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|----------------------|----------------------------------|------------------------------|
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| Prev Hit             | Back                             | HomePage                     |
| Hit List             | Best Sections                    | Help                         |
|                      | Contents Display                 |                              |
| Next Hit<br>Prev Hit | Forward<br>Back<br>Best Sections | New Bills Search<br>HomePage |

# H.R.6124

Food, Conservation, and Energy Act of 2008 (Enrolled as Agreed to or Passed by Both House and Senate)

# `Subpart I--Qualified Tax Credit Bonds

Sec. 54A. Credit to holders of qualified tax credit bonds.

Sec. 54B. Qualified forestry conservation bonds.

### `SEC. 54A. CREDIT TO HOLDERS OF QUALIFIED TAX CREDIT BONDS.

` (a) Allowance of Credit- If a taxpayer holds a qualified tax credit bond on one or more credit allowance dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

` (b) Amount of Credit-

`(1) IN GENERAL- The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tax credit bond is 25 percent of the annual credit determined with respect to such bond.

(2) ANNUAL CREDIT- The annual credit determined with respect to any qualified tax credit bond is the product of-

- `(A) the applicable credit rate, multiplied by
- `(B) the outstanding face amount of the bond.

`(3) APPLICABLE CREDIT RATE- For purposes of paragraph (2), the applicable credit rate is the rate which the Secretary estimates will permit the issuance of qualified tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. The applicable credit rate with respect to any qualified tax credit bond shall be determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond.

` (4) SPECIAL RULE FOR ISSUANCE AND REDEMPTION- In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

` (c) Limitation Based on Amount of Tax-

(1) IN GENERAL- The credit allowed under subsection (a) for any taxable year shall not exceed the excess of--

- (A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over
- (B) the sum of the credits allowable under this part (other than subpart C and this subpart).

(2) CARRYOVER OF UNUSED CREDIT- If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

`(d) Qualified Tax Credit Bond- For purposes of this section--

(1) QUALIFIED TAX CREDIT BOND- The term `qualified tax credit bond' means a qualified forestry conservation bond which is part of an issue that meets the requirements of paragraphs (2), (3), (4), (5), and (6).

(2) SPECIAL RULES RELATING TO EXPENDITURES-

`(A) IN GENERAL- An issue shall be treated as meeting the requirements of this paragraph if, as of the date of issuance, the issuer reasonably expects--

`(i) 100 percent or more of the available project proceeds to be spent for 1 or more qualified purposes within the 3-year period beginning on such date of issuance, and

` (ii) a binding commitment with a third party to spend at least 10 percent of such available project proceeds will be incurred within the 6-month period beginning on such date of issuance.

`(B) FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 3 YEARS-

` (i) IN GENERAL- To the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

`(ii) EXPENDITURE PERIOD- For purposes of this subpart, the term `expenditure period' means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

` (iii) EXTENSION OF PERIOD- Upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

(C) QUALIFIED PURPOSE- For purposes of this paragraph, the term `qualified purpose' means a purpose specified in section 54B(e).

CD) REIMBURSEMENT- For purposes of this subtitle, available project proceeds of an issue shall be treated as spent for a qualified purpose if such proceeds are used to reimburse the issuer for amounts paid for a qualified purpose after the date that the Secretary makes an allocation of bond limitation with respect to such issue, but only if--

` (i) prior to the payment of the original expenditure, the issuer declared its intent to reimburse such expenditure with the proceeds of a qualified tax credit bond,

` (ii) not later than 60 days after payment of the original expenditure, the issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

(3) REPORTING- An issue shall be treated as meeting the requirements of this paragraph if the issuer of qualified tax credit bonds submits reports similar to the reports required under section 149(e).

(4) SPECIAL RULES RELATING TO ARBITRAGE-

<sup>°</sup> (A) IN GENERAL- An issue shall be treated as meeting the requirements of this paragraph if the issuer satisfies the requirements of section 148 with respect to the proceeds of the issue.

(B) SPECIAL RULE FOR INVESTMENTS DURING EXPENDITURE PERIOD- An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any investment of available project proceeds during the expenditure period.

C) SPECIAL RULE FOR RESERVE FUNDS- An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any fund which is expected to be used to repay such issue if--

`(i) such fund is funded at a rate not more rapid than equal annual installments,

` (ii) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue, and

(5)(B) with respect to the issue.

(5) MATURITY LIMITATION-

`(A) IN GENERAL- An issue shall be treated as meeting the requirements of this paragraph if the maturity of any bond which is part of such issue does not exceed the maximum term determined by the Secretary under subparagraph (B).

` (B) MAXIMUM TERM- During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(6) PROHIBITION ON FINANCIAL CONFLICTS OF INTEREST- An issue shall be treated as meeting the requirements of this paragraph if the issuer certifies that--

(A) applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, and

` (B) if the Secretary prescribes additional conflicts of interest rules governing the appropriate Members of Congress, Federal, State, and local officials, and their spouses, such additional rules are satisfied with respect to such issue.

`(e) Other Definitions- For purposes of this subchapter--

`(1) CREDIT ALLOWANCE DATE- The term `credit allowance date' means--

- `(A) March 15,
- `(B) June 15,
- (C) September 15, and
- (D) December 15.

Such term includes the last day on which the bond is outstanding.

`(2) BOND- The term `bond' includes any obligation.

(3) STATE- The term `State' includes the District of Columbia and any possession of the United States.

`(4) AVAILABLE PROJECT PROCEEDS- The term `available project proceeds' means--

`(A) the excess of--

` (i) the proceeds from the sale of an issue, over

`(ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and

`(B) the proceeds from any investment of the excess described in subparagraph (A).

(f) Credit Treated as Interest- For purposes of this subtitle, the credit determined under subsection (a) shall be treated as interest which is includible in gross income.

(g) S Corporations and Partnerships- In the case of a tax credit bond held by an S corporation or partnership, the allocation of the credit allowed by this section to the shareholders of such corporation or partners of such partnership shall be treated as a distribution.

` (h) Bonds Held by Regulated Investment Companies and Real Estate Investment Trusts- If any qualified tax credit bond is held by a regulated investment company or a real estate investment trust, the credit determined under subsection (a) shall be allowed to shareholders of such company or beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be treated as distributed to such shareholders or beneficiaries) under procedures prescribed by the Secretary.

(i) Credits May Be Stripped- Under regulations prescribed by the Secretary--

`(1) IN GENERAL- There may be a separation (including at issuance) of the ownership of a qualified tax credit bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

` (2) CERTAIN RULES TO APPLY- In the case of a separation described in paragraph (1), the rules of section 1286 shall apply to the qualified tax credit bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

## SEC. 54B. QUALIFIED FORESTRY CONSERVATION BONDS.

`(a) Qualified Forestry Conservation Bond- For purposes of this subchapter, the term `qualified forestry conservation bond' means any bond issued as part of an issue if--

(1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified forestry conservation purposes,

(2) the bond is issued by a qualified issuer, and

(3) the issuer designates such bond for purposes of this section.

(b) Limitation on Amount of Bonds Designated- The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (d).

(c) National Limitation on Amount of Bonds Designated- There is a national qualified forestry conservation bond limitation of \$500,000,000.

`(d) Allocations-

`(1) IN GENERAL- The Secretary shall make allocations of the amount of the national qualified forestry conservation bond limitation described in subsection (c) among qualified forestry conservation purposes in such manner as the Secretary determines appropriate so as to ensure that all of such limitation is allocated before the date which is 24 months after the date of the enactment of this section.

` (2) SOLICITATION OF APPLICATIONS- The Secretary shall solicit applications for allocations of the national qualified forestry conservation bond limitation described in subsection (c) not later than 90 days after the date of the enactment of this section.

`(e) Qualified Forestry Conservation Purpose- For purposes of this section, the term `qualified forestry conservation purpose' means the acquisition by a State or any political subdivision or instrumentality thereof or a 501(c)(3) organization (as defined in section 150(a)(4)) from an unrelated person of forest and forest land that meets the following qualifications:

(1) Some portion of the land acquired must be adjacent to United States Forest Service Land.

` (2) At least half of the land acquired must be transferred to the United States Forest Service at no net cost to the United States and not more than half of the land acquired may either remain with or be conveyed to a State.

(3) All of the land must be subject to a native fish habitat conservation plan approved by the United States Fish and Wildlife Service.

(4) The amount of acreage acquired must be at least 40,000 acres.

(f) Qualified Issuer- For purposes of this section, the term `qualified issuer' means a State or any political subdivision or instrumentality thereof or a 501(c)(3) organization (as defined in section 150(a)(4)).

(g) Special Arbitrage Rule- In the case of any qualified forestry conservation bond issued as part of an issue, section 54A(d)(4)(C) shall be applied to such issue without regard to clause (i).

` (h) Election to Treat 50 Percent of Bond Allocation as Payment of Tax-

(1) IN GENERAL- If--

`(A) a qualified issuer receives an allocation of any portion of the national qualified forestry conservation bond limitation described in subsection (c), and

(B) the qualified issuer elects the application of this subsection with respect to such allocation,

then the qualified issuer (without regard to whether the issuer is subject to tax under this chapter) shall be treated as having made a payment against the tax imposed by this chapter, for the taxable year preceding the taxable year in which the allocation is received, in an amount equal to 50 percent of the amount of such allocation.

#### (2) TREATMENT OF DEEMED PAYMENT-

(A) IN GENERAL- Notwithstanding any other provision of this title, the Secretary shall not use the payment of tax described in paragraph (1) as an offset or credit against any tax liability of the qualified issuer but shall refund such payment to such issuer.

(B) NO INTEREST- Except as provided in paragraph (3)(A), the payment described in paragraph (1) shall not be taken into account in determining any amount of interest under this title.

(3) REQUIREMENT FOR, AND EFFECT OF, ELECTION-

` (A) REQUIREMENT- No election under this subsection shall take effect unless the qualified issuer certifies to the Secretary that any payment of tax refunded to the issuer under this subsection will be used exclusively for 1 or more qualified forestry conservation purposes. If the qualified issuer fails to use any portion of such payment for such purpose, the issuer shall be liable to the United States in an amount equal to such portion, plus interest at the overpayment rate under section 6621 for the period from the date such portion was refunded to the date such amount is paid. Any such amount shall be assessed and collected in the same manner as tax imposed by this chapter, except that subchapter B of chapter 63 (relating to deficiency procedures) shall not apply in respect of such assessment or collection.

` (B) EFFECT OF ELECTION ON ALLOCATION- If a qualified issuer makes the election under this subsection with respect to any allocation--

 $\hat{\}$  (i) the issuer may issue no bonds pursuant to the allocation, and

 $\hat{}$  (ii) the Secretary may not reallocate such allocation for any other purpose.'.

(b) Reporting- Subsection (d) of section 6049 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

(9) REPORTING OF CREDIT ON QUALIFIED TAX CREDIT BONDS-

`(A) IN GENERAL- For purposes of subsection (a), the term `interest' includes amounts includible in gross income under section 54A and such amounts shall be treated as paid on the credit allowance date (as defined in section 54A(e)(1)).

<sup>•</sup> (B) REPORTING TO CORPORATIONS, ETC- Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A) of this paragraph, subsection (b)(4) of this section shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i).

° (C) REGULATORY AUTHORITY- The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.'.

(c) Conforming Amendments-

(1) Sections 54(c)(2) and 1400N(I)(3)(B) are each amended by striking `subpart C' and inserting `subparts C and I'.

(2) Section 1397E(c)(2) is amended by striking `subpart H' and inserting `subparts H and I'.

(3) Section 6401(b)(1) is amended by striking `and H' and inserting `H, and I'.

(4) The heading of subpart H of part IV of subchapter A of chapter 1 is amended by striking `**Certain Bonds**' and inserting `**Clean Renewable Energy Bonds**'.

(5) The table of subparts for part IV of subchapter A of chapter 1 is amended by striking the item relating to subpart H and inserting the following new items:

### `subpart h. nonrefundable credit to holders of clean renewable energy bonds.

### `subpart i. qualified tax credit bonds.'.

(6) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by striking `or 6428 or 53(e)' and inserting `, 53(e), 54B(h), or 6428'.

(d) Effective Dates- The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

# PART II--ENERGY PROVISIONS

# Subpart A--Cellulosic Biofuel

### SEC. 15321. CREDIT FOR PRODUCTION OF CELLULOSIC BIOFUEL.

(a) In General- Subsection (a) of section 40 (relating to alcohol used as fuel) is amended by striking `plus' at the end of paragraph (1), by striking `plus' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting `, plus', and by adding at the end the following new paragraph:

(4) the cellulosic biofuel producer credit.'.

(b) Cellulosic Biofuel Producer Credit-

(1) IN GENERAL- Subsection (b) of section 40 is amended by adding at the end the following new paragraph:

`(6) CELLULOSIC BIOFUEL PRODUCER CREDIT-

`(A) IN GENERAL- The cellulosic biofuel producer credit of any taxpayer is an amount equal to the applicable amount for each gallon of qualified cellulosic biofuel production.

(B) APPLICABLE AMOUNT- For purposes of subparagraph (A), the applicable amount means \$1.01, except that such amount shall, in the case of cellulosic biofuel which is alcohol, be reduced by the sum of--

 $\hat{(b)}$  (i) the amount of the credit in effect for such alcohol under subsection (b)(1) (without regard to subsection (b)(3)) at the time of the qualified cellulosic biofuel production, plus

(ii) in the case of ethanol, the amount of the credit in effect under subsection (b)(4) at the time of such production.

`(C) QUALIFIED CELLULOSIC BIOFUEL PRODUCTION- For purposes of this section, the term `qualified cellulosic biofuel production' means any cellulosic biofuel which is produced by the taxpayer, and which during the taxable year--

`(i) is sold by the taxpayer to another person--

`(I) for use by such other person in the production of a qualified cellulosic biofuel mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

`(III) who sells such cellulosic biofuel at retail to another person and places such cellulosic biofuel in the fuel tank of such other person, or

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

The qualified cellulosic biofuel production of any taxpayer for any taxable year shall not include any alcohol which is purchased by the taxpayer and with respect to which such producer increases the proof of the alcohol by additional distillation.

CD) QUALIFIED CELLULOSIC BIOFUEL MIXTURE- For purposes of this paragraph, the term `qualified cellulosic biofuel mixture' means a mixture of cellulosic biofuel and gasoline or of cellulosic biofuel and a special fuel which--

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

`(ii) is used as a fuel by the person producing such mixture.

`(E) CELLULOSIC BIOFUEL- For purposes of this paragraph--

`(i) IN GENERAL- The term `cellulosic biofuel' means any liquid fuel which--

(I) is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and

`(II) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545).

` (ii) EXCLUSION OF LOW-PROOF ALCOHOL- Such term shall not include any alcohol with a proof of less than 150. The determination of the proof of any alcohol shall be made without regard to any added denaturants.

` (F) ALLOCATION OF CELLULOSIC BIOFUEL PRODUCER CREDIT TO PATRONS OF COOPERATIVE- Rules similar to the rules under subsection (g)(6) shall apply for purposes of this paragraph.

` (G) REGISTRATION REQUIREMENT- No credit shall be determined under this paragraph with respect to any taxpayer unless such taxpayer is registered with the Secretary as a producer of cellulosic biofuel under section 4101.

(H) APPLICATION OF PARAGRAPH- This paragraph shall apply with respect to qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2013.'.

(2) TERMINATION DATE NOT TO APPLY- Subsection (e) of section 40 (relating to termination) is amended--

(A) by inserting `or subsection (b)(6)(H)' after `by reason of paragraph (1)' in paragraph (2), and

(B) by adding at the end the following new paragraph:

(3) EXCEPTION FOR CELLULOSIC BIOFUEL PRODUCER CREDIT- Paragraph (1) shall not apply to the portion of the credit allowed under this section by reason of subsection (a)(4).'.

### (3) CONFORMING AMENDMENTS-

(A) Paragraph (1) of section 4101(a) is amended--

(i) by striking `and every person' and inserting `, every person', and

(ii) by inserting `, and every person producing cellulosic biofuel (as defined in section 40(b)(6)(E))' after `section 6426(b) (4)(A))'.

(B) The heading of section 40, and the item relating to such section in the table of sections for subpart D of part IV of subchapter A of chapter 1, are each amended by inserting `, etc.,' after `Alcohol'.

(c) Biofuel Not Used as a Fuel, etc-

(1) IN GENERAL- Paragraph (3) of section 40(d) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

`(D) CELLULOSIC BIOFUEL PRODUCER CREDIT- If--

(i) any credit is allowed under subsection (a)(4), and

`(ii) any person does not use such fuel for a purpose described in subsection (b)(6)(C),

then there is hereby imposed on such person a tax equal to the applicable amount (as defined in subsection (b)(6)(B)) for each gallon of such cellulosic biofuel.'.

(2) CONFORMING AMENDMENTS-

(A) Subparagraph (C) of section 40(d)(3) is amended by striking `PRODUCER' in the heading and inserting `SMALL ETHANOL PRODUCER'.

(B) Subparagraph (E) of section 40(d)(3), as redesignated by paragraph (1), is amended by striking `or (C)' and inserting `(C), or (D)'.

(d) Biofuel Produced in the United States- Section 40(d) is amended by adding at the end the following new paragraph:

`(6) SPECIAL RULE FOR CELLULOSIC BIOFUEL PRODUCER CREDIT- No cellulosic biofuel producer credit shall be determined under subsection (a) with respect to any cellulosic biofuel unless such cellulosic biofuel is produced in the United States and used as a fuel in the United States. For purposes of this subsection, the term `United States' includes any possession of the United States.'.

(e) Waiver of Credit Limit for Cellulosic Biofuel Production by Small Ethanol Producers- Section 40(b)(4)(C) is amended by inserting `(determined without regard to any qualified cellulosic biofuel production)' after `15,000,000 gallons'.

(f) Denial of Double Benefit-

(1) BIODIESEL- Paragraph (1) of section 40A(d) is amended by adding at the end the following new flush sentence:

Such term shall not include any liquid with respect to which a credit may be determined under section 40.'.

(2) RENEWABLE DIESEL- Paragraph (3) of section 40A(f) is amended by adding at the end the following new flush sentence:

Such term shall not include any liquid with respect to which a credit may be determined under section 40.'.

(g) Effective Date- The amendments made by this section shall apply to fuel produced after December 31, 2008.

## SEC. 15322. COMPREHENSIVE STUDY OF BIOFUELS.

(a) Study- The Secretary of the Treasury, in consultation with the Secretary of Agriculture, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, shall enter into an agreement with the National Academy of Sciences to produce an analysis of current scientific findings to determine--

(1) current biofuels production, as well as projections for future production,

(2) the maximum amount of biofuels production capable in United States forests and farmlands, including the current quantities and character of the feedstocks and including such information as regional forest inventories that are commercially available, used in the

production of biofuels,

- (3) the domestic effects of an increase in biofuels production levels, including the effects of such levels on--
  - (A) the price of fuel,
  - (B) the price of land in rural and suburban communities,
  - (C) crop acreage, forest acreage, and other land use,

(D) the environment, due to changes in crop acreage, fertilizer use, runoff, water use, emissions from vehicles utilizing biofuels, and other factors,

- (E) the price of feed,
- (F) the selling price of grain crops and forest products,
- (G) exports and imports of grains and forest products,
- (H) taxpayers, through cost or savings to commodity crop payments, and
- (I) the expansion of refinery capacity,
- (4) the ability to convert corn ethanol plants for other uses, such as cellulosic ethanol or biodiesel,

(5) a comparative analysis of corn ethanol versus other biofuels and renewable energy sources, considering cost, energy output, and ease of implementation,

(6) the impact of the tax credit established by this subpart on the regional agricultural and silvicultural capabilities of commercially available forest inventories, and

(7) the need for additional scientific inquiry, and specific areas of interest for future research.

(b) Report- The Secretary of the Treasury shall submit an initial report of the findings of the study required under subsection (a) to Congress not later than 6 months after the date of the enactment of this Act (36 months after such date in the case of the information required by subsection (a)(6)), and a final report not later than 12 months after such date (42 months after such date in the case of the information required by subsection (a)(6)).

# Subpart B--Revenue Provisions

### SEC. 15331. MODIFICATION OF ALCOHOL CREDIT.

(a) Income Tax Credit-

- (1) IN GENERAL- The table in paragraph (2) of section 40(h) is amended--
  - (A) by striking `through 2010' in the first column and inserting `, 2006, 2007, or 2008',
  - (B) by striking the period at the end of the third row, and
  - (C) by adding at the end the following new row:

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| Prev Hit    | Back             | HomePage         |
| Hit List    | Best Sections    | Help             |
|             | Contents Display |                  |

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