

Biodiesel Fuels Credit

Department of the Treasury
Internal Revenue Service

▶ **Attach to your tax return.**

Attachment
Sequence No. **141**

Name(s) shown on return

Identifying number

Caution:

- The biodiesel fuels credit applies to fuel produced, and sold or used, after December 31, 2004, in tax years ending after December 31, 2004.
- You cannot claim any amounts on Form 8864 that you claimed (or will claim) on Schedule C (Form 720), Form 8849, or Form 4136.

Part I Current Year Credit

Claimant has a certificate from the producer or importer of the biodiesel which identifies the percentage of biodiesel or agri-biodiesel in the product, and has no reason to believe the information in the certificate is false.

Type of Biodiesel Fuel	(a) Number of Gallons Sold or Used	(b) Rate	(c) Column (a) x Column (b)
1 Straight biodiesel	1	\$.50	
2 Straight agri-biodiesel.	2	\$1.00	
3 Biodiesel included in a biodiesel mixture	3	\$.50	
4 Agri-biodiesel included in an agri-biodiesel mixture	4	\$1.00	
5 Add lines 1 through 4. Include this amount in your income for 2004			5
6 Biodiesel fuels credit(s) from a partnership, S corporation, estate, or trust (see instructions).			6
7 Current year credit. Add lines 5 and 6			7

Part II Allowable Credit (See *Who must file Form 3800* to find out if you complete the lines below or file Form 3800.)

8 Regular tax before credits:			
• Individuals. Enter the amount from Form 1040, line 43	}		8
• Corporations. Enter the amount from Form 1120, Schedule J, line 3; Form 1120-A, Part I, line 1; or the applicable line of your return			
• Estates and trusts. Enter the sum of the amounts from Form 1041, Schedule G, lines 1a and 1b, or the amount from the applicable line of your return			
9 Alternative minimum tax:			
• Individuals. Enter the amount from Form 6251, line 35	}		9
• Corporations. Enter the amount from Form 4626, line 14			
• Estates and trusts. Enter the amount from Form 1041, Schedule I, line 56			
10 Add lines 8 and 9			10
11a Foreign tax credit	11a		11f
b Credits from Form 1040, lines 47 through 53	11b		
c Possessions tax credit (Form 5735, line 17 or 27)	11c		
d Credit for fuel from a nonconventional source	11d		
e Qualified electric vehicle credit (Form 8834, line 20)	11e		
f Add lines 11a through 11e			
12 Net income tax. Subtract line 11f from line 10. If zero, skip lines 13 through 16 and enter -0- on line 17			12
13 Net regular tax. Subtract line 11f from line 8. If zero or less, enter -0-	13		16
14 Enter 25% (.25) of the excess, if any, of line 13 over \$25,000 (see instructions)	14		
15 Tentative minimum tax (see instructions)	15		
16 Enter the greater of line 14 or line 15			16
17 Subtract line 16 from line 12. If zero or less, enter -0-			17
18 Credit allowed for the current year. Enter the smaller of line 7 or line 17 here and on Form 1040, line 54; Form 1120, Schedule J, line 6d; Form 1120-A, Part I, line 2; Form 1041, Schedule G, line 2c; or the applicable line of your return. If line 17 is smaller than line 7, see instructions.			18

General Instructions

Section references are to the Internal Revenue Code.

Purpose of Form

Use Form 8864 to figure your biodiesel fuels credit. You claim the credit for the tax year in which the sale or use occurs. This credit consists of the:

- Biodiesel (or agri-biodiesel) mixture credit, and
- Biodiesel (or agri-biodiesel) credit.

Caution: Before claiming a credit on Form 8864, the qualified biodiesel mixture credit should be taken against any section 4081 liability on Form 720. Any credit in excess of the section 4081 liability can be taken as a claim for payment on Form 8849 or as an income tax credit on Form 4136.

Definitions and Special Rules

Biodiesel

Biodiesel means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet the registration requirements for fuels and fuel additives established by the Environmental Protection Agency (EPA) under section 211 of the Clean Air Act, and the requirements of the American Society of Testing and Materials (ASTM) D6751.

Agri-Biodiesel

Agri-biodiesel means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

Biodiesel (or Agri-Biodiesel) Mixture

The biodiesel (or agri-biodiesel) must be used to make a qualified mixture. A qualified mixture combines biodiesel (or agri-biodiesel) with diesel fuel (defined below), determined without regard to any use of kerosene. The producer of the mixture either:

- Used it as fuel, or
- Sold it as fuel to another person.

The credit is available only to the producer who blends the mixture. The producer must use or sell the mixture in a trade or business and the credit is available only for the year the mixture is sold or used. The credit is not allowed for casual off-farm production of a qualified mixture.

Diesel Fuel

Diesel fuel means any liquid that, without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or diesel-powered train. A liquid is suitable for this use if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train. Diesel fuel does not include gasoline, kerosene, excluded liquid (defined below), No. 5 and No. 6 fuel oils covered by ASTM specification D 396, or F-76 (Fuel Naval Distillate) covered by military specification MIL-F-16884.

An excluded liquid is any liquid that (a) contains less than 4% normal paraffins, or (b) has a (i) distillation range of 125° F or less, (ii) sulfur content of 10 parts per million or less, and (iii) minimum color of +27 Saybolt.

Certification

You must obtain and keep as part of your records a certification from the producer or importer of the biodiesel. The certificate is required for any credit claimed on lines 1-5. The certificate must identify the product produced and the percentage of biodiesel and agri-biodiesel in the product. If the producer or importer of the biodiesel is also the taxpayer claiming the biodiesel credit, the certificate is still required. See Publication 510, Excise Taxes for 2005, or Notice 2005-4 for a model certificate.

Straight Biodiesel (or Agri-Biodiesel)

The biodiesel must not be a mixture. The credit is for biodiesel (or agri-biodiesel) which during the tax year you:

- Used as a fuel in a trade or business, or
- Sold at retail to another person and put in the fuel tank of that person's vehicle.

However, no credit is allowed for biodiesel (or agri-biodiesel) you used as a fuel in a trade or business if that biodiesel (or agri-biodiesel) was sold in a retail sale described above.

Caution: You may be liable for a 24.4 cents per gallon excise tax on the biodiesel used in a qualified biodiesel or agri-biodiesel mixture that you used or sold for use in your trade or business. Report the tax liability on Form 720 on the line for IRS No. 60(c), for the quarter in which the mixture was sold or used. For more information, see the Instructions for Form 720.

Registration

All producers and importers of biodiesel must be registered with the IRS by July 1, 2005. See Form 637, Application for Registration (For Certain Excise Tax Activities).

Coordination With Excise Tax Credit

Only one credit may be taken with respect to any gallon of biodiesel. If any amount is claimed (or will be claimed), with respect to any gallon of biodiesel on Form 720, Quarterly Federal Excise Tax Return, Form 8849, Claim for Refund of Excise Taxes, or Form 4136, Credit for Federal Tax Paid on Fuels, then a claim cannot be made on Form 8864 for that gallon of biodiesel.

Recapture of Credit

You must pay a tax on each gallon of biodiesel (or the biodiesel in the mixture) at the rate you used to figure the credit if you:

- Separate the biodiesel from the mixture,
- Use the mixture other than as a fuel,
- Mix straight biodiesel on which the credit was allowed for the retail sale, or
- Use the straight biodiesel other than as a fuel.

Report the tax on Form 720, Quarterly Federal Excise Tax Return.

Additional Information

See Pub. 378, Fuel Tax Credits and Refunds.

Specific Instructions

Part I—Current Year Credit

Use lines 1 through 5 to figure any biodiesel fuels credit from your own trade or business.

Skip lines 1 through 5 if you are claiming only a credit that was allocated to you from a pass-through entity (that is, an S corporation, partnership, estate, or trust).

S Corporations, Partnerships, Estates, and Trusts

Figure the total credit on lines 1 through 7. Then, allocate the line 7 credit to each shareholder, partner, and beneficiary in the same way that income and loss are divided. Electing large partnerships include this credit in "general credits."

Line 5

Include this amount in income, under "other income" on the applicable line of your income tax return, even if you cannot use all of the credit because of the tax liability limit. However, if you are subject to alternative minimum tax (AMT), this amount is not income in computing AMT and must be subtracted when figuring your alternative minimum taxable income. Do this by including this amount on line 26 of Form 6251, line 23 of Schedule I, Form 1041, or line 2o of Form 4626.

Line 6

Enter the amount of credit that was allocated to you as a shareholder, partner, or beneficiary.

Line 7

For an estate or trust, the credit on line 7 is allocated between the estate or trust and the beneficiaries in proportion to the income allocable to each. In the margin to the right of line 7, the estate or trust should enter its part of the total credit. Label it "1041 Portion" and use this amount in lines 8 through 18 (or Form 3800) to figure the credit to claim on Form 1041. Also, enter and identify the total beneficiaries' share of the credit to the right of line 7 and attach a schedule showing how the total credit was divided.

Part II—Allowable Credit

The credit allowed for the current year may be limited based on your tax liability. Use Part II to figure the allowable credit unless you must file Form 3800, General Business Credit.

Who must file Form 3800. You must file Form 3800 if you have:

- A biodiesel fuels credit from a passive activity,
- More than one credit included in the general business credit (other than a credit from Form 8844, Form 8884, or Section B of Form 8835), or
- A carryback or carryforward of any of those credits.

See the instructions for Form 3800 for a list of credits included in the general business credit.

Line 14

See section 38(c)(5) for special rules that apply to married couples filing separate returns, controlled corporate groups, regulated investment companies, real estate investment trusts, and estates and trusts.

Line 15

Although you may not owe AMT, you generally must still compute the tentative minimum tax (TMT) to figure your credit. For a small corporation exempt from the AMT under section 55(e), enter zero. Otherwise, complete and attach the applicable AMT form or schedule. Enter on line 15 the TMT from the line shown below.

- Individuals: Form 6251, line 33.
- Corporations: Form 4626, line 12.
- Estates and trusts: Form 1041, Schedule I, line 54.

Line 18

If you cannot use all of the credit because of the tax liability limit (line 17 is smaller than line 7), carry the unused credit forward up to 20 years. See the instructions for Form 3800 for details.

Note. Any unused credit cannot be carried back to a tax year ending before 2005.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

- Recordkeeping** 7 hrs., 24 min.
- Learning about the law or the form** 45 min.
- Preparing and sending the form to the IRS** 2 hrs., 7 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.