

IRS provides guidance to taxpayers for claiming biodiesel and alternative fuel incentives for 2014

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In brief

On January 16, 2015, the Internal Revenue Service (Service) issued Notice 2015-3, which provides taxpayers with a streamlined process to make one-time claims for credits and payments related to biodiesel (including renewable diesel) mixtures and alternative fuels for 2014.

In detail

Tax incentives for producing biodiesel (including renewable diesel) and alternative fuels, as well as biodiesel mixtures and alternative fuel mixtures, expired on December 31, 2013. In December 2014, the Congress retroactively reinstated these tax incentives with the enactment of the Tax Increase Prevention Act of 2014 (Pub. L. 113-295) (Act). The Act specifically directs the Service to issue guidance on how taxpayers may make a one-time claim for credits and payments allowable under Sections 6426(c), 6426(d), and 6427(e), related to biodiesel and alternative fuel incentives, and how to claim offsets of Section 4081 liability for Section 6426(e) alternative fuel mixtures, for calendar year 2014. Below is a summary of the general rules for claiming these credits and the Notice 2015-3

procedures by which taxpayers must make such claims.

General method for making claims

Section 6426(c) allows the blender of a biodiesel mixture a credit of \$1.00 for each gallon of biodiesel (which, for purposes of this discussion, includes renewable diesel) used in producing a biodiesel mixture. However, the credit is only available to producing taxpayers that either sell the biodiesel mixture to a person for use as a fuel, or themselves use the biodiesel mixture as a fuel. The credit must first be claimed against the federal excise tax imposed on taxable fuel under Section 4081, if any. To the extent the amount of the credit exceeds the taxpayer's excise tax liability, the taxpayer may claim a payment of the excess amount under Section 6427(e) or, instead, claim a credit against the taxpayer's income tax

liability under Section 34. In the alternative, the taxpayer may claim a nonrefundable income tax credit under Section 40A.

Sections 6426(d) and (e) also provide for a \$0.50 credit for each gallon of alternative fuel and alternative fuel mixture, respectively, sold or used in the prescribed manner. The Section 6426(d) alternative fuel credits must first be taken against the federal excise tax liability for the year, if any, imposed under Sections 4041. To the extent any amount of the credit exceeds this offset amount, a taxpayer may file a claim for payment under Section 6427(e) for the excess credit amount or, in the alternative, claim a credit against the taxpayer's income tax liability under Section 34. The alternative fuel mixture credit under Section 6426(e) is only allowable to the extent of the taxpayer's Section 4081 excise tax liability.

Process for claiming credits for calendar year 2014

Making one-time claims for credits and payments allowable under Sections 6426(c), 6426(d), and 6427(e) for biodiesel mixtures and alternative fuel incentives

Section 160(e) of the Act, following similar language to that set forth in 2010 legislation extending these credits, directs the Service to issue guidance within 30 days of the Act's enactment, allowing a one-time claim procedure. The legislation allows for a 180-day period for submission of claims for biodiesel mixtures and alternative fuel incentives for 2014. Notice 2015-3 provides an effective date of February 9, 2015, with a closing date for filing claims of August 8, 2015. As such, taxpayers must file any payment claims for biodiesel mixtures and alternative fuel incentives within this period. While the claims may be filed before February 9, 2015, the Service will treat any such claims as being filed on the effective date.

Notice 2015-3 specifically provides the means for taxpayers to make a one-time claim for the federal excise tax payments for biodiesel mixtures and alternative fuel incentives for calendar year 2014. The Notice provides detailed information on how the 2014 claims are required to be filed. Specifically, a taxpayer must file a claim for biodiesel mixture and alternative fuel incentives on Schedule 3 of Form 8849, *Claim for Refund of Excise Taxes*. The taxpayer must claim the full amount of biodiesel and alternative fuel incentives for which the taxpayer is eligible under Sections 6426(c), 6426(d), and 6427(e), for the entire 2014 calendar year, on a single

Form 8849.¹ The Service has made clear that it will not process multiple claims from the same taxpayer. Note that a taxpayer claiming alternative fuel mixture incentives must have registered with the Service prior to submission of the Form 8849. Registration may be completed by filing Form 637, *Application for Registration (For Certain Excise Tax Activities)*. Additionally, the Notice states that any previously filed protective claims need to be refiled in accordance with the procedures in the Notice.

Making an alternative fuel mixture claim under Section 6426(e)

Pursuant to the guidance set forth in Notice 2015-3, all alternative fuel mixture credit claims for 2014 must be made on Form 720X, *Amended Quarterly Federal Excise Tax Return* (inclusive of claims for the fourth quarter). The failure to file a Form 720, *Quarterly Federal Excise Tax Return* (and remit Section 4081 tax due for any quarter in 2014) prior to submitting a claim on Form 720X will delay processing and payment of refunds. The claim for a Section 6426(e) credit for any quarter may not exceed the Section 4081 liability for the quarter in which the credit is being claimed. Taxpayers may adjust multiple quarters on a single Form 720X.

The same initial timeframes for filing claims for biodiesel and alternative fuel incentives apply here. Thus, claims for alternative fuel mixture credits filed before the effective date of February 9, 2015, will be deemed filed on that date. Generally, claims for alternative fuel mixture credit must be made within three years from filing of the return or two years from

the payment of the tax, whichever is later.

The takeaway

Taxpayers have been anticipating this Notice, in light of similar guidance that the Service issued in early 2011 and 2013 after legislation was passed extending the availability of these credits for those years. As the credits expired in December 2013, a one-time claim procedure is good news in providing taxpayers with a convenient means to claim the entire amount of their credits for 2014.

Taxpayers should carefully adhere to the Service's guidance in order to ensure that their claims are timely filed and accurately reflect the full amount of their claimed credit for calendar year 2014. The Service will not permit multiple or amended claims. Consequently, if a taxpayer had submitted protective claims in anticipation of the extension being passed by Congress, taxpayers must now file new claims as the Service will not treat any prior claims as perfected as a result of the legislation. The Notice also specifies how a claimant may offset its Section 4081 liability with the Section 6426(e) alternative fuel mixture credit. Importantly, all alternative fuel mixture claims under Section 6426(e) must be made on Form 720X.

Sections 152 and 153 of the Act also reinstated provisions that authorize credits for second generation biofuel producers and biodiesel and renewable diesel used as fuel. Specifically, Sections 40(b)(6) and 40A expired December 31, 2013, but were retroactively reinstated for 2014. The Notice does not affect claims for nonrefundable income tax credits for

¹ This differs from the standard procedure for claims on Forms 8849, which are usually filed quarterly, but may be filed as often as weekly.

second generation biofuel producers under Section 40(b)(6), biodiesel mixtures under Section 40A(b)(1), biodiesel (including renewable diesel) under Section 40A(b)(2), and the small agri-biodiesel producer credit under Section 40A(b)(4). Taxpayers availing themselves of these credits should continue to file claims separately, and in accordance with Form 8864, *Biodiesel and Renewable Diesel Fuels Credits*, with their income tax return. Furthermore, the Notice does not affect claims for

refundable income tax credits under Section 34 for biodiesel mixtures or alternative fuel. Taxpayers should continue to submit such claims on Form 4136, *Credit for Federal Tax Paid on Fuels*, with their income tax return. As a reminder, credits are not allowed under Section 34 for amounts that are properly payable under Section 6427 and timely claimed. For this purpose, the Service will treat as timely filed any claims for amounts payable under Section 6427 that

conform to the guidance set forth in the Notice.

Finally, the legislation retroactively reinstating the credits discussed above only did so through December 31, 2014. While their future remains uncertain for taxable years beginning after January 1, 2015, taxpayers should maintain accurate records in the event Congress again passes legislation to extend the credits beyond their current expiration date.

Let's talk

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