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Cellulosic Biofuel Producer Tax Credit

The newly enacted Farm Bill included a new income tax credit for the producers of cellulosic alcohol and other cellulosic biofuels. The credit is \$1.01 per gallon. If the cellulosic biofuel is ethanol, this amount is reduced by the amount of credit available for alcohol fuels generally (now assumed to be \$0.45 per gallon in 2009). The credit will apply to fuel produced after 2008 and before 2013.

Because this credit is an income tax credit, it will be an offset against the producer's income tax liability. Thus, the producer can reduce its estimated taxes to reflect the amounts of credit earned. It is important to note, however, that (i) amounts of credit in excess of the income tax reductions will not be paid to the producer, (ii) the credit produces no current benefit for a producer with no income tax liability, and (iii) the credit does not offset alternative minimum tax liability. Unused credits can be carried forward for up to 15 years.

Although the effective dates apply to fuel produced between 2009 and 2012, the credit is triggered by the producer's sale of the cellulosic biofuel for use as a fuel or by the producer's use of the fuel.

This new credit is in addition to, not in place of, the existing 10-cent-per-gallon small producer income tax credit. In fact, the new law provides that cellulosic ethanol is not subject to the 15,000,000 gallon limit on the amount of ethanol for which the small producer credit can be claimed. However, it does not appear that the 60 million gallon productive capacity limit for that credit has been waived.