

117TH CONGRESS
1ST SESSION

H. R. 3440

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

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2021

Mr. SCHNEIDER (for himself, Mr. KILDEE, and Ms. BROWNLEY) introduced the following bill; which was referred to the Committee on Ways and Means

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
9 1986 is amended by inserting after section 40A the fol-
10 lowing new section:

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

2 “(a) IN GENERAL.—

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

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

9 “(B) the applicable supplementary credit
10 amount.

11 “(2) APPLICABLE SUPPLEMENTARY CREDIT
12 AMOUNT.—

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

21 “(B) MAXIMUM SUPPLEMENTARY CREDIT
22 AMOUNT.—For purposes of subparagraph (A),
23 the maximum applicable supplementary credit
24 amount allowable is \$0.50.

25 “(3) 40A EXCEPTION.—If the biodiesel fuels
26 credit under section 40A is not in effect for a tax-

1 able year, paragraph (1)(A) shall be applied by sub-
2 stituting ‘\$1.15’ for ‘\$1.50’.

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

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

9 “(2) is used—

10 “(A) by the taxpayer producing such mix-
11 ture, and

12 “(B) in an aircraft that has fuel uplift in
13 the United States.

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

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

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

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

25 “(1) that—

1 “(A) consists of synthesized hydrocarbons,

2 “(B) meets the requirements of—

3 “(i) ASTM International Standard
4 D7566, or

5 “(ii) the Fischer Tropsch provisions of
6 ASTM International Standard D1655,
7 Annex A1, and

8 “(C) is derived from biomass (as such term
9 is defined in section 45K(c)(3)), waste streams,
10 renewable energy sources, or gaseous carbon ox-
11 ides,

12 “(D) is not derived from palm fatty acid
13 distillates, and

14 “(2) that achieves at least a 50 percent lifecycle
15 greenhouse gas emissions reduction in comparison
16 with petroleum-based jet fuel, as determined by a
17 test that shows—

18 “(A) the fuel production pathway achieves
19 at least a 50 percent reduction of the aggregate
20 attributional core lifecycle emissions and the
21 positive induced land use change values under
22 the lifecycle methodology for sustainable avia-
23 tion fuels adopted by the International Civil
24 Aviation Organization with the agreement of
25 the United States, or

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

9 “(i) reflective of the latest scientific
10 understanding of lifecycle greenhouse gas
11 emissions, and

12 “(ii) as stringent as the requirement
13 under subparagraph (A).

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

16 For purposes of subparagraph (B) of subsection (d)(2),
17 the Secretary, in consultation with the Administrator of
18 the Environmental Protection Agency, shall, within 24
19 months after the date of the enactment of this section,
20 adopt at least one methodology for testing lifecycle green-
21 house gas emissions that meets the requirements of such
22 subparagraph.

23 “(f) CERTIFICATION REQUIREMENTS.—

24 “(1) IN GENERAL.—No credit shall be allowed
25 under subsection (a) unless the taxpayer meets cer-

1 tification requirements demonstrating the sustain-
2 able aviation fuel conforms with one of the lifecycle
3 greenhouse gas emissions reduction tests under sub-
4 section (d)(2).

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

19 “(3) CERTIFICATION REQUIREMENTS FOR TEST
20 IN (D)(2)(B).—For purposes of paragraph (1), with
21 respect to certifications based on the test under sub-
22 paragraph (B) of subsection (d)(2)—

23 “(A) the taxpayer shall obtain from the
24 fuel producer a certification that the fuel has
25 been determined by the Environmental Protec-

1 tion Agency to qualify under the requirements
2 of such subparagraph, and

3 “(B) the taxpayer shall obtain from the
4 fuel producer an additional certification that
5 the fuel conforms with the sustainability criteria
6 and the traceability and information trans-
7 mission requirements that the Secretary, in
8 consultation with the Administrator of the En-
9 vironmental Protection Agency, determines are
10 equivalent with those necessary to claim emis-
11 sions reductions from sustainable aviation fuel
12 use under the Carbon Offsetting and Reduction
13 Scheme for International Aviation adopted by
14 the International Civil Aviation Organization
15 with the agreement of the United States.

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

18 (b) CREDIT MADE PART OF GENERAL BUSINESS
19 CREDIT.— Section 38(b) (relating to current year busi-
20 ness credit) is amended by striking “plus” at the end of
21 paragraph (32), by striking the period at the end of para-
22 graph (33) and inserting “, plus”, and by inserting after
23 paragraph (33) the following new paragraph:

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

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

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

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