

# *IRS issues taxpayer-favorable guidance for claiming biodiesel and alternative fuel incentives*

*April 17, 2013*

## ***In brief***

On April 4, 2013, the Internal Revenue Service issued Notice 2013-26 to provide a simplified mechanism for taxpayers to claim federal excise tax credits and payments related to biodiesel (including renewable diesel) mixtures and alternative fuel for 2012 (specified credits). Prior to issuance of this Notice, IRS guidance suggested that taxpayers would need to claim these credits on amended federal excise tax returns and, if in excess of fuel excise tax liability, by claiming income tax credits. This guidance, however, will allow taxpayers the option of claiming the credits as direct payments or income tax credits. Notice 2013-26 also extends the deadline for filing claims for the specified credits until July 1, 2013.

## ***In detail***

Tax incentives for producing biodiesel (including renewable diesel) and alternative fuels, as well as biodiesel and alternative fuel mixtures, expired on December 31, 2011. However, on January 2, 2013, the American Taxpayer Relief Act of 2012 (Pub. L. No. 112-240) (Act), reinstated these incentives as if they had not expired. Thus, the credits are now available retroactively to January 1, 2012, and are extended through December 31, 2013 (with the exception of the portion of the alternative fuel mixture credit in excess of fuel tax liability, which was not extended past December 31, 2011).

Congress previously enacted a retroactive and prospective extension of these same credits in the Tax Relief, Unemployment Insurance Reauthorization, and Jobs Creation Act of 2010 (Pub. L. No. 111-312). Unlike that prior legislation, though, the Act did not specifically direct the Internal Revenue Service to issue guidance on how taxpayers may make a one-time claim for those fuel credits or payments reinstated for calendar year 2012. In the absence of the administrative relief provided by the Notice, it appeared that the only avenue for claiming the specified credits in excess of fuel tax liability was through income tax credits, as the Section 6427

periods for claiming payments had expired and had not been modified by statute. Notice 2013-26 now provides taxpayers with a method to claim these otherwise unavailable payments, summarized below.

### ***Special credits and general methods for making claims***

Notice 2013-26 focuses only on the specified credits as defined above.<sup>1</sup> Section 6426(c) provides a \$1.00 biodiesel mixture credit for each gallon of a biodiesel mixture sold by the producing taxpayer to a person for use as a fuel or used by the producing taxpayer as a fuel. Section 6426(d) provides for a \$.50 credit for each gallon of alternative fuel a taxpayer sells

<sup>1</sup> Section 405(a) of the Act also extended the credit for various sales and uses of biodiesel fuel (including renewable diesel) under Section 40A, to December 31, 2013. However, as this income tax credit may only be claimed as a part of the general business credit in Section 38, taxpayers must claim the credit on their income tax returns. Section 40A income tax credit claims are not addressed in Notice 2013-26 or here.

for use as a fuel or uses as a fuel. Under normal circumstances, Section 6426 requires that credits for production of these fuels must first be taken as an offset against a taxpayer's excise tax liability imposed under Section 4041 or 4081. To the extent any amount of the credit exceeds this offset amount, a taxpayer may then file a claim for payment under Section 6427 for the excess credit amount or, in the alternative, claim a Section 34 credit against the taxpayer's income tax liability.

In order to receive a payment of the excess credit amount under Section 6427, a taxpayer must make a payment claim on or before the last day of the first quarter following the earliest quarter included in the claim. For example, a payment claim related to gallons sold in March (first calendar quarter) must be included on a claim form filed on or before June 30, i.e., the last day of the second calendar quarter. It bears noting that because the Act was enacted on January 2, 2013, payment claims arising from the first three quarters of 2012 already fell outside these rules as of that date. Furthermore, the time for claiming payments for the fourth quarter of 2012 expired on March 31, 2013.

### ***Claiming specified credits for calendar year 2012***

Notice 2013-26 provides a mechanism for filing payment claims that would otherwise be untimely. Under the Notice, taxpayers have until July 1, 2013, to file a Form 8849, Claim For

Refund of Excise Taxes, to make Section 6427 payment claims for the specified credits. In addition, the Notice allows taxpayers to use the Form 8849 filed for 2012 to claim the portion of the credits that offsets fuel tax liability, eliminating the need for filing amended Forms 720, *Quarterly Excise Tax Return*.

The Notice sets forth certain criteria that taxpayers must satisfy in order to utilize the filing mechanism it describes. Primarily, the taxpayer may not have made the claim on any other form, except that the Form 8849 will be accepted if one was previously filed and rejected solely because the claim was untimely. If the claimant previously filed an income tax return and claimed Section 34 income tax credits, the claimant may file an amended income tax return and repay the Section 34 amounts, and now follow the Notice's procedures for filing a Form 8849 claim. Any claimant must be registered with the IRS and otherwise satisfy the requirements for Form 8849 claims.

### ***The takeaway***

This notice should be well received by taxpayers as it provides them with a mechanism for claiming otherwise untimely payments and eliminates the need to file amended Forms 720 to take the specified credits against fuel tax liability. Both of these developments alter prior IRS guidance for 2012 claims, as set forth in frequently asked questions

posted on [www.irs.gov](http://www.irs.gov) in January 2013. This Notice appears to administratively implement a methodology similar to that mandated by the Congress in 2010.

While Notice 2013-26 provides the exclusive means for filing claims under Section 6427 for payment of the specified credits for sales and uses in 2012, clients may alternatively choose to submit Form 4136, *Credit for Federal Tax Paid on Fuels*, to instead claim the Section 34 refundable income tax credit on their income tax returns. Likewise, while the Notice eliminates the need to file amended Forms 720 to report the offset of 2012 fuel tax liability, it does not mandate such action. Clients should determine, prior to filing their Form 8849 for 2012, which approaches best accomplish their goals.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

#### ***US Tax Controversy and Dispute Resolution***

Adam Rosner  
(202) 312-7580  
[adam.rosner@us.pwc.com](mailto:adam.rosner@us.pwc.com)

Andrew Stroot  
(202) 312-7683  
[andrew.m.stroot@us.pwc.com](mailto:andrew.m.stroot@us.pwc.com)

Lew Fernandez  
(202) 312-7683  
[lew.fernandez@us.pwc.com](mailto:lew.fernandez@us.pwc.com)