

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

CC:PSI:7:CLangley
POSTN-115708-13

UILC: 6426.04-00

date: April 26, 2013

to: Joesph J. Tiberio
Acting Chief, Excise Tax Program

from: Frank Boland
Chief, CC:PSI:7

subject: Alternative Fuel Mixture Credit

This responds to your request for non-taxpayer specific legal advice regarding the alternative fuel mixture credit under § 6426 of the Internal Revenue Code (the Code). This advice may not be used or cited as precedent.

ISSUE

May the alternative fuel mixture credit under § 6426 be claimed for a calendar quarter other than for the calendar quarter in which the claimant sold or used the alternative fuel mixture for use as a fuel?

CONCLUSIONS

No. The alternative fuel mixture credit under § 6426 may not be claimed for a calendar quarter other than the calendar quarter in which the claimant sold or used the alternative fuel mixture for use as a fuel.

LAW

Section 6426(a)(1) allows as a credit against the tax imposed by § 4081 an amount equal to the alternative fuel mixture credit described in § 6426(e).

Under § 6426(e)(1), the alternative fuel mixture credit is the product of \$.50 and the number of gallons of alternative fuel used by the taxpayer in producing any alternative fuel mixture for sale or use in a trade or business of the taxpayer. Section 6426(e)(2) defines "alternative fuel mixture" as a mixture of alternative fuel and taxable fuel that is sold by the taxpayer producing the mixture to any person for use as a fuel or used as a fuel by the taxpayer producing the mixture.

Section 40.6011(a)-1(a)(1) of the Excise Tax Procedural Regulations requires a Form 720, Quarterly Federal Excise Tax Return, to be filed to report § 4081 taxes. Section

40.6011(a)-1(a)(2)(i) requires this return to be made for a period of one calendar quarter.

Section 4(b) of Notice 2006-92, 2006-2 C.B. 774, describes the conditions that must be met to make a claim under § 6426 for an alternative fuel mixture credit. Section 4(b)(1)(vi) of that notice requires that the claimant “has § 4081 liability for the period of the claim and the total amount of the alternative fuel mixture excise tax credit claimed under § 6426 for the period of the claim does not exceed such liability.”

ANALYSIS

Notice 2006-92 specifically states that to make a claim under § 6426, the claimant must have § 4081 liability for the period of the claim and that the total amount of the § 6426 credit for the period of the claim cannot exceed such liability. The period of the claim is the period for which the return is filed reporting § 4081 liability.

For example, during Calendar Quarter 1, P, an alternative fuel mixture producer, incurred \$25,000 of § 4081 liability but did not produce and sell any amount of alternative fuel mixture.

During Calendar Quarter 2, P used 100,000 gallons of alternative fuel to produce an alternative fuel mixture and sold it for use as a fuel. The total amount of P’s potential § 6426 credit for that quarter is \$50,000 (100,000 gallons x \$0.50). P did not incur any §4081 liability in Calendar Quarter 2.

During Calendar Quarter 3, P incurred \$25,000 of § 4081 liability but did not produce and sell any amount of alternative fuel mixture.

The period of P’s claim for the \$50,000 is Calendar Quarter 2. Because P did not have § 4081 liability during that period, P may not file a § 6426 claim for credit for Calendar Quarter 2. Because neither Calendar Quarter 1 nor Calendar Quarter 3 are the period of P’s claim, P may not file an amended return to make a claim for Calendar Quarter 1 or make a claim when it files its Form 720 for Calendar Quarter 3.

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