

108TH CONGRESS  
1ST SESSION

# S. 240

To amend the Internal Revenue Code of 1986 to allow allocation of small ethanol producer credit to patrons of cooperative, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2003

Mr. FITZGERALD (for himself, Mr. JOHNSON, Mr. HAGEL, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to allow allocation of small ethanol producer credit to patrons of cooperative, 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. SMALL ETHANOL PRODUCER CREDIT.**

4       (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO  
5 PATRONS OF A COOPERATIVE.—Subsection (g) of section  
6 40 of the Internal Revenue Code of 1986 (relating to alco-  
7 hol used as fuel) is amended by adding at the end the  
8 following new paragraph:

1               “(6) ALLOCATION OF SMALL ETHANOL PRO-  
2               DUCER CREDIT TO PATRONS OF COOPERATIVE.—

3               “(A) ELECTION TO ALLOCATE.—

4               “(i) IN GENERAL.—In the case of a  
5               cooperative organization described in sec-  
6               tion 1381(a), any portion of the credit de-  
7               termined under subsection (a)(3) for the  
8               taxable year may, at the election of the or-  
9               ganization, be apportioned pro rata among  
10               patrons of the organization on the basis of  
11               the quantity or value of business done with  
12               or for such patrons for the taxable year.

13               “(ii) FORM AND EFFECT OF ELEC-  
14               TION.—An election under clause (i) for any  
15               taxable year shall be made on a timely  
16               filed return for such year. Such election,  
17               once made, shall be irrevocable for such  
18               taxable year.

19               “(B) TREATMENT OF ORGANIZATIONS AND  
20               PATRONS.—The amount of the credit appor-  
21               tioned to patrons under subparagraph (A)—

22               “(i) shall not be included in the  
23               amount determined under subsection (a)  
24               with respect to the organization for the  
25               taxable year,

1                         “(ii) shall be included in the amount  
2                         determined under subsection (a) for the  
3                         taxable year of each patron for which the  
4                         patronage dividends for the taxable year  
5                         described in subparagraph (A) are included  
6                         in gross income, and

7                         “(iii) shall be included in gross income  
8                         of such patrons for the taxable year in the  
9                         manner and to the extent provided in sec-  
10                         tion 87.

11                         “(C) SPECIAL RULES FOR DECREASE IN  
12                         CREDITS FOR TAXABLE YEAR.—If the amount  
13                         of the credit of a cooperative organization de-  
14                         termined under subsection (a)(3) for a taxable  
15                         year is less than the amount of such credit  
16                         shown on the return of the cooperative organi-  
17                         zation for such year, an amount equal to the  
18                         excess of—

19                         “(i) such reduction, over

20                         “(ii) the amount not apportioned to  
21                         such patrons under subparagraph (A) for  
22                         the taxable year,

23                         shall be treated as an increase in tax imposed  
24                         by this chapter on the organization. Such in-  
25                         crease shall not be treated as tax imposed by

1           this chapter for purposes of determining the  
2           amount of any credit under this chapter or for  
3           purposes of section 55.”.

4           (b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER  
5           CREDIT.—

6           (1) DEFINITION OF SMALL ETHANOL PRO-  
7           DUCER.—Section 40(g) of such Code (relating to  
8           definitions and special rules for eligible small ethanol  
9           producer credit) is amended by striking  
10           “30,000,000” each place it appears and inserting  
11           “60,000,000”.

12           (2) SMALL ETHANOL PRODUCER CREDIT NOT A  
13           PASSIVE ACTIVITY CREDIT.—Clause (i) of section  
14           469(d)(2)(A) of such Code is amended by striking  
15           “subpart D” and inserting “subpart D, other than  
16           section 40(a)(3),”.

17           (3) ALLOWING CREDIT AGAINST ENTIRE REG-  
18           ULAR TAX AND MINIMUM TAX.—

19           (A) IN GENERAL.—Subsection (c) of sec-  
20           tion 38 of such Code (relating to limitation  
21           based on amount of tax) is amended by redesign-  
22           ing paragraph (4) as paragraph (5) and by  
23           inserting after paragraph (3) the following new  
24           paragraph:

1                   “(4) SPECIAL RULES FOR SMALL ETHANOL  
2                   PRODUCER CREDIT.—

3                   “(A) IN GENERAL.—In the case of the  
4                   small ethanol producer credit—

5                   “(i) this section and section 39 shall  
6                   be applied separately with respect to the  
7                   credit, and

8                   “(ii) in applying paragraph (1) to the  
9                   credit—

10                   “(I) the amounts in subparagraphs (A) and (B) thereof shall be  
11                   treated as being zero, and

13                   “(II) the limitation under paragraph (1) (as modified by subclause  
14                   (I)) shall be reduced by the credit allowed under subsection (a) for the  
15                   taxable year (other than the small  
16                   ethanol producer credit).

19                   “(B) SMALL ETHANOL PRODUCER CREDIT.—For purposes of this subsection, the term  
20                   ‘small ethanol producer credit’ means the credit  
21                   allowable under subsection (a) by reason of section 40(a)(3).”.

24                   (B) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii) and sub-

1           clause (II) of section 38(c)(3)(A)(ii) are each  
2           amended by inserting “or the small ethanol pro-  
3           ducer credit” after “employee credit”.

4           (4) SMALL ETHANOL PRODUCER CREDIT NOT  
5           ADDED BACK TO INCOME UNDER SECTION 87.—Sec-  
6           tion 87 of such Code (relating to income inclusion  
7           of alcohol fuel credit) is amended to read as follows:

8           **“SEC. 87. ALCOHOL FUEL CREDIT.**

9           “Gross income includes an amount equal to the sum  
10           of—

11           “(1) the amount of the alcohol mixture credit  
12           determined with respect to the taxpayer for the tax-  
13           able year under section 40(a)(1), and

14           “(2) the alcohol credit determined with respect  
15           to the taxpayer for the taxable year under section  
16           40(a)(2).”.

17           (c) CONFORMING AMENDMENT.—Section 1388 of  
18           such Code (relating to definitions and special rules for co-  
19           operative organizations) is amended by adding at the end  
20           the following new subsection:

21           “(k) CROSS REFERENCE.—For provisions relating to  
22           the apportionment of the alcohol fuels credit between coop-  
23           erative organizations and their patrons, see section  
24           40(g)(6).”.

1       (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 the date of the enactment of this Act.

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