)
6 is amended by striking “plus” at the end of paragraph
7 (14), by striking the period at the end of paragraph (15)
8 and inserting “, plus”, and by adding at the end the fol-
9 lowing new paragraph:

10 “(16) the biodiesel fuels credit determined
11 under section 40A(a).”.

12 (c) CONFORMING AMENDMENTS.—

13 (1) Section 39(d) of the Internal Revenue Code
14 of 1986 is amended by adding at the end the fol-
15 lowing new paragraph:

16 “(11) NO CARRYBACK OF BIODIESEL FUELS
17 CREDIT BEFORE EFFECTIVE DATE.—No portion of
18 the unused business credit for any taxable year
19 which is attributable to the biodiesel fuels credit de-
20 termined under section 40A may be carried back to
21 a taxable year ending on or before September 30,
22 2004.”.

23 (2)(A) Section 87 of such Code is amended to
24 read as follows:

1 **“SEC. 87. ALCOHOL AND BIODIESEL FUELS CREDITS.**

2 “Gross income includes—

3 “(1) the amount of the alcohol fuels credit de-
4 termined with respect to the taxpayer for the taxable
5 year under section 40(a), and

6 “(2) the biodiesel fuels credit determined with
7 respect to the taxpayer for the taxable year under
8 section 40A(a).”.

9 (B) The item relating to section 87 in the table
10 of sections for part II of subchapter B of chapter 1
11 of such Code is amended by striking “fuel credit”
12 and inserting “and biodiesel fuels credits”.

13 (3) Section 196(c) of such Code is amended by
14 striking “and” at the end of paragraph (9), by strik-
15 ing the period at the end of paragraph (10) and in-
16 sserting “, and”, and by adding at the end the fol-
17 lowing new paragraph:

18 “(11) the biodiesel fuels credit determined
19 under section 40A(a).”.

20 (4) The table of sections for subpart D of part
21 IV of subchapter A of chapter 1 of such Code is
22 amended by adding after the item relating to section
23 40 the following new item:

“Sec. 40A. Biodiesel used as fuel.”.

24 (d) **EFFECTIVE DATE.**—The amendments made by
25 this section shall apply to fuel produced, and sold or used,

- 1 after September 30, 2004, in taxable years ending after
- 2 such date.

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