

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

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to: Holly L. McCann
Chief, Excise Tax Program
Small Business/Self-Employed Division

from: Frank Boland
Chief, Branch 7
Office of the Associate Chief Counsel
(Passthroughs & Special Industries) CC:PSI:7

subject: Application of the § 6426 Alternative Fuel Mixture Credit to Tax Imposed under § 4081

This responds to your request for assistance in determining whether a taxpayer may use an alternative fuel mixture excise tax credit, provided under section 6426(e) of the Internal Revenue Code (Code), to offset its section 4081 excise tax liabilities, generally, or, whether the taxpayer may use the credit only against section 4081 liability incurred in the taxpayer's production of an alternative fuel mixture. This advice may not be used or cited as precedent.

ISSUE

Whether Taxpayer may use the section 6426(e) alternative fuel mixture excise tax credit against tax imposed under section 4081 that is unrelated to the production of an alternative fuel mixture.

CONCLUSION

Taxpayer may use the section 6426(e) alternative fuel mixture excise tax credit against tax imposed under section 4081 that is unrelated to the production of an alternative fuel mixture.

FACTS

Company (Taxpayer), a position holder of taxable fuel, is liable for tax under section 4081 for rack removals of taxable fuel. Taxpayer also produces alternative fuel mixtures as defined in section 6426(e)(2) and meets the conditions for allowance of an alternative fuel mixture excise tax credit. Taxpayer would like to use the alternative fuel mixture excise

tax credit to offset its section 4081 liability for rack removals of taxable fuel.

LAW

Section 6426(a)(1) generally allows as a credit against the tax imposed by section 4081 an amount equal to the sum of the credits described in subsections (b) (alcohol fuel mixture credit), (c) (biodiesel mixture credit) and (e) (alternative fuel mixture credit).

Section 5(a) of Notice 2005-62, 2005-2 C.B. 443, states that section 6426 generally allows a biodiesel mixture credit against any tax imposed by section 4081, including those taxes unrelated to biodiesel mixtures or alcohol mixtures.

Section 4(b)(1) of Notice 2006-92, 2006-2 C.B. 774, requires as a condition to allowance of the alternative fuel mixture excise tax credit that the taxpayer have section 4081 liability for the period of the claim and that the total amount of the alternative fuel mixture excise tax credit that the taxpayer claims under section 6426 for the period does not exceed such liability.

ANALYSIS

Section 6426(a)(1) of the Code provides for a credit against tax imposed under section 4081 in an amount equal to the sum of the alcohol fuel mixture credit, the biodiesel mixture credit and the alternative fuel mixture credit. The Code does not further define the tax liability that the alternative fuel mixture credit, and the other two mixture credits, may offset. Similarly, Notice 2006-92 states that a taxpayer's section 4081 liability may not exceed the taxpayer's claim for an alternative fuel mixture credit under section 6426, for the period involved, but does not limit the nature of the tax liability under section 4081 to which the taxpayer may apply the credit.

Notice 2005-62 states explicitly that section 6426 generally allows a biodiesel mixture credit against any tax imposed by section 4081, including those taxes unrelated to biodiesel mixtures or alcohol mixtures. The language of section 6426(a) does not suggest that a different rule should apply to the alternative fuel mixture excise tax credit. Accordingly, a taxpayer that meets the conditions for the allowance of the alternative fuel mixture excise tax credit may apply the credit against its section 4081 liability, regardless of the basis for the liability.

Please call (202) 622-3130 if you have any further questions.