

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

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date: June 19, 2013

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

from: Frank Boland
Chief, CC:PSI:7

subject: Section 6206 Assessments for Alternative Fuel

This responds to your request for legal advice regarding §§ 6206 and 6427 of the Internal Revenue Code (the Code). This advice may not be used or cited as precedent.

ISSUE

By when must the Internal Revenue Service (IRS) assess an excessive amount, as that term is defined in § 6675(b), that the IRS paid to a municipality.

CONCLUSION

The IRS must assess an excessive amount that it paid to a municipality within six years following the close of the municipality's taxable year.

FACTS

The claimant is a municipality that is a political subdivision of a state. The municipality is a registered alternative fueler eligible to claim an alternative fuel payment under § 6427. It used an alternative fuel as a fuel in its motor vehicles. In July 2008, the claimant filed a Form 8849, Claim for Refund of Excise Taxes, Schedule 3, to claim an alternative fuel payment for the alternative fuel it used during its fiscal year that ended June 30, 2008. The IRS paid the full amount of this claim in August 2011. In March 2012, the IRS opened an examination on the claimant, determined that the claimant overstated its alternative fuel use, and was only entitled to a portion of the amount claimed.

LAW

Under § 6206, any portion of a payment made under § 6427 that constitutes an excessive amount is assessable and collectible as a § 4041 or § 4081 tax. The period

for assessing a § 6427 excessive amount is three years from the last day prescribed for filing the § 6427 claim.

Section 6427(e) allows a payment of \$0.50 per gallon for an alternative fuel registrant's use of alternative fuel in a motor vehicle after it first offsets any fuel tax liability under § 6426.

Section 6427(i)(3) allows alternative fuel claims to be made as frequently as weekly if the claimant meets certain requirements. Section 6427(i)(3)(C) requires a claimant to file a § 6427(i)(3) claim on or before the last day of the first quarter following the earliest quarter included in the claim.

Under § 6427(k)(1) payments under § 6427 may only be made to persons not subject to income tax, including a State or political subdivision. Under § 6427(k)(2), this restriction under § 6427(k)(1) does not apply to claims made under § 6427(i)(3).

Section 48.6427-3(b)(1)(ii) of the Manufacturers and Retailers Excise Tax Regulations requires a claim for payment of a governmental unit or exempt organization to be made no later than three years following the close of its taxable year.

Under §48.6421-4(g), the taxable year of a governmental unit is the calendar or fiscal year on the basis of which it regularly keeps its books.

ANALYSIS

The claimant used an alternative fuel as fuel for its motor vehicles and is eligible to make a claim under § 6427(e). The claimant made a claim for its entire fiscal year rather than a quicker claim under § 6427(i)(3). Therefore, the § 6427(i)(3)(C) timing restrictions do not apply to that claim. Section 48.6427-3(b)(1)(ii) requires a tax-exempt entity to file a claim no later than three years following the close of its taxable year. The claimant's taxable year ended on June 30, 2008. Therefore, the last day the claimant could make a claim under § 6427(k)(1) was June 30, 2011, which is three years following the close of its taxable year. Section 6206 requires the IRS to assess an excessive amount under § 6427 within three years of the last day prescribed for filing the claim. Accordingly, the IRS may assess an excessive amount for that claim until June 30, 2014.

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