

112TH CONGRESS  
1ST SESSION

# S. 1185

To amend the Internal Revenue Code of 1986 to provide for a variable VEETC rate based on the price of crude oil, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

JUNE 13, 2011

Mr. THUNE (for himself, Ms. KLOBUCHAR, Mr. GRASSLEY, Mr. JOHANNES, Mr. HOEVEN, Mr. FRANKEN, Mr. MORAN, Mr. LUGAR, Mr. NELSON of Nebraska, Mr. HARKIN, Mr. JOHNSON of South Dakota, Mr. KIRK, Mr. COATS, Mr. DURBIN, and Mrs. MCCASKILL) 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 provide for a variable VEETC rate based on the price of crude oil, 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 “Ethanol Reform and  
5 Deficit Reduction Act”.

6 **SEC. 2. VARIABLE VEETC RATE BASED ON PRICE OF CRUDE**  
7 **OIL.**

8 (a) EXCISE TAX CREDIT.—

1 (1) IN GENERAL.—Subparagraph (A) of section  
 2 6426(b)(2) of the Internal Revenue Code of 1986 is  
 3 amended—

4 (A) by striking “and” at the end of clause  
 5 (i),

6 (B) by striking “calendar years beginning  
 7 after 2008, 45 cents.” in clause (ii) and insert-  
 8 ing “calendar quarters beginning after 2008  
 9 and before July 1, 2011, 45 cents, and”, and

10 (C) by adding at the end the following new  
 11 clause:

12 “(iii) in the case of calendar quarters  
 13 beginning after June 30, 2011, the appli-  
 14 cable rate determined in accordance with  
 15 the following table:

<b>“If the average price of crude oil during the preceding calendar quarter is:</b>	<b>The applicable rate for the calendar quarter is:</b>
Not more than \$50/barrel .....	30 cents
More than \$50 but not more than \$60/barrel .....	24 cents
More than \$60 but not more than \$70/barrel .....	18 cents
More than \$70 but not more than \$80/barrel .....	12 cents
More than \$80 but not more than \$90/barrel .....	6 cents
More than \$90/barrel .....	0 cents.

16 For purposes of the preceding table, the  
 17 average price of crude oil for any calendar  
 18 quarter shall be the average 3-month fu-  
 19 tures price on the New York Mercantile  
 20 Exchange for light sweet crude oil for such  
 21 calendar quarter. Each applicable rate

1           under the preceding table shall be reduced  
2           by 2 cents for each calendar year begin-  
3           ning after 2011.”.

4           (2) EXTENSION OF TAX CREDIT OR PAY-  
5           MENT.—Sections 6426(b)(6) and 6427(e)(6)(A) of  
6           such Code are each amended by striking “2011” and  
7           inserting “2014”.

8           (b) INCOME TAX CREDIT.—

9           (1) IN GENERAL.—The table contained in sec-  
10          tion 40(h)(2) of the Internal Revenue Code of 1986  
11          is amended—

12           (A) by striking “calendar year” in the  
13          heading for the first column,

14           (B) by inserting “Calendar year” before  
15          “2001”,

16           (C) by inserting “Calendar year” before  
17          “2003”,

18           (D) by inserting “Calendar year” before  
19          “2005”,

20           (E) by inserting “Calendar years” before  
21          “2009”,

22           (F) by striking “2011” and inserting “the  
23          last calendar quarter beginning before July 1,  
24          2011”,

1 (G) by striking the period at the end of the  
 2 table, and

3 (H) by adding at the end the following:

“Any calendar quarter beginning after June 30, 2011, and before 2015. 1st applicable rate 2d applicable rate.”.

4 (2) APPLICABLE RATES.—Paragraph (3) of section 40(h) of such Code is amended to read as follows:

7 “(3) APPLICABLE RATES.—For purposes of this subsection, the 1st applicable rate and the 2d applicable rate shall be determined in accordance with the following table:

“If the average price of crude oil during the preceding calendar quarter is:	The 1st applicable rate for the calendar quarter is:	The 2d applicable rate for the calendar quarter is:
Not more than \$50/barrel .....	30 cents	22.20 cents
More than \$50 but not more than \$60/barrel.	24 cents	17.76 cents
More than \$60 but not more than \$70/barrel.	18 cents	13.33 cents
More than \$70 but not more than \$80/barrel.	12 cents	8.88 cents
More than \$80 but not more than \$90/barrel.	6 cents	4.44 cents
More than \$90/barrel .....	0 cents	0 cents.

11 For purposes of the preceding table, the average  
 12 price of crude oil for any calendar quarter shall be  
 13 the average 3-month futures price on the New York  
 14 Mercantile Exchange for light sweet crude oil for  
 15 such calendar quarter. Each 1st applicable rate  
 16 under the preceding table shall be reduced by 2  
 17 cents for each calendar year beginning after 2011

1 and each 2d applicable rate under such table shall  
2 be reduced by 1.48 cents for each such year.”.

3 (3) **EXTENSION OF TAX CREDIT.**—Section 40 of  
4 such Code is amended—

5 (A) by striking “2011” in subsection  
6 (e)(1)(A) and inserting “2014”,

7 (B) by striking “2012” in subsection  
8 (e)(1)(B) and inserting “2015”, and

9 (C) by striking “2011” in subsection  
10 (h)(1) and inserting “2014”.

11 (c) **REPEAL OF DEADWOOD.**—Section 6426(b)(2) of  
12 the Internal Revenue Code of 1986 is amended by striking  
13 subparagraph (C).

14 (d) **EFFECTIVE DATE.**—The amendments made by  
15 this section shall apply to any sale, use, or removal for  
16 any period after June 30, 2011.

17 **SEC. 3. EXTENSION AND MODIFICATION OF ALTERNATIVE**  
18 **FUEL VEHICLE REFUELING PROPERTY CRED-**  
19 **IT.**

20 (a) **EXTENSION.**—Subsection (g) of section 30C of  
21 the Internal Revenue Code of 1986 is amended by striking  
22 “placed in service—” and all that follows and inserting  
23 “placed in service after the earlier of December 31, 2016,  
24 or the date on which the Secretary certifies that at least  
25 53,000 qualified alternative fuel refueling properties

1 (other than properties described in subsection (e)(2)(C))  
2 have been placed in service.”.

3 (b) ONLY CERTAIN ETHANOL BLENDS ELIGIBLE  
4 FOR CREDIT.—Subparagraph (A) of section 30C(c)(2) of  
5 the Internal Revenue Code of 1986 is amended to read  
6 as follows:

7 “(A) Any fuel—

8 “(i) at least 85 percent of the volume  
9 of which consists of one or more of the fol-  
10 lowing: natural gas, compressed natural  
11 gas, liquified natural gas, liquefied petro-  
12 leum gas, or hydrogen, or

13 “(ii) at least 85 percent of the volume  
14 of which consists of—

15 “(I) ethanol, or

16 “(II) ethanol and gasoline or one  
17 or more of the fuels described in  
18 clause (i), but only if at least 15 per-  
19 cent and not more than 85 percent of  
20 the volume of such fuel consists of  
21 ethanol.”.

22 (c) CREDIT FOR DUAL-USE REFUELING PROP-  
23 erty.—Subsection (e) of section 30C of the Internal Rev-  
24 enue Code of 1986 is amended by adding at the end the  
25 following new paragraph:

1 “(6) DUAL-USE REFUELING PROPERTY.—

2 “(A) IN GENERAL.—In the case of any  
3 dual-use refueling property, 100 percent of the  
4 cost of such property shall be treated as quali-  
5 fied alternative fuel refueling property if the  
6 taxpayer certifies, in such time and manner as  
7 the Secretary shall prescribe, that such prop-  
8 erty will be used in more than a de minimis ca-  
9 pacity for the purposes described in section  
10 179A(d)(3)(A) (applied as specified in sub-  
11 section (c)(2)).

12 “(B) RECAPTURE.—If at any time within  
13 5 years after the date of the certification under  
14 subparagraph (A) the dual-use refueling prop-  
15 erty ceases to be used as required under such  
16 subparagraph, 100 percent of the cost of such  
17 property shall be subject to recapture under  
18 paragraph (5).

19 “(C) DUAL-USE REFUELING PROPERTY.—  
20 For purposes of this paragraph, the term ‘dual-  
21 use refueling property’ means property that is  
22 both qualified alternative fuel vehicle refueling  
23 property and property used—

24 “(i) to store or dispense fuels not de-  
25 scribed in subsection (c)(2), or

1                   “(ii) to store fuels described in sub-  
2                   section (c)(2) for any purpose other than  
3                   delivery of such fuel into the fuel tank of  
4                   a motor vehicle.”.

5           (d) **EFFECTIVE DATE.**—The amendments made by  
6 this section shall apply to property placed in service after  
7 June 30, 2011.

8 **SEC. 4. EXTENSION OF CELLULOSIC BIOFUEL PRODUCER**  
9                   **CREDIT THROUGH 2014.**

10           (a) **IN GENERAL.**—Section 40(b)(6) of the Internal  
11 Revenue Code of 1986 is amended by striking subpara-  
12 graph (H).

13           (b) **CONFORMING AMENDMENT.**—Section 40(e) of  
14 the Internal Revenue Code of 1986 is amended by striking  
15 paragraph (3).

16 **SEC. 5. EXTENSION OF SPECIAL DEPRECIATION ALLOW-**  
17                   **ANCE FOR CELLULOSIC BIOFUEL PLANT**  
18                   **PROPERTY.**

19           Subparagraph (D) of section 168(l)(2) of the Internal  
20 Revenue Code of 1986 is amended by striking “January  
21 1, 2013” and inserting “January 1, 2015”.



1 **SEC. 6. ALGAE TREATED AS A QUALIFIED FEEDSTOCK FOR**  
2 **PURPOSES OF THE CELLULOSIC BIOFUEL**  
3 **PRODUCER CREDIT, ETC.**

4 (a) IN GENERAL.—Subclause (I) of section  
5 40(b)(6)(E)(i) of the Internal Revenue Code of 1986 is  
6 amended to read as follows:

7 “(I) is derived solely by, or from,  
8 qualified feedstocks, and”.

9 (b) QUALIFIED FEEDSTOCK; SPECIAL RULES FOR  
10 ALGAE.—Paragraph (6) of section 40(b) of the Internal  
11 Revenue Code of 1986, as amended by this Act, is amend-  
12 ed by redesignating subparagraphs (F) and (G) as sub-  
13 paragraphs (H) and (I), respectively, and by inserting  
14 after subparagraph (E) the following new subparagraphs:

15 “(F) QUALIFIED FEEDSTOCK.—For pur-  
16 poses of this paragraph, the term ‘qualified  
17 feedstock’ means—

18 “(i) any lignocellulosic or hemicellulosic  
19 matter that is available on a renewable  
20 or recurring basis, and

21 “(ii) any cultivated algae, cyanobacte-  
22 ria, or lemna.

23 “(G) SPECIAL RULES FOR ALGAE.—In the  
24 case of fuel which is derived by, or from, feed-  
25 stock described in subparagraph (F)(ii) and  
26 which is sold by the taxpayer to another person

1 for refining by such other person into a fuel  
 2 which meets the requirements of subparagraph  
 3 (E)(i)(II)—

4 “(i) such sale shall be treated as de-  
 5 scribed in subparagraph (C)(i),

6 “(ii) such fuel shall be treated as  
 7 meeting the requirements of subparagraph  
 8 (E)(i)(II) in the hands of such taxpayer,  
 9 and

10 “(iii) except as provided in this sub-  
 11 paragraph, such fuel (and any fuel derived  
 12 from such fuel) shall not be taken into ac-  
 13 count under subparagraph (C) with respect  
 14 to the taxpayer or any other person.”.

15 (c) ALGAE TREATED AS A QUALIFIED FEEDSTOCK  
 16 FOR PURPOSES OF BONUS DEPRECIATION FOR BIOFUEL  
 17 PLANT PROPERTY.—

18 (1) IN GENERAL.—Subparagraph (A) of section  
 19 168(l)(2) of the Internal Revenue Code of 1986 is  
 20 amended by striking “solely to produce cellulosic  
 21 biofuel” and inserting “solely to produce second gen-  
 22 eration biofuel (as defined in section 40(b)(6)(E))”.

23 (2) CONFORMING AMENDMENTS.—Subsection  
 24 (l) of section 168 of such Code, as amended by this  
 25 Act, is amended—

1 (A) by striking “cellulosic biofuel” each  
2 place it appears in the text thereof and insert-  
3 ing “second generation biofuel”,

4 (B) by striking paragraph (3) and redesign-  
5 ating paragraphs (4) through (8) as para-  
6 graphs (3) through (7), respectively,

7 (C) by striking “CELLULOSIC” in the  
8 heading of such subsection and inserting “SEC-  
9 OND GENERATION”, and

10 (D) by striking “CELLULOSIC” in the head-  
11 ing of paragraph (2) and inserting “SECOND  
12 GENERATION”.

13 (d) CONFORMING AMENDMENTS.—

14 (1) Section 40 of the Internal Revenue Code of  
15 1986, as amended by this Act, is amended—

16 (A) by striking “cellulosic biofuel” each  
17 place it appears in the text thereof and insert-  
18 ing “second generation biofuel”,

19 (B) by striking “CELLULOSIC” in the  
20 headings of subsections (b)(6), (b)(6)(E), and  
21 (d)(3)(D) and inserting “SECOND GENERA-  
22 TION”, and

23 (C) by striking “CELLULOSIC” in the head-  
24 ings of subsections (b)(6)(C), (b)(6)(D),

1 (b)(6)(H), (d)(6), and (e)(3) and inserting  
2 “SECOND GENERATION”.

3 (2) Clause (ii) of section 40(b)(6)(E) of such  
4 Code is amended by striking “Such term shall not”  
5 and inserting “The term ‘second generation biofuel’  
6 shall not”.

7 (3) Paragraph (1) of section 4101(a) of such  
8 Code is amended by striking “cellulosic biofuel” and  
9 inserting “second generation biofuel”.

10 (e) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Except as provided in para-  
12 graph (2), the amendments made by this section  
13 shall apply to fuels sold or used after the date of the  
14 enactment of this Act.

15 (2) APPLICATION TO BONUS DEPRECIATION.—  
16 The amendments made by subsection (c) shall apply  
17 to property placed in service after the date of the en-  
18 actment of this Act.

19 **SEC. 7. BUDGETARY EFFECTS.**

20 (a) PAYGO SCORECARD.—The budgetary effects of  
21 this Act shall not be entered on either PAYGO scorecard  
22 maintained pursuant to section 4(d) of the Statutory Pay-  
23 As-You-Go Act of 2010.

24 (b) SENATE PAYGO SCORECARD.—The budgetary  
25 effects of this Act shall not be recorded on any PAYGO

- 1 scorecard maintained for purposes of section 201 of S.
- 2 Con. Res. 21 (110th Congress).

○