

Part III - Administrative, Procedural, and Miscellaneous

Biodiesel and Alternative Fuels; Claims for 2012; Excise Tax

Notice 2013-26

Section 1. PURPOSE

(a) On January 2, 2013, the American Taxpayer Relief Act of 2012 (Pub. L. 112-240) (“ATRA”) retroactively extended the following fuel tax credits that expired on December 31, 2011: the biodiesel (including renewable diesel) mixture credit, biodiesel credit, alternative fuel credit, and the alternative fuel mixture credit. These credits are now scheduled to expire on December 31, 2013.

(b) The due date for filing certain claims for payments related to biodiesel mixtures and alternative fuel had already passed by the date that ATRA was enacted, and the due date for other claims will expire before or shortly after this Notice is released. This Notice allows additional time for claimants to file these claims for payments.

Section 2. BACKGROUND

(a) Excise tax credits--(1) In general. Sections 6426(a) and (c) of the Internal Revenue Code allow a person producing a biodiesel (including renewable diesel)

mixture to claim a \$1.00-per-gallon credit against its tax liability under section 4081 (relating to the tax imposed on taxable fuel). Similar rules under section 6426(d) apply to a person that sells or uses alternative fuel as a fuel in a motor vehicle or a motorboat and in aviation, except that the credit amount is \$0.50 per gallon, and the credit for alternative fuel is taken against the claimant's tax liability under section 4041 (relating to the tax imposed on diesel fuel and alternative fuel).

(2) Form and timing. The taxes imposed by sections 4041 and 4081 are reported on Form 720, Quarterly Federal Excise Tax Return, and the section 6426 claims are made on Schedule C (Form 720), Claims. Claims allowed by section 6426 that were not made by a claimant on the claimant's Form 720 for a particular quarter may be claimed on Form 720X, Amended Quarterly Federal Excise Tax Return. Generally, these claims 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.

(b) Claims for payment--(1) In general. A person allowed the biodiesel mixture credit or alternative fuel credit whose claims exceed its tax liability may claim this excess as a payment under section 6427(e).

(2) Form and timing. A claimant must first apply the biodiesel mixture credit and alternative fuel credit against its tax liability by making the claim on Form 720 or Form 720X. To the extent the claim exceeds its tax liability, the claimant may file a claim for payment of that excess amount on Form 8849, Claim for Refund of Excise Taxes, and attach Schedule 3 (Form 8849), Certain Fuel Mixtures and the Alternative Fuel Credit. Section 6427(i)(3)(C) requires claims for payment under section 6427(e) to be filed on

or before the last day of the first quarter following the earliest quarter of the claimant's income tax year included in the claim. For example, a calendar-year claimant's claim for a biodiesel mixture sold or used during June and July must be filed by September 30 of the same calendar year.

(c) Refundable income tax claims--(1) In general. If a claimant does not timely file an allowable claim for a payment under section 6427(e), then section 34 allows the claimant to file the claim as a refundable income tax credit.

(2) Form and timing. Claims under section 34 must be filed on Form 4136, Credit for Federal Tax Paid on Fuels, as an attachment to the claimant's income tax return. Generally, these claims must be made within three years from the time the claimant's income tax return was filed or two years from the time the income tax was paid, whichever is later.

Section 3. TRANSITION RELIEF

(a) In general. When ATRA was enacted on January 2, 2013, the time had already passed for filing some claims for payment under section 6427(i)(3)(C). The time for filing certain other claims for payment will expire before or shortly after this Notice is released. This Notice extends the time allowed to file these claims. These claims may be combined on a single form with claims for an excise tax credit under section 6426. This Notice does not affect the time for filing claims under section 34 (relating to refundable income tax credits) or section 6426 (relating to excise tax credits). Further, this Notice does not affect a claimant's ability to amend a previously-filed income tax return on which the claimant claimed a section 34 credit so that a section 6427(e) claim

may be made pursuant to this Notice. For example, if before April 3, 2013, a claimant filed a claim for an income tax credit under section 34 for 2012, the claimant may amend its income tax return to remove that claim under section 34 and instead file a claim for payment under section 6427(e) pursuant to the procedures in section 3(b) of this Notice.

(b) Allowable claims. The IRS will consider a claim as timely filed if--

(1) The claim relates to sales or uses of biodiesel mixtures or alternative fuel in 2012 for which either a credit under section 6426 or a payment under section 6427 is allowed;

(2) The claim is filed on Form 8849 in accordance with the instructions for that form (as modified by this paragraph 3(b));

(3) The claimant has not made, and will not make, this claim on any other form or at any other time except for a claim that--

(i) Had previously been rejected by the IRS solely because the claim was untimely; or

(ii) Has been repaid by the claimant on an amended income tax return as described in paragraph (a) of this section; and

(4) The claim is filed by July 1, 2013.

Section 4. DRAFTING INFORMATION

The principal author of this Notice is Frank Boland of the Office of Associate Chief Counsel (Passthroughs and Special Industries). Mr. Boland may be reached at (202) 622-3130 (not a toll-free call). For questions about filing claims described in this

Notice, please contact Ron Sass at (919) 850-1136 (not a toll-free call).