

111TH CONGRESS  
1ST SESSION

# S. 1250

To amend the Internal Revenue Code of 1986 to expand the definition of cellulosic biofuel to include algae-based biofuel for purposes of the cellulosic biofuel producer credit and the special allowance for cellulosic biofuel plant property.

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## IN THE SENATE OF THE UNITED STATES

JUNE 11, 2009

Mr. NELSON of Florida (for himself, Mr. CRAPO, Mr. BINGAMAN, Mr. BENNET, Mr. MARTINEZ, Mr. CARDIN, and Mr. BROWNBACK) 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 expand the definition of cellulosic biofuel to include algae-based biofuel for purposes of the cellulosic biofuel producer credit and the special allowance for cellulosic biofuel plant property.

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 “Algae-based Renewable  
5 Fuel Promotion Act of 2009”.

1 **SEC. 2. INCLUSION OF ALGAE-BASED BIOFUEL IN DEFINI-**  
2 **TION OF CELLULOSIC BIOFUEL.**

3 (a) CELLULOSIC BIOFUEL PRODUCER CREDIT.—

4 (1) GENERAL RULE.—Paragraph (4) of section  
5 40(a) of the Internal Revenue Code of 1986 is  
6 amended by inserting “and algae-based” after “cel-  
7 lulosic”.

8 (2) DEFINITIONS.—Paragraph (6) of section  
9 40(b) of such Code is amended—

10 (A) by inserting “AND ALGAE-BASED”  
11 after “CELLULOSIC” in the heading,

12 (B) by striking subparagraph (A) and in-  
13 serting the following:

14 “(A) IN GENERAL.—The cellulosic and  
15 algae-based biofuel producer credit of any tax-  
16 payer is an amount equal to the applicable  
17 amount for each gallon of—

18 “(i) qualified cellulosic biofuel produc-  
19 tion, and

20 “(ii) qualified algae-based biofuel pro-  
21 duction.”,

22 (C) by redesignating subparagraphs (F),  
23 (G), and (H) as subparagraphs (I), (J), and  
24 (K), respectively,

1 (D) by inserting “AND ALGAE-BASED”  
2 after “CELLULOSIC” in the heading of subpara-  
3 graph (I), as so redesignated,

4 (E) by inserting “or algae-based biofuel,  
5 whichever is appropriate,” after “cellulosic  
6 biofuel” in subparagraph (J), as so redesign-  
7 nated,

8 (F) by inserting “and qualified algae-based  
9 biofuel production” after “qualified cellulosic  
10 biofuel production” in subparagraph (K), as so  
11 redesignated, and

12 (G) by inserting after subparagraph (E)  
13 the following new subparagraphs:

14 “(F) QUALIFIED ALGAE-BASED BIOFUEL  
15 PRODUCTION.—For purposes of this section,  
16 the term ‘qualified algae-based biofuel produc-  
17 tion’ means any algae-based biofuel which is  
18 produced by the taxpayer, and which during the  
19 taxable year—

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

22 “(I) for use by such other person  
23 in the production of a qualified algae-  
24 based biofuel mixture in such other

1 person's trade or business (other than  
2 casual off-farm production),

3 “(II) for use by such other per-  
4 son as a fuel in a trade or business,  
5 or

6 “(III) who sells such algae-based  
7 biofuel at retail to another person and  
8 places such algae-based biofuel in the  
9 fuel tank of such other person, or

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

12 The qualified algae-based biofuel production of  
13 any taxpayer for any taxable year shall not in-  
14 clude any alcohol which is purchased by the  
15 taxpayer and with respect to which such pro-  
16 ducer increases the proof of the alcohol by addi-  
17 tional distillation.

18 “(G) QUALIFIED ALGAE-BASED BIOFUEL  
19 MIXTURE.—For purposes of this paragraph, the  
20 term ‘qualified algae-based biofuel mixture’  
21 means a mixture of algae-based biofuel and gas-  
22 oline or of algae-based biofuel and a special fuel  
23 which—

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

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

6           “(H) ALGAE-BASED BIOFUEL.—For pur-  
7           poses of this paragraph—

8           “(i) IN GENERAL.—The term ‘algae-  
9           based biofuel’ means any liquid fuel, in-  
10          cluding gasoline, diesel, aviation fuel, and  
11          ethanol, which—

12           “(I) is produced from the bio-  
13          mass of algal organisms, and

14           “(II) meets the registration re-  
15          quirements for fuels and fuel additives  
16          established by the Environmental Pro-  
17          tection Agency under section 211 of  
18          the Clean Air Act (42 U.S.C. 7545).

19           “(ii) ALGAL ORGANISM.—The term  
20          ‘algal organism’ means a single- or multi-  
21          cellular organism which is primarily aquat-  
22          ic and classified as a non-vascular plant,  
23          including microalgae, blue-green algae  
24          (cyanobacteria), and macroalgae (sea-  
25          weeds).

1           “(iii) EXCLUSION OF LOW-PROOF AL-  
2           COHOL.—Such term shall not include any  
3           alcohol with a proof of less than 150. The  
4           determination of the proof of any alcohol  
5           shall be made without regard to any added  
6           denaturants.”.

7           (3) CONFORMING AMENDMENTS.—

8           (A) Subparagraph (D) of section 40(d)(3)  
9           of such Code is amended—

10           (i) by inserting “AND ALGAE-BASED”  
11           after “CELLULOSIC” in the heading,

12           (ii) by inserting “or (b)(6)(F)” after  
13           “(b)(6)(C)” in clause (ii), and

14           (iii) by inserting “or algae-based”  
15           after “such cellulosic”.

16           (B) Paragraph (6) of section 40(d) of such  
17           Code is amended—

18           (i) by inserting “AND ALGAE-BASED”  
19           after “CELLULOSIC” in the heading, and

20           (ii) by striking the first sentence and  
21           inserting “No cellulosic and algae-based  
22           biofuel producer credit shall be determined  
23           under subsection (a) with respect to any  
24           cellulosic or algae-based biofuel unless such  
25           cellulosic or algae-based biofuel is produced

1                   in the United States and used as a fuel in  
2                   the United States.”

3                   (C) Paragraph (3) of section 40(e) of such  
4                   Code is amended by inserting “AND ALGAE-  
5                   BASED” after “CELLULOSIC” in the heading.

6                   (D) Paragraph (1) of section 4101(a) of  
7                   such Code is amended—

8                                 (i) by inserting “or algae-based” after  
9                                 “cellulosic”, and

10                                (ii) by inserting “and 40(b)(6)(H), re-  
11                                spectively” after “section 40(b)(6)(E)”.

12                   (b) SPECIAL ALLOWANCE FOR CELLULOSIC BIOFUEL  
13                   PLANT PROPERTY.—Subsection (l) of section 168 of the  
14                   Internal Revenue Code of 1986 is amended—

15                               (1) by inserting “AND ALGAE-BASED” after  
16                                “CELLULOSIC” in the heading,

17                               (2) by inserting “and any qualified algae-based  
18                                biofuel plant property” after “qualified cellulosic  
19                                biofuel plant property” in paragraph (1),

20                               (3) by redesignating paragraphs (4) through  
21                                (8) as paragraphs (6) through (10), respectively,

22                               (4) by inserting “or qualified algae-based  
23                                biofuel plant property” after “cellulosic biofuel plant  
24                                property” in paragraph (7)(C), as so redesignated,

1           (5) by striking “with respect to” and all that  
2 follows in paragraph (9), as so redesignated, and in-  
3 serting “with respect to any qualified cellulosic  
4 biofuel plant property and any qualified algae-based  
5 biofuel plant property which ceases to be such quali-  
6 fied property.”,

7           (6) by inserting “or qualified algae-based  
8 biofuel plant property” after “cellulosic biofuel plant  
9 property” in paragraph (10), as so redesignated, and

10          (7) by inserting after paragraph (3) the fol-  
11 lowing new paragraphs:

12           “(4) QUALIFIED ALGAE-BASED BIOFUEL PLANT  
13 PROPERTY.—The term ‘qualified algae-based biofuel  
14 plant property’ means property of a character sub-  
15 ject to the allowance for depreciation—

16           “(A) which is used in the United States  
17 solely to produce algae-based biofuel,

18           “(B) the original use of which commences  
19 with the taxpayer after December 31, 2008,

20           “(C) which is acquired by the taxpayer by  
21 purchase (as defined in section 179(d)) after  
22 December 31, 2008, but only if no written bind-  
23 ing contract for the acquisition was in effect on  
24 or before such date, and



1           “(D) which is placed in service by the tax-  
2           payer before January 1, 2013.

3           “(5) ALGAE-BASED BIOFUEL.—

4           “(A) IN GENERAL.—The term ‘algae-based  
5           biofuel’ means any liquid fuel which is produced  
6           from the biomass of algal organisms.

7           “(B) ALGAL ORGANISM.—The term ‘algal  
8           organism’ means a single- or multi-cellular or-  
9           ganism which is primarily aquatic and classified  
10          as a non-vascular plant, including microalgae,  
11          blue-green algae (cyanobacteria), and  
12          macroalgae (seaweeds).”.

13          (c) EFFECTIVE DATES.—

14           (1) CELLULOSIC BIOFUEL PRODUCER CRED-  
15          IT.—The amendments made by subsection (a) shall  
16          apply to fuel produced after December 31, 2008.

17           (2) SPECIAL ALLOWANCE FOR CELLULOSIC  
18          BIOFUEL PLANT PROPERTY.—The amendments  
19          made by subsection (b) shall apply to property pur-  
20          chased and placed in service after December 31,  
21          2008.

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