

Part III – Administrative, Procedural, and Miscellaneous

Income tax treatment of 2014 fuel credits allowable under section 6426(c) and section 6426(d)

Notice 2015-56

PURPOSE

This notice informs claimants about the federal income tax treatment of credits under § 6426(c) and (d) of the Internal Revenue Code that are paid in cash under the one-time claim submission process of section 160(e) of the Tax Increase Prevention Act of 2014 (Act), Pub. L. No. 113-295, 128 Stat. 4023, and implemented by Notice 2015-3, 2015-6 I.R.B. 583. Specifically, a claimant must reduce its income tax deduction for (or cost of goods sold deduction attributable to) § 4081 excise taxes for each calendar quarter during 2014 by the amount of the § 6426(c) credit for a biodiesel mixture sold or used during that calendar quarter. Similarly, a claimant must reduce its income tax deduction for (or cost of goods sold deduction attributable to) § 4041 excise taxes for each calendar quarter during 2014 by amount of the § 6426(d) credit for alternative fuel sold or used during that calendar quarter.

BACKGROUND

Section 6426(a) and (c) allows a blender of a biodiesel (including renewable diesel) mixture to claim a credit (biodiesel mixture credit) against its tax liability under § 4081, relating to the tax imposed on taxable fuel. Specifically, § 6426(c)(1) and (c)(2) provides that the biodiesel mixture credit is the product of \$1.00 and the number of gallons of biodiesel used by the claimant in producing any biodiesel mixture for sale or use in a trade or business of the claimant.

Section 6426(a) and (d) allows a claimant that sells or uses alternative fuel as a fuel in a motor vehicle or motorboat, or in aviation, to claim a credit (alternative fuel credit) against the claimant's excise tax liability under § 4041, relating to the tax imposed on diesel fuel and alternative fuel. Section 6426(d)(1) provides that the alternative fuel credit is the product of 50 cents and the number of gallons of an alternative fuel or gasoline gallon equivalents of a nonliquid alternative fuel sold by the claimant for use as a fuel in a motor vehicle or motorboat, sold by the taxpayer for use in aviation, or so used by the claimant.

Any excess credit under the biodiesel mixture credit or alternative fuel credit may be claimed as a payment under § 6427(e) or as a refundable income tax credit under § 34. Generally, the excise taxes imposed by §§ 4041 and 4081 are reported on Form 720, *Quarterly Federal Excise Tax Return*, and § 6426 credits are claimed on Schedule C (Form 720), *Claims*. A claimant must first apply the biodiesel mixture credit against its § 4081 tax liability and the alternative fuel credit against its § 4041 tax liability by making the claim on Form 720 or Form 720X. To the extent the claim exceeds a

claimant's § 4081 or § 4041 tax liability, the claimant may file a claim for payment of that excess amount pursuant to § 6427(e) using Form 8849, *Claim for Refund of Excise Taxes*, and attaching Schedule 3 (Form 8849), *Certain Fuel Mixtures and the Alternative Fuel Credit*.

The Code provisions authorizing the biodiesel mixture credit and the alternative fuel credit expired for sales and uses after December 31, 2013 (September 30, 2014, in the case of any sale or use involving liquefied hydrogen). In the Act, which was signed into law on December 19, 2014, Congress retroactively reinstated the biodiesel mixture credit and the alternative fuel credit for sales and uses during 2014. Specifically, section 160(a)(1) of the Act provides that § 6426(c)(6) is amended by striking "December 31, 2013," and inserting "December 31, 2014." Similarly, section 160(b)(1) of the Act provides that § 6426(d)(5) is amended by striking "December 31, 2013," and inserting "December 31, 2014." Section 160(d)(1) of the Act provides that the amendments to § 6426(c) and (d) apply to fuel sold or used after December 31, 2013.

Section 160(e) of the Act required issuance of guidance providing for a one-time submission of claims under § 6426(c) and (d) (including any payment under § 6427(e)) covering periods during 2014. Pursuant to this statutory mandate, the IRS issued Notice 2015-3, which provides procedures to make a one-time claim for payment of the credits and payments allowable under §§ 6426(c), 6426(d), and 6427(e) for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar year 2014 (referred to in Notice 2015-3 as the 2014 biodiesel and alternative fuel incentives). These streamlined procedures require that claimants submit all claims for

2014 biodiesel and alternative fuel incentives on a single Form 8849. For example, under Notice 2015-3, a biodiesel mixture claimant whose § 4081 tax liability exceeds its § 6426(c) biodiesel mixture credit (and would therefore not be eligible for a § 6427(e) payment) must still use Form 8849 to make a § 6426(c) claim. That the claimant receives a payment of the § 6426(c) credit as opposed to a credit against its excise tax liability does not change the underlying character of the claim from a § 6426(c) claim for credit to a § 6427(e) claim for payment.

Claimants have requested clarification regarding the proper accounting period(s) for reducing the income tax deduction for or the cost of goods sold deduction attributable to —

(i) the amount of the 2014 calendar year biodiesel mixture credit claimed against § 4081 excise taxes; and

(ii) the amount of the 2014 calendar year alternative fuel credit claimed against § 4041 excise taxes.

INCOME TAX TREATMENT OF 2014 FUEL CREDITS UNDER § 6426(C) AND (D)

The Act retroactively reinstated through December 31, 2014, the biodiesel mixture credit and the alternative fuel credit. See § 160(c) and (d) of the Act and § 6426(c)(6) and (d)(5). As a result, these credits are treated as if they never expired. Claimants determine their 2014 calendar year biodiesel mixture credit and alternative fuel credit by reference to the sale or use of a biodiesel mixture or alternative fuel during 2014. See § 6426(c)(1) and (d)(1).

Consequently, for federal income tax purposes, a claimant must reduce its—

(i) § 4081 excise tax liability for each calendar quarter during the 2014 calendar year by its biodiesel mixture credit attributable to a biodiesel mixture sold or used during that calendar quarter; and

(ii) § 4041 excise tax liability for each calendar quarter during the 2014 calendar year by its alternative fuel credit attributable to alternative fuels sold or used during the calendar quarter.

The reductions apply whether or not the claimant's taxable year ended before the Act was signed into law on December 19, 2014. This is because Congress restored the credits retroactively; therefore, a claimant must treat the credits as if they never expired. The statute's procedural mandate, under section 160(e) of the Act, of a one-time submission of claims process does not affect the substantive federal income tax treatment of these credits.

The following examples illustrate the application of the income tax treatment in the context of the biodiesel mixture credit, but the principles in the example apply equally to the alternative fuel credit:

Example 1. B is a calendar year taxpayer. During each calendar quarter of 2014, B's § 4081 excise tax liability was \$25, for a total of \$100 for 2014. In addition, during each calendar quarter of 2014 B produced a biodiesel mixture using 20 gallons of biodiesel. B produced the biodiesel mixture for sale or use in its trade or business. B claims the biodiesel mixture credit on Form 8849 pursuant to Notice 2015-3, and is allowed an \$80 biodiesel mixture credit for 2014 (\$80 = 20 gallons of biodiesel used to produce a mixture x \$1.00/gallon credit x 4 quarters). B must apply the \$80 credit against B's \$100 § 4081 excise tax liability. Thus, for federal income tax purposes, B's § 4081 excise tax liability for 2014 is \$20. Therefore, B's federal income tax deduction (or cost of goods sold, where applicable) attributable to § 4081 excise taxes for 2014 is \$20.

Example 2. C is a taxpayer with a tax year ending March 31. During each calendar quarter of its tax year ending March 31, 2014, C's § 4081 excise tax liability

was \$25. In addition, during each calendar quarter of that tax year, C produced a biodiesel mixture using 20 gallons of biodiesel. C produced the biodiesel mixture for sale or use in its trade or business. C claims a \$60 biodiesel mixture credit on Schedule C of the Forms 720 that C files for the last three calendar quarters of 2013 (\$60 = 20 gallons of biodiesel used to produce a mixture x \$1.00/gallon credit x 3 quarters). C also claims the biodiesel mixture credit on Form 8849 pursuant to Notice 2015-3. For the first calendar quarter of 2014 C produces a biodiesel mixture using 20 gallons of biodiesel. Therefore, C is allowed a \$20 biodiesel mixture credit for the first calendar quarter of 2014 (\$20 = 20 gallons of biodiesel used to produce a mixture x \$1.00/gallon credit x 1 quarter). C's biodiesel mixture credit for its taxable year ending March 31, 2014 equal \$80 (\$60 of credit in the last three calendar quarters of 2013 and \$20 in the first calendar quarter of 2014). C must apply the \$80 credit against C's \$100 § 4081 excise tax liability. Thus, for federal income tax purposes, C's § 4081 excise tax liability for its tax year ending March 31, 2014 is \$20. Therefore, C's federal income tax deduction (or cost of goods sold, where applicable) attributable to § 4081 excise taxes for its tax year ending March 31, 2014 is \$20.

EFFECT ON OTHER DOCUMENTS

This notice amplifies Notice 2015-3 by providing that, for federal income tax purposes, a claimant reduces its § 4081 excise tax liability by the amount of 2014 excise tax credit allowable under § 6426(c) and its § 4041 excise tax liability by the amount of 2014 excise tax credit allowable under § 6426(d), in determining its deduction for those excise taxes or its cost of goods sold deduction attributable to those excise taxes.

DRAFTING INFORMATION

The principal author of this notice is Shareen S. Pflanz of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Shareen S. Pflanz on (202) 317-4718 (not a toll-free call).