

***Caution: DRAFT FORM***

This is an advance proof copy of an IRS tax form. It is subject to change and OMB approval before it is officially released.

If you have any comments on this draft form, you can submit them to us on our web site. Include the word DRAFT in your response. You may make comments anonymously, or you may include your name and e-mail address or phone number. We will be unable to respond to all comments due to the high volume we receive. However, we will carefully consider each suggestion. So that we can properly consider your comments, please send them to us within 30 days from the date the draft was posted.

Department of the Treasury  
Internal Revenue Service

▶ **Attach to your tax return.**

Name(s) shown on return

Identifying number

**Caution.** You cannot claim any amounts on Form 8864 that you claimed (or will claim) on Form 720 (Schedule C), Form 8849, or Form 4136.

Claimant has a certificate from the producer or importer of biodiesel or renewable diesel reported on lines 1 through 6 below and, if applicable, claimant also has a statement from the reseller. Claimant has no reason to believe that the information in the certificate or statement is false. Claimant may need to attach a copy of the certificate and statement. See *Certification* below.

Type of Fuel		(a) Number of Gallons Sold or Used	(b) Rate	(c) Column (a) x Column (b)
1	Biodiesel (other than agri-biodiesel)	1		
2	Agri-biodiesel	2		
3	Renewable diesel	3		
4	Biodiesel (other than agri-biodiesel) included in a biodiesel mixture	4		
5	Agri-biodiesel included in a biodiesel mixture	5		
6	Renewable diesel included in a renewable diesel mixture	6		
7	Qualified agri-biodiesel production	7		
8	Add lines 1 through 7. Include this amount in your income for 2011 (see instructions)		8	
9	Biodiesel and renewable diesel fuels credit from partnerships, S corporations, cooperatives, estates, and trusts (see instructions)		9	
10	Add lines 8 and 9. Cooperatives, estates, and trusts, go to line 11. Partnership and S corporations, report this amount on Schedule K. All others, report this amount on Form 3800, line 11		10	
11	Amount allocated to patrons of the cooperative or beneficiaries of the estate or trust (see instructions)		11	
12	Cooperatives, estates, and trusts, subtract line 11 from line 10. Report this amount on Form 3800, line 11		12	

**General Instructions**

Section references are to the Internal Revenue Code.

**What's New**

• The biodiesel and renewable diesel fuels credit is scheduled to expire for fuel sold or used after 2011. Do not report this fuel on Form 8864 unless the credit is extended. See [www.irs.gov/form8864](http://www.irs.gov/form8864) for the latest information about this credit.

**Purpose of Form**

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

- Biodiesel credit,
- Renewable diesel credit,
- Biodiesel mixture credit,
- Renewable diesel mixture credit, and
- Small agri-biodiesel producer credit.

**Definitions and Special Rules**

**Certification**

To claim a credit on lines 1 through 6, you generally must attach the Certificate for Biodiesel and, if applicable, Statement of Biodiesel Reseller, to Form 8864. To claim a credit on lines 3 or 6, the certificate must indicate at all appropriate locations that the fuel to which it relates is renewable diesel and state that the fuel meets the requirements discussed under *Renewable Diesel* on page 2. However, if the certificate or statement was attached to a previously filed claim, attach a statement with the following information.

- Certificate identification number.
- Total gallons of agri-biodiesel, biodiesel other than agri-biodiesel, or renewable diesel on the certificate.
- Total gallons claimed on Schedule 3 (Form 8849).
- Total gallons claimed on Schedule C (Form 720).
- Total gallons claimed on Form 4136.

See Notice 2005-62, 2005-35 I.R.B. 443, or Pub. 510, Excise Taxes, for the model certificate and statement.

### 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.

Biodiesel includes both agri-biodiesel and biodiesel other than agri-biodiesel. Biodiesel does not include:

- Fuel produced outside the United States or a U.S. possession for use as a fuel outside the United States or a U.S. possession.
- Any liquid that is eligible for the alcohol and cellulosic biofuel fuels credit (Form 6478).

### 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, mustard seeds, and camelina, and from animal fats.

### Renewable Diesel

Renewable diesel means liquid fuel derived from biomass (defined below) that meets the registration requirements for fuels and fuel additives established by the EPA under section 211 of the Clean Air Act, and the requirements of the ASTM D975 or D396, or other equivalent standard approved by the IRS, or a Department of Defense specification for military jet fuel or an ASTM specification for aviation turbine fuel. For aviation uses, treat kerosene as diesel fuel when figuring a renewable diesel mixture credit.

Renewable diesel does not include:

- Fuel produced outside the United States or a U.S. possession for use as a fuel outside the United States or a U.S. possession.
- Any fuel derived from co-processing biomass with feedstock that is not biomass.
- Any liquid eligible for the alcohol and cellulosic biofuel fuels credit (Form 6478).

**Biomass.** Biomass means any organic material other than oil and natural gas (or any product thereof) and coal (including lignite) or any product thereof.

### Biodiesel and Renewable Diesel Credits

The biodiesel or renewable diesel reported on lines 1 through 3 must not be a mixture. The credits are for biodiesel or renewable diesel 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 fuel used in a trade or business that was purchased in a retail sale described above.

**Caution.** You may be liable for a 24.4 cents per gallon excise tax on biodiesel or renewable diesel you sold (in your trade or business) for use or used in a diesel-powered highway vehicle or diesel-powered train. Report the tax liability on Form 720 on the line for IRS No. 79 for the quarter in which the biodiesel was sold or used or IRS No. 60(b) for the quarter in which the renewable diesel was sold or used.

### Biodiesel and Renewable Diesel Mixture Credits

The biodiesel or renewable diesel reported on lines 4 through 6 must be used to make a qualified mixture. A qualified mixture combines biodiesel or renewable diesel with diesel fuel (defined below), determined without regard to any use of kerosene. But treat the kerosene as diesel fuel when figuring a renewable diesel mixture credit for certain aviation fuel (see *Renewable Diesel* above). 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 of 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.

**Caution.** You may be liable for a 24.4 cents per gallon excise tax on biodiesel or renewable diesel used to produce blended taxable fuel outside the bulk transfer terminal system if the mixture is diesel fuel. 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.

**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, and
- Transmix.

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, No. 5 and No. 6 fuel oils covered by ASTM specification D396, 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. For example, biodiesel is always an excluded liquid because it does not contain paraffins. But a biodiesel mixture may not be an excluded liquid.

Transmix means a by-product of refined products created by the mixing of different specification products during pipeline transportation.

### Qualified Agri-Biodiesel Production

Qualified agri-biodiesel production means up to 15 million gallons of agri-biodiesel which is produced by an eligible small agri-biodiesel producer (defined below), and which during the tax year:

1. Is sold by such producer to another person:
  - a. For use by such person in the production of a qualified biodiesel mixture in such other person's trade or business (other than casual off-farm production),
  - b. For use by such person as a fuel in a trade or business, or
  - c. Who sells such agri-biodiesel at retail to another person and places such agri-biodiesel in the fuel tank of such other person, or
2. Is used or sold by such producer for any purpose described in (1).

**Note.** Production of renewable diesel is not qualified agri-biodiesel production.

**Eligible small agri-biodiesel producer.** An eligible small agri-biodiesel producer is a person who, at all times during the tax year, has a productive capacity for agri-biodiesel not in excess of 60 million gallons.

**Aggregation rule.** All members of the same controlled group of corporations (see section 267(f)) and all persons under common control (see section 52(b) but treat an interest of more than 50% as a controlling interest) are treated as 1 person for purposes of the 15 and 60 million gallon limits.

**Partnership, S corporation, and other pass-through entities.** The 15 and 60 million gallon limits discussed above are applied at both the entity level and at the partner or similar level.

### Registration

All producers and importers of biodiesel or renewable diesel must be registered with the IRS. All persons producing blended taxable fuel must be registered. 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 amount of biodiesel or renewable diesel. If any amount is claimed (or will be claimed) with respect to any amount of biodiesel or renewable diesel 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 amount of biodiesel or renewable diesel.

### Recapture of Credit

You must pay a tax on each gallon of biodiesel or renewable diesel on which a credit was claimed at the rate used to figure the credit if you:

- Use it (including a mixture) other than as a fuel,
- Buy it at retail and use it to create a mixture,
- Separate it from a mixture, or
- Use agri-biodiesel on which the small agri-biodiesel producer credit was claimed for a use not described under *Qualified Agri-Biodiesel Production* above.

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

### Additional Information

See Pub. 510, Excise Taxes.

## Specific Instructions

Use lines 1 through 8 to figure any biodiesel and renewable diesel fuels credit from your own trade or business.

Skip lines 1 through 8 if you are claiming only a credit that was allocated to you from a pass-through entity (that is, an S corporation, partnership, estate, trust, or cooperative).

### Line 8

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 27 of Form 6251, line 23 of Schedule I (Form 1041), or line 2o of Form 4626.

### Line 9

If you are allocated a small agri-biodiesel producer credit from a pass-through entity, the entity must tell you the number of gallons for which it claimed the credit and its productive capacity for agri-biodiesel. You, as a shareholder, partner, beneficiary, or patron, are subject to the 15 million gallon limitation for line 7 and the 60 million gallon productive capacity limitation for an eligible small agri-biodiesel producer.

### Line 11

A cooperative, estate, or trust allocating the small agri-biodiesel credit must give the patron or beneficiary a statement providing them with the number of gallons for which it claimed the credit and its productive capacity for agri-biodiesel. An estate or trust must also provide the amount of the small agri-biodiesel credit included as part of the pass-through credit. See the above instructions for line 9.

**Cooperatives.** A cooperative described in section 1381(a) can elect to allocate any part of the small agri-biodiesel producer credit among the patrons of the cooperative. The credit is allocated among the patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the tax year.

The cooperative is deemed to have made the election by completing line 11. However, the election is not effective unless (a) made on a timely filed return (including extensions) and (b) the organization designates the apportionment in a written notice mailed to its patrons during the payment period described in section 1382(d).

If you timely file your return without making an election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Enter "Filed pursuant to section 301.9100-2" on the amended return.

Once made, the election cannot be revoked.

**Estates and trusts.** Allocate the biodiesel and renewable diesel fuels credit on line 10 between the estate or trust and the beneficiaries in the same proportion as income was allocated and enter the beneficiaries' share on line 11.

**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 burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

- Recordkeeping** . . . . . 8 hrs., 36 min.
- Learning about the law or the form** . . . . . 57 min.
- Preparing and sending the form to the IRS** . . . . . 2 hrs., 20 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.