

117TH CONGRESS  
1ST SESSION

# S. 2263

To amend the Internal Revenue Code of 1986 to provide a tax credit for sustainable aviation fuel, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Mr. BROWN (for himself, Ms. CANTWELL, Mr. WARNOCK, and Mrs. MURRAY) 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 a tax credit for sustainable aviation fuel, 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 “Sustainable Skies  
5 Act”.

6 **SEC. 2. SUSTAINABLE AVIATION FUEL CREDIT.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-  
8 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by inserting after section 40A the fol-  
 2 lowing new section:

3 **“SEC. 40B. SUSTAINABLE AVIATION FUEL CREDIT.**

4 “(a) IN GENERAL.—

5 “(1) CREDIT AMOUNT.—For purposes of sec-  
 6 tion 38, the sustainable aviation fuel credit for the  
 7 taxable year is, with respect to each gallon of sus-  
 8 tainable aviation fuel which is used by the taxpayer  
 9 in the production of a qualified mixture—

10 “(A) a base credit amount of \$1.50, plus

11 “(B) the applicable supplementary credit  
 12 amount.

13 “(2) APPLICABLE SUPPLEMENTARY CREDIT  
 14 AMOUNT.—

15 “(A) IN GENERAL.—For purposes of para-  
 16 graph (1), the applicable supplementary credit  
 17 amount is \$0.01 for every percentage point  
 18 above 50 percent for which the sustainable avia-  
 19 tion fuel is certified under subsection (f) to re-  
 20 duce emissions in comparison with petroleum-  
 21 based jet fuel as described in subsections  
 22 (d)(2)(A) or (d)(2)(B).

23 “(B) MAXIMUM SUPPLEMENTARY CREDIT  
 24 AMOUNT.—For purposes of subparagraph (A),

1           the maximum applicable supplementary credit  
2           amount allowable is \$0.50.

3           “(3) 40A EXCEPTION.—If the biodiesel fuels  
4           credit under section 40A is not in effect for a tax-  
5           able year, paragraph (1)(A) shall be applied by sub-  
6           stituting ‘\$1.15’ for ‘\$1.50’.

7           “(b) QUALIFIED MIXTURE.—For purposes of this  
8           section, the term ‘qualified mixture’ means a mixture of  
9           sustainable aviation fuel and kerosene, which—

10           “(1) is sold by the taxpayer producing such  
11           mixture for use in an aircraft that has fuel uplift in  
12           the United States, or

13           “(2) is used—

14           “(A) by the taxpayer producing such mix-  
15           ture, and

16           “(B) in an aircraft that has fuel uplift in  
17           the United States.

18           “(c) SALE OR USE MUST BE IN TRADE OR BUSI-  
19           NESS, ETC.—Sustainable aviation fuel used in the produc-  
20           tion of a qualified mixture shall be taken into account—

21           “(1) only if the sale or use described in sub-  
22           section (b) is in a trade or business of the taxpayer,  
23           and

24           “(2) for the taxable year in which such sale or  
25           use occurs.

1       “(d) SUSTAINABLE AVIATION FUEL.—For purposes  
 2 of this section, the term ‘sustainable aviation fuel’ means  
 3 liquid fuel—

4           “(1) that—

5               “(A) consists of synthesized hydrocarbons,

6               “(B) meets the requirements of—

7                   “(i) ASTM International Standard  
 8 D7566, or

9                   “(ii) the Fischer Tropsch provisions of  
 10 ASTM International Standard D1655,  
 11 Annex A1,

12               “(C) is derived from biomass (as such term  
 13 is defined in section 45K(c)(3)), waste streams,  
 14 renewable energy sources, or gaseous carbon ox-  
 15 ides, and

16               “(D) is not derived from palm fatty acid  
 17 distillates, and

18           “(2) that achieves at least a 50 percent lifecycle  
 19 greenhouse gas emissions reduction in comparison  
 20 with petroleum-based jet fuel, as determined by a  
 21 test that shows—

22               “(A) the fuel production pathway achieves  
 23 at least a 50 percent reduction of the aggregate  
 24 attributional core lifecycle emissions and the  
 25 positive induced land use change values under

1 the lifecycle methodology for sustainable avia-  
2 tion fuels adopted by the International Civil  
3 Aviation Organization with the agreement of  
4 the United States, or

5 “(B) the fuel production pathway achieves  
6 at least a 50 percent reduction of the aggregate  
7 attributional core lifecycle greenhouse gas emis-  
8 sions values and the positive induced land use  
9 change values under another methodology that  
10 the Secretary, in consultation with the Adminis-  
11 trator of the Environmental Protection Agency  
12 and the Secretary of Energy working jointly,  
13 determines is—

14 “(i) reflective of the latest scientific  
15 understanding of lifecycle greenhouse gas  
16 emissions, and

17 “(ii) as stringent as the requirement  
18 under subparagraph (A).

19 “(e) TIME LIMIT FOR ADOPTION OF NEW SUSTAIN-  
20 ABLE AVIATION FUEL EMISSIONS REDUCTION TEST.—

21 For purposes of subparagraph (B) of subsection (d)(2),  
22 the Secretary, in consultation with the Administrator of  
23 the Environmental Protection Agency and the Secretary  
24 of Energy working jointly, shall, within 24 months after  
25 the date of the enactment of this section, adopt at least

1 one methodology for testing lifecycle greenhouse gas emis-  
 2 sions that meets the requirements of such subparagraph.

3 “(f) CERTIFICATION REQUIREMENTS.—

4 “(1) IN GENERAL.—No credit shall be allowed  
 5 under subsection (a) unless the taxpayer meets cer-  
 6 tification requirements demonstrating the sustain-  
 7 able aviation fuel conforms with one of the lifecycle  
 8 greenhouse gas emissions reduction tests under sub-  
 9 section (d)(2).

10 “(2) CERTIFICATION REQUIREMENT FOR TEST  
 11 IN (D)(2)(A).—For purposes of paragraph (1), with  
 12 respect to certifications based on the test under sub-  
 13 paragraph (A) of subsection (d)(2), the taxpayer  
 14 shall obtain from the fuel producer a certification  
 15 from a sustainability certification scheme approved  
 16 by the International Civil Aviation Organization  
 17 demonstrating that the fuel conforms with the Car-  
 18 bon Offsetting and Reduction Scheme for Inter-  
 19 national Aviation’s sustainability criteria and the  
 20 traceability and information transmission require-  
 21 ments approved by the International Civil Aviation  
 22 Organization with the agreement of the United  
 23 States.

24 “(3) CERTIFICATION REQUIREMENTS FOR TEST  
 25 IN (D)(2)(B).—For purposes of paragraph (1), with

1       respect to certifications based on the test under sub-  
 2       paragraph (B) of subsection (d)(2)—

3               “(A) the taxpayer shall obtain from the  
 4       fuel producer a certification that the fuel has  
 5       been determined by the Environmental Protec-  
 6       tion Agency to qualify under the requirements  
 7       of such subparagraph, and

8               “(B) the taxpayer shall obtain from the  
 9       fuel producer an additional certification that  
 10      the fuel conforms with the sustainability criteria  
 11      and the traceability and information trans-  
 12      mission requirements that the Secretary, in  
 13      consultation with the Administrator of the En-  
 14      vironmental Protection Agency and the Sec-  
 15      retary of Energy working jointly, determines  
 16      are equivalent with those necessary to claim  
 17      emissions reductions from sustainable aviation  
 18      fuel use under the Carbon Offsetting and Re-  
 19      duction Scheme for International Aviation  
 20      adopted by the International Civil Aviation Or-  
 21      ganization with the agreement of the United  
 22      States.

23       “(g) TERMINATION.—This section shall not apply to  
 24      any sale or use after December 31, 2031.”.

1 (b) CREDIT MADE PART OF GENERAL BUSINESS

2 CREDIT.—Section 38(b) of the Internal Revenue Code of  
3 1986 is amended by striking “plus” at the end of para-  
4 graph (32), by striking the period at the end of paragraph  
5 (33) and inserting “, plus”, and by inserting after para-  
6 graph (33) the following new paragraph:

7 “(34) the sustainable aviation fuel credit deter-  
8 mined under section 40B.”.

9 (c) CONFORMING AMENDMENT.—Section 40A(f) of  
10 such Code is amended by striking paragraph (4).

11 (d) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years ending after the  
13 date of the enactment of this Act.

○