

## IRM PROCEDURAL UPDATE

**DATE: 02/28/2013**

**NUMBER: WI-21-0213-0436**

**SUBJECT: American Taxpayer Tax Relief Act of 2010, P.L. 112-240**

**AFFECTED IRM(s)/SUBSECTION(s): 21.7.4**

**CHANGE(s):**

**IRM 21.7.4.4.8.3.3(2) - (13)** Changed the title to: Form 6478, *Alcohol and Cellulosic Biofuels Fuels Credit (Including Second Generation Biofuel)*. Also added information that the credit was extended and modified by the American Taxpayer Relief Act of 2012.

1. Form 6478 is used to claim the credit under IRC section 40 for alcohol and cellulosic biofuels used as fuel in a trade or business. The credit consists of:
  - Alcohol mixture credit
  - Alcohol credit
  - Small ethanol producer credit, and
  - Cellulosic biofuel producer credit (added by P.L. 110–234, section 15321, of the Food, Conservation, and Energy Act of 2008. The credit is available for cellulosic biofuel that the taxpayer produces after December 31, 2008 and before January 1, 2013. See Notice 2008-110 for guidance on the cellulosic biofuel producer credit

**NOTE:** The alcohol mixture, alcohol, and small ethanol producer credits expired for fuels sold or used after 2011. The cellulosic biofuel producer credit was extended to cover fuel sold or used through January 2, 2013.

2. Section 404(a), Extension, of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the credit for qualified cellulosic biofuel production for one year to December 31, 2013.
3. Qualified cellulosic biofuel production is cellulosic biofuel which is produced by a taxpayer, and which during the tax year:
  - a. Is sold by the producer to another person: (i) for use by the buyer in the buyer's trade or business to produce a qualified cellulosic biofuel mixture (other than casual off-farm production), (ii) for use by the buyer as a fuel in a trade or business, or (iii) who sells the cellulosic biofuel at retail to another person and puts the cellulosic biofuel in the retail buyer's fuel tank; or
  - b. Is used or sold by the producer for any purpose described in (1) above.

4. A qualified cellulosic biofuel mixture combines cellulosic biofuel with gasoline or a special fuel. The producer of the mixture either used it as a fuel, or sold it as fuel to another person.
5. Generally, cellulosic biofuel, for credit purposes, is any liquid fuel, which:
  - Is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis,
  - 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), and
  - Is not alcohol of less than 150 proof. In figuring the proof of any alcohol, disregard any added denaturants (additives that make the alcohol unfit for human consumption).
6. Section 404(b), Algae Treated As a Qualified Feedstock, of the American Taxpayer Relief Act of 2012, P.L. 112-240, added a second generation biofuel producer credit for algae-based fuel and covers fuel sold or used after January 2, 2013, and before January 1, 2014.
7. Qualified second generation biofuel production is second generation biofuel which during the tax year:
  - Is sold by the producer to another person (i) for use by the buyer in the buyer's trade or business to produce a qualified second generation biofuel mixture (other than casual off-farm production), (ii) for use by the buyer as a fuel in a trade or business, or (iii) who sells the second generation biofuel at retail to another person and puts the second generation biofuel in the retail buyer's fuel tank; or
  - Is used or sold by the producer for any purpose described in the above bullet
8. Qualified cellulosic biofuel production and qualified second generation biofuel production does not include purchasing alcohol and increasing the proof of the alcohol through additional distillation. Nor does it include cellulosic biofuel that is not both produced in the United States or a U.S. possession and used as a fuel in the United States or a U.S. possession.
9. Generally second generation biofuel, for credit purposes is any liquid fuel, which:
  - Is derived by, or from, qualified feedstocks
  - 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), and
  - Is not alcohol of less than 150 proof. In figuring the proof of any alcohol, disregard any added denaturants (additives that make the alcohol unfit for human consumption)
10. A qualified feedstock is:
  - Any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and
  - Any cultivated algae, cyanobacteria, or lemna
11. Special rules for algae. Second generation biofuel also includes certain liquid fuel, which:
  - Is derived by, or from, any cultivated algae, cyanobacteria, or lemna, and

- Is not alcohol of less than 150 proof (disregard any added denaturants), and
  - Is sold by the producer to another person for refining by such person into a liquid fuel which will meet the registration requirements for fuels and fuel additives established by the EPA under section 211 of the Clean Air Act (42 U.S.C. 7545).
12. Cellulosic biofuel and second generation biofuel does not include any fuel if:
- More than four-percent of the fuel (determined by weight) is any combination of water and sediment
  - The ash content of the fuel is more than one-percent (determined by weight), or
  - The fuel has an acid number greater than 25
13. Once this fuel is sold by the producer to another person for refining by such person into a fuel which will meet these requirements, neither the producer nor any other person can use such fuel (or any fuel derived from such fuel) to figure a second credit for qualified second generation biofuel production.
14. Before claiming a credit on Form 6478, the alcohol fuel mixture credit must be taken against any IRC section 4081 liability on Form 720. Any credit in excess of the IRC section 4081 liability can be taken as a claim for payment on Form 8849 or an income tax credit on Form 4136.
15. See the General Instructions for Form 6478 for definitions, special rules and the coordination with excise tax credits 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 Fuel*. Also, on the recapture of the credit.
16. All producers and importers of alcohol with a proof of at least 190 and all producers of cellulosic biofuel must be registered by the IRS. See Form 637, *Application for Registration (For Certain Excise Tax Activities)*.
17. Any unused portion of this credit remaining, after the tax is reduced to zero, cannot be carried back. Taxpayers must carry the unused credit forward 20 years. However, see IRM 21.7.4.4.8.1.4, if the credit involves a carryback.
18. Action required:
- a. Math verify Form 6478
  - b. Input TC 291 to increase the credit or TC 290 to reduce the credit
  - c. Input IRN 884 for the amount of the credit. Use a positive amount to increase the credit and a negative amount to reduce the credit.

**IRM 21.7.4.4.8.3.4(6) & (7)** Added information that the Research Credit was extended for two years by the American Taxpayer Relief Act of 2012.

- 6. Section 1351 of the Energy Policy Act of 2005, P.L. 109-58, modified the research credit as it applies to qualified energy research and is effective on the date of enactment (08-08-2005). Division C, Title III, section 301 of the Emergency Economic Stabilization Act of 2008, P.L. 110-343, extended the

credit for two years to any amount paid or incurred on or before December 31, 2009, and modifies the alternative simplified credit.

7. On December 17, 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, was signed into law. Section 731 of the act extended the research credit for two years for any amount paid or incurred for taxable years beginning after December 31, 2009 and on or before December 31, 2011. Section 301(a), Extension and Modification of Research Credit, of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the credit for two years for amounts paid or incurred on or before December 31, 2013.

**IRM 21.7.4.4.8.3.8(11)** Added information that the credit for Indian Coal Facilities placed in service before 2009 has been extended for one year to December 31, 2012.

11. Section 406, Extension of Production Credit for Indian Coal Facilities Placed in Service before 2009, of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the credit for Indian coal facilities placed in service before 2009 for one year to December 31, 2012.

**IRM 21.7.4.4.8.3.21(3), (4) & (5)** Added information that the Biodiesel and Renewable Diesel Fuel Credits was extended for fuels produced, and sold or used, for two year through December 31, 2013, by the American Taxpayer Relief Act of 2012.

3. Division B, Title II, section 202(a) of the Emergency Economic Stabilization Act of 2008, P.L. 110-343, extended the credit for fuels produced, and sold or used, for one year through December 31, 2009. Section 701(a) and section 701(b), of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, P. L. 111-312, extended the credit for fuels produced, and sold or used, for two years through December 31, 2011.
4. Special Rule for 2010. Under section 701(c) of the Act, per Notice 2011-10, Biodiesel and Alternative Fuels; Claims for 2010; Excise Tax, taxpayers may make a one-time claim for payment of the credits and payments allowable under IRC sections 6426 and 6427 for biodiesel (including renewable diesel) mixtures, alternative fuels, and alternative fuel mixtures sold or used during calendar year 2010, on Form 8849. See IRM 21.7.8.4.5.4, *Form 8849, Schedule 3, Certain Fuel Mixtures and the Alternative Fuel Credit*, for more information. Taxpayers may also continue to claim the credit on Form 4136, *Credit for Federal Tax Paid on Fuels*. The one-time claim rule mentioned above, does not pertain to claims on Form 4136.

5. Section 405(a), Extension of Incentives for Biodiesel and Renewable Diesel, of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the credit for fuels produced, and sold or used, for two years through December 31, 2013.

**IRM 21.7.4.4.8.3.26.1(13)** Added information that the Qualified Plug-in Electric and Electric Vehicle Credit expired for vehicles acquired after December 31, 2011. However, taxpayers that acquired the plug-in electric vehicle before 2012, but placed the vehicle in service during 2012, may still be able to claim the credit for 2012.

13. The Qualified plug-in electric vehicle credit expired for vehicles acquired after December 31, 2011. However, taxpayers that acquired the plug-in electric vehicle before 2012, but placed the vehicle in service during 2012, may still be able to claim the credit for 2012 on Form 8834. Taxpayers can claim a credit for certain two- or three-wheeled vehicles acquired after 2011 on Form 8936. See IRM 21.7.4.4.8.3.37.1 below for more information.

**IRM 21.7.4.4.8.3.35.1** Added information that the Energy-Efficient Appliance Credit, was extended for one year for certain appliances produced in 2012 by the American Taxpayer Relief Act of 2012.

1. Section 409, Extension of Credit for Energy-Efficient Appliance, of the American Taxpayer Relief Act of 2012, P.L. 112-240, extends the credit for two years for certain appliances produced in 2012 and 2013.
2. The credit for dishwashers manufactured in 2012 and 2013 is as follows:

<b>The credit for dishwashers that use no more than</b>	<b>and the number of gallons it uses per cycle is no more than</b>	<b>or, for dishwashers designed for greater than 12 place settings and the number of gallons it uses per cycle is no more than</b>	<b>then the credit is</b>
295 Kilowatt hours	4.25	4.75	\$50
280 Kilowatt hours	4	4.5	\$75

3. The credit for clothes washers manufactured in 2012 and 2013 is as follows:
  - o \$225 for a top-loading clothes washer which meets or exceeds a 2.4 modified energy factor and does not exceed a 4.2 water consumption factor

- \$225 for a front-loading clothes washer which meets or exceeds a 2.8 modified energy factor and does not exceed a 3.5 water consumption factor
- 4. The credit for refrigerators manufactured in 2012 and 2013 is as follows:
  - \$150 for a refrigerator which consumes at least 30-percent less than the 2001 energy conservation standards, and
  - \$200 for a refrigerator which consumes at least 35-percent less than the 2001 energy conservation standards
- 5. See IRM subsection 21.7.4.4.8.3.35 above and the General Instructions for Form 8909 for more specific information.
- 6. Action required:
  - a. Math verify Form 8909
  - b. Input TC 291 to increase the credit and TC 290 to decrease the credit

**IRM 21.7.4.4.8.3.37.1** Added new subsection titled: American Taxpayer Relief Act of 2012, P.L. 112-240, Form 8936, Qualified Plug-in Electric Drive Motor Vehicle Credit (*Including Qualified Two- or Three-Wheeled Plug-in Electric Vehicle*).

1. Section 403, Extension for 2- or 3-Wheeled Plug-in Electric Vehicles, of the American Taxpayer Relief Act of 2012, P.L. 112-240, adds new section 30D(g), Credit Allowed for two- and three-wheeled plug-In electric vehicle, to the code. The credit is available for certain two- or three-wheeled plug-in electric vehicles acquired after December 31, 2011 and before 2014 and is claimed on Form 8936.
2. The amount of the credit is 10-percent of the cost of any qualified plug-in electric vehicle placed in service by the taxpayer during the taxable year, and cannot exceed \$2,500.
3. A qualified two- or three-wheeled plug-in electric vehicle is a new vehicle with two or three wheels that:
  - Is capable of achieving a speed of 45 miles per hour or greater, and
  - Is propelled to a significant extent by an electric motor which draws electricity from a battery which (i) has a capacity of not less than 2.5 kilowatt hours, (ii) is capable of being recharged from an external source of electricity
  - Has a gross vehicle weight rating of less than 14,000 pounds
4. The following requirements must be met to qualify for the credit:
  - The original use commences with the taxpayer
  - The vehicle is placed in service during the tax year
  - Is acquired for use or lease by the taxpayer and not for resale
  - Is made by a manufacturer
  - Is manufactured primarily for use on public streets, roads, and highways
  - The vehicle is used primarily in the United States
5. IRM subsection 21.7.4.4.8.3.37 above and the General Instructions for Form 8936 for more specific information.

6. Action required
  - Math verify Form 8936
  - Input TC 291 to increase the credit and TC 290 to decrease the credit

**IRM 21.7.4.4.18.4(5)** Added information to see IRM subsections 21.7.4.4.18.4.1 and 21.7.7.18.4.2 for extensions and modifications to the deduction.

5. See subsections IRM 21.7.4.4.18.4.1 and IRM 21.7.7.18.4.2 below for extensions and modifications to the deductions.

**IRM 21.7.4.4.18.4.2** Added new subsection titled: American Taxpayer Relief Act of 2012, P.L. 112-240, Second Generation Biofuel Plant Property - Additional First-Year Depreciation.

1. Section 410(a), Extension and Modification of Special Allowance for Cellulosic Biofuel Plant Property, of the American Taxpayer Relief Act of 2012, P.L. 112-240, extends and modifies the 50-percent additional first-year depreciation deduction. The deduction is equal to 50-percent of the adjusted basis of qualified second generation biofuel plant property identified in IRC section 168(I)(2). The additional first-year depreciation deduction is allowed for both regular and alternative minimum tax for the taxable year in which the property is placed in service. The provision extends the additional first-year depreciation deduction for one year to January 1, 2014.
2. Act section 410(b) amends IRC 168(I)(2). In order for property to qualify for the additional first-year depreciation deduction, it must be second generation biofuel plant property, which is depreciable property that meets the following conditions:
  - The property is used in the United States solely to produce second generation biofuel (as defined in IRC section 40(b)(6)(E)).
  - The original use of the property must begin with the taxpayer on or after December 20, 2006 (the date of enactment of the provision).
  - The property must be acquired by purchase by the taxpayer after December 20, 2006. (Property does not qualify if a written binding contract for acquisition of such property was in effect before December 20, 2006.)
  - Is placed in service by the taxpayer before January 1, 2014.
3. Property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, qualifies if the taxpayer begins the manufacture, construction, or production after December 20, 2006 and the property is placed in service before January 1, 2014. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered manufactured, constructed, or produced by the taxpayer.

4. Second generation biofuel is defined in IRC section 40(b)(6)(E) and is described in paragraphs (9) through (12) in IRM 21.7.4.4.8.3.3.

**IRM 21.7.4.4.18.7.5** Added new subsection titled: American Taxpayer Relief Act of 2012, P.L.112-240, IRC section 179 Expensing.

1. Section 315, Extension of Increased Expensing Limitations and Treatment of Certain Real Property as Section 179 Property, of the American Taxpayer Relief Act of 2012, P.L. 112-240, made several amendments to IRC section 179. Section 315(a)(1) of the Act amends the maximum amount under IRC section 179(b)(1) of the cost of qualifying property placed in service for the taxable year that a taxpayer may expense. For taxable years beginning in 2012, the amount is increased from \$125,000 to \$500,000. For taxable years beginning in 2013, the amount is increased from \$25,000 to \$500,000. For taxable years beginning after 2013, the applicable IRC section 179(b)(1) amount is \$25,000.
2. Under IRC section 179(b)(2), the applicable IRC section 179(b)(1) amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service by the taxpayer during the taxable year exceeds certain thresholds. Section 315(a)(2) of the American Taxpayer Relief Act of 2012, P.L. 112-240, amends these amounts as follows
  - o \$2,000,000 in the case of taxable years beginning in 2012 and 2013
  - o \$200,000 in the case of taxable years beginning after 2013
3. Section 315(b) of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the placed in service date for computer software described in paragraph (2) in subsection 21.7.4.4.18.7 above, for one year to taxable years before 2014.
4. Section 315(c), of the American Taxpayer Relief Act of 2012, P.L. 112-240, extended the provision permitting a taxpayer to irrevocably revoke an election for a taxable year under IRC section 179 without the consent of the Commissioner for one year (through taxable years beginning in 2013).
5. Section 315(d) of the Act extended the placed in service date for qualified real property for two years to taxable years beginning in 2012 and 2013.