

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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from: Michael J. Montemurro
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subject: Federal income tax treatment of excise tax credits under § 6426(a) of the Internal Revenue Code

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

For federal income tax purposes, how does a claimant with a liability for federal excise taxes under §§ 4081 and/or 4041 treat the excise tax credits allowed under § 6426(a) in determining its deductible excise taxes for federal income tax purposes?

CONCLUSION

For federal income tax purposes, the claimant must treat the excise tax credits allowed under § 6426(a) as a reduction in its federal excise tax liability under §§ 4081 and 4041. Accordingly, the claimant's allowable federal income tax deduction for federal excise taxes is reduced by the amount of the credits.

FACTS

On August 29, 2013, we provided advice (CCA 201342010) that concluded that § 6426(c) excise tax credits and § 6427(e) payments are not items of gross income under § 61 to a biodiesel blender. That advice did not address the effect of the § 6426(a) excise tax credits on the claimant's deduction for federal excise taxes imposed by §§ 4081 and 4041.

You now ask the broader question of whether, for federal income tax purposes, the credits allowed under § 6426(a) reduce a claimant's liability for excise taxes. This Chief Counsel Advice supplements our prior advice.

You indicate that claimants typically include their excise tax liability in their cost of goods sold deduction. Thus, in this context, the issue is whether a claimant must reduce that portion of its cost of goods sold deduction attributable to the excise taxes imposed by §§ 4081 and 4041 by the fuel credits allowed under § 6426(a).

LAW AND ANALYSIS

Section 6426(a)(1) allows as a credit "against the tax imposed" by §§ 4081 and 4041 an amount equal to the sum of the credits for alcohol fuel mixtures, biodiesel mixtures, alternative fuels, and alternative fuel mixtures described in § 6426(b), (c), (d), and (e) respectively.¹ Thus, the credits allowed under § 6426(a) must be taken into account when calculating the claimant's excise tax liability.

A claimant must first apply the credits under § 6426(b), (c), (d) and/or (e) against its §§ 4081 and 4041 fuel tax liabilities. To the extent a claimant's credit allowed under § 6426(a) exceeds the claimant's fuel tax liability, the claimant may (i) make a claim for payment of the excess under § 6427(e), or (ii) make a claim for a refundable income tax credit under § 34(a)(3) on the claimant's income tax return.

Where a credit satisfies an otherwise deductible liability, it is the position of the Service that the deduction is reduced by the amount of the credit. For example, in the analogous situation where a state provides a credit against state income tax liability, the Service has ruled that the state tax credit is not includible in gross income but rather reduces the taxpayer's state income tax deduction for federal income tax purposes. Rev. Rul. 79-315, 1979-2 C.B. 27, Holding (3). The Office of Chief Counsel has consistently analyzed refundable state income tax credits as resulting in a reduction in the taxpayer's state income tax liability to the extent of the state income tax liability, leading to a reduced deduction for state income taxes under § 164(a)(3). See, for example, CCA 200708003 (Jan. 9, 2007) (refundable state income tax credit for certain military service); NSAR 20085201F (Nov. 26, 2008) (refundable state business tax

¹ Most of the credits set forth in §§ 6426(b), (c), (d), and (e) expired on or before December 31, 2013.

credit to encourage employment); See *also* CCA 200842002 (Sept. 23, 2008) (refundable state franchise tax credit) and INFO 2013-009 (Dec. 21, 2012).²

We conclude that the credits allowed under § 6426(a) must be applied against a claimant's excise tax liabilities under §§ 4081 and 4041 to determine the claimant's deductible excise tax liability for federal income tax purposes. To the extent that such credits serve to reduce the claimant's fuel tax liability, the credits reduce the excise tax deduction that the claimant may claim as part of its costs of goods sold. Thus, for federal income tax purposes, the credit allowed under § 6426(a) is not an item excluded from income that is used to satisfy an excise tax liability; rather, for federal income tax purposes, the credit is applied in determining the amount of the deductible excise tax liability.

The following example illustrates our position.

Example. B is allowed an \$80 credit under § 6426(a)(1) against its \$100 § 4081 excise tax liability. B must apply the \$80 credit against B's \$100 excise tax liability. Thus, for federal income tax purposes, B's excise tax liability is \$20. Therefore, B's cost of goods sold deduction attributable to federal excise taxes is \$20.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 317-4718 if you have any further questions.

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² The foregoing guidance does not have precedential effect; we refer to that guidance, however, to illustrate the consistency of our conclusion here with prior views of the Office of Chief Counsel.

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