

IRM PROCEDURAL UPDATE

DATE: 04/05/2016

NUMBER: WI-21-0416-0683

SUBJECT: Moratorium for Excise Tax on Medical Devices, Line 5 of Form 2290, 2014 and 2015 No Interest on Biodiesel and Alternative Fuel Claims

AFFECTED IRM(s)/SUBSECTION(s): 21.7.8

CHANGE(s):

IRM 21.7.8.4.1.4.7.4 Added Note based on the Moratorium for the Excise Tax on Medical Devices.

1. Beginning January 1, 2013, IRC 4191 imposes an excise tax of 2.3 percent on the sale of certain medical devices by the manufacturer, producer, or importer of the device. This provision was enacted by section 1405 of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, in conjunction with the Patient Protection and Affordable Care Act, Public Law 111–148.

NOTE: There has been a tax law change to the Medical Device Excise Tax. The Protecting Americans from Tax Hikes Act of 2015 (PATH) Pub. L. 114-113 Div. Q (2015), which was signed into law on December 18, 2015, includes a two-year moratorium on the medical device excise tax imposed by the Internal Revenue Code Section 4191. Thus, the Medical Device Excise Tax does not apply to the sale of a taxable medical device by manufacturer, producer, or importer of the device during the period beginning on January 1, 2016 and ending on December 31, 2017.

2. In general, a taxable medical device is a device that is listed with the Food and Drug Administration (FDA) under section 510(j) of the Federal Food, Drug, and Cosmetic Act and 21 CFR part 807. The term taxable medical device does not include eyeglasses, contact lenses, or hearing aids. The term taxable medical device also does not include devices generally purchased by the general public at retail for individual use (the "retail exemption").
3. IRC 4221(a) limits tax-free sales of taxable medical devices to sales for:
 - o Use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for further manufacture.
 - o Export, or resale by the purchaser to a second purchaser for export.
4. The manufacturer, the first purchaser, and in some cases the second purchaser must be registered by the IRS to make a tax-free sale for further manufacture or export. A manufacturer or purchaser applies for a registration by filing Form 637, *Application for Registration*. The applicant may request

- Activity Letters A, B, or D, depending upon whether they are a manufacturer and/or producer for further manufacturing or export.
5. The tax imposed under IRC 4191 is based on the price for which a taxable medical device is sold (sales price). The sales price and related tax liability is reported on Form 720, *Quarterly Federal Excise Tax Return*.
 6. The taxpayer must use the Form 720X, *Amended Quarterly Federal Excise Tax Return*, to amend the original filing (reporting errors).
 7. Use TC 29X and IRS No. 136 on MFT 03 to adjust tax. The sales price field is captured by Submission Processing and is an adjustable information field. Use Item Reference Number 812 to adjust the sales price field.

CAUTION: Due to processing issues with the Medical Device Sales field, the field for the first (201303), second (201306), and third quarters (201309) must be reviewed for accuracy and, if necessary, corrected whenever an original or amended return is available.

8. Semi-monthly deposits will generally be required if tax liability exceeds \$2,500 for the calendar quarter. Per Notice 2012-77, Section 6, the IRS is providing deposit penalty relief for medical device taxpayers. During the first three calendar quarters of 2013, the IRS will not impose the deposit penalty provided the taxpayer demonstrates a good faith attempt to comply with the deposit requirements and the failure to deposit was not due to willful neglect. IRM 20.1.4, *Failure to Deposit Penalty*, provides additional information.
9. If the manufacturer or purchaser is eligible to claim a credit or refund (without interest), the claimant must use Schedule C (Form 720) or Form 8849, Schedule 6. The related credit reference number (CRN) is 438. See Publication 510, *Excise Taxes*, Chapter 5, for more information about claims for credit or refund.
10. Additional filing and payment information is available in the Instructions for Form 720 and Publication 510, *Excise Taxes*.

IRM 21.7.8.4.1.5.1 Updated table in (4) with fee schedule for October 1, 2015 through October 1, 2016.

4. The fee is indexed to national health expenditures until September 30, 2019. The annual fees are provided in the following table:

If the policy or plan year ends	Then the fee is
Before October 1, 2013	\$1.00
On or after October 1, 2013 and before October 1, 2014	\$2.00
On or after October 1, 2014 and before October 1, 2015	\$2.08
On or after October 1, 2015 and before October 1, 2016	\$2.17

IRM 21.7.8.4.2.14 Updated (2) with guidance regarding the use of line 5 of Form 2290 to claim credit for tax paid.

2. Taxpayers may use line 5 of the Form 2290 to claim a credit for tax paid in the three following circumstances:
 - Vehicle was sold,
 - Vehicle is destroyed (so damaged by accident or other casualty it is not economical to rebuild it) or stolen before June 1 of the taxable period and is not used during the remainder of the taxable period, or
 - Vehicle was used during the prior period 5,000 miles or less (7,500 for agricultural vehicles).

IRM 21.7.8.4.7.3.1 Added paragraphs with guidance for 2014 and 2015 no interest for biodiesel and alternative fuel incentive claims.

1. The credits and payments allowable under IRC 6426(c), IRC 6426(d), and IRC 6427(e) for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during the calendar years 2014 or 2015 are collectively known as the biodiesel and alternative fuel incentives for years 2014 or 2015.
2. Claimants must follow the procedures listed below to make a one-time claim related to the 2014 or 2015 biodiesel and alternative fuel incentives:
 - Claimants must submit claims on Form 8849, *Claim for Refund of Excise Taxes*.
 - Claimants must include Schedule 3 (Form 8849), Certain Fuel Mixtures and the Alternative Fuel Credit, with the submission and include the biodiesel and alternative fuel amounts on Line 2 and Line 3.
 - Claimants must claim all 2015 biodiesel and alternative fuel incentives on a single Form 8849.
 - Claimants may not combine 2015 and 2016 claims for biodiesel and alternative fuel incentives.
 - Claimants must mail the submission to the address provided in the Schedule 3 instructions.
 - Claimants may electronically file the Form 8849 and Schedule 3.
 - Claimants must be registered with an AL (alternative fuel) activity letter at the time the claim is filed for the alternative fuel credit under IRC 6426(d) and IRC 6427(e).
 - The 180-day claim period for 2014 biodiesel and alternative fuel incentives begins on February 9, 2015. Any claim submitted prior to February 9, 2015 will be considered filed on February 9, 2015. All claims must be filed on or before August 8, 2015. The IRS will not process claims post marked after August 8, 2015.

- The 180-day period for 2015 biodiesel and alternative fuel incentives begins on February 8, 2016. Any claim submitted prior to February 8, 2016 will be considered filed on February 8, 2016. All claims must be filed on or before August 8, 2016. The IRS will not process claims postmarked after August 8, 2016.
3. Interest Considerations - 2014 Biodiesel and Alternative Fuel Incentive Claim: No interest is allowed on a 2014 biodiesel and alternative fuel incentive claim when the overpayment is issued (date of refund check) within 60 days of the **later** of the:
- Received date of the claim,
 - Processible date of the claim, or
 - February 9, 2015

If the 60-day interest-free period is missed, interest is allowed from the **latest** of the preceding dates to the refund schedule date, less the applicable back-off period of IRC 6611(b)(2)

CAUTION: Because the IRS computer does not calculate interest using the received date of a claim, interest must be manually computed and input with TC 770 when the interest-free period is missed.

EXAMPLE: A processible claim is filed on January 26, 2015. IRS has until April 10, 2016 (February 9 plus 60 days) to pay the claim without interest. After that date, the taxpayer is entitled to credit interest from February 9, 2015 (the earliest date the claim is considered as filed).

4. Interest Considerations - 2015 Biodiesel and Alternative Fuel Incentive Claim: No interest is allowed on a 2015 biodiesel and alternative fuel incentive claim when the overpayment is issued (date of refund check) within 60 days of the **later** of the:
- Received date of the claim,
 - Processible date of the claim, or
 - February 8, 2016

If the 60-day interest free period is missed, interest is allowed from the **latest** of the preceding dates to the refund schedule date, less the applicable back-off period of IRC 6611(b)(2).

CAUTION: Because the IRS computer does not calculate interest using the received date of a claim, interest must be manually computed and input with TC 770 when the interest-free period is missed.

EXAMPLE: A processible claim is filed on January 26, 2016. IRS has until April 8, 2016 (February 8 plus 60 days) to pay the claim without interest. After that date, the taxpayer is entitled to credit interest from February 8, 2016 (the earliest date the claim is considered as filed).

IRM 21.7.8.4.7.3.2 Added guidance for 2015 claim period.

1. For 2014 and 2015, all alternative fuel mixture credit claims allowed under IRC 6426(e), including claims for the fourth quarter, must be submitted on Form 720X, *Amended Quarterly Federal Excise Tax Return*.
2. An alternative fuel mixture credit for any quarter may not exceed the IRC 4081 tax liability reported in the quarter for which the credit is being claimed.
3. The claim period for the 2014 alternative fuel mixture credit begins on February 9, 2015. The claim period for the 2015 alternative fuel mixture credit begins on February 8, 2016.
4. In general, claims for the IRC 6426(e) alternative fuel mixture credit must be made within three years from the time the return was filed or two years from the time the tax was paid, whichever is later.
5. The taxpayer must be registered with an AM (alternative fuel mixture) activity letter at the time the claim is filed for credit.