

## Part III - Administrative, Procedural, and Miscellaneous

### Biodiesel and Alternative Fuels; Claims for 2015; Excise Tax

Notice 2016-05

#### **Section 1. PURPOSE**

This notice provides rules claimants must follow to make a one-time claim for payment of the credits and payments allowable under §§ 6426(c), 6426(d), and 6427(e) of the Internal Revenue Code (Code) for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar year 2015 (collectively, 2015 biodiesel and alternative fuel incentives). These rules are prescribed under §§ 185(b)(4) and 192(c) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Pub. L. 114-113 Div. Q (2015) (the Act). This notice also provides instructions for how a claimant may offset its § 4081 liability with the § 6426(e) alternative fuel mixture credit for 2015, and provides instructions for how a claimant may make certain income tax claims for biodiesel, second generation biofuel, and alternative fuel.

**Section 2. BACKGROUND**

Sections 6426(a) and (c) allow a blender of a biodiesel (including renewable diesel) mixture to claim a \$1.00-per-gallon credit against its tax liability under § 4081 (relating to the tax imposed on taxable fuel). Similarly, §§ 6426(a) and (e) allow a blender of an alternative fuel mixture to claim a credit against its tax liability under § 4081, except that the credit amount is \$0.50 per gallon. Sections 6426(a) and (d) allow a person that sells or uses alternative fuel as a fuel in a motor vehicle or motorboat and in aviation to claim a \$0.50-per-gallon credit against the claimant's tax liability under § 4041 (relating to the tax imposed on diesel fuel and alternative fuel).

Blenders of biodiesel (including renewable diesel) mixtures and persons that sell or use alternative fuel as a fuel in a motor vehicle or motorboat and in aviation may claim any excess credit under §§ 6426(c) or (d) as a payment under § 6427(e) or as a refundable income tax credit under § 34. As an alternative to the payments and credits allowed under §§ 6426, 6427, and 34, a blender of a biodiesel (including renewable diesel) mixture may claim a nonrefundable income tax credit under § 40A (see Section 8 of this notice for additional information). For federal income tax purposes, a claimant reduces its § 4081 excise tax liability by the amount of excise tax credit allowable under § 6426(c) and its § 4041 excise tax liability by the amount of excise tax credit allowable under § 6426(d) in determining its deduction for those excise taxes or its cost of goods sold deduction attributable to those excise taxes. See Notice 2015-56, 2015-35 I.R.B. 235.

The Code provisions that authorize these credits and payments expired for sales and uses after December 31, 2014, but were reinstated by the Act for sales and uses through 2016. Sections 185(b)(4) and 192(c) of the Act direct the Secretary of the Treasury (Secretary) to issue guidance providing for a one-time submission of claims under §§ 6426(c), 6426(d), and 6427(e) for 2015. The Act requires the guidance to provide for a 180-day period for the submission of claims (in such manner as prescribed by the Secretary) to begin no later than 30 days after the guidance is issued.

Sections 184 and 185(a) of the Act also reinstated Code provisions authorizing credits for second generation biofuel producers (§ 40(b)(6)) and biodiesel and renewable diesel used as fuel (§ 40A), respectively. The second generation biofuel producer credit expired for production after December 31, 2014, and was reinstated by the Act for production through 2016. The credit for biodiesel and renewable diesel used as fuel expired for sales and uses after December 31, 2014, and was reinstated by the Act for sales and uses through 2016.

### **Section 3. SCOPE**

This notice provides the procedure for claiming 2015 biodiesel and alternative fuel incentives. Claimants that filed “protective” or anticipatory claims during 2015 for biodiesel and alternative fuel incentives covered by this notice should refile their claims pursuant to the procedures provided in this notice. The IRS will not treat as perfected any such protective or anticipatory claims previously filed with the IRS that are not timely supplemented in accordance with these procedures.

Except as provided by this notice, the rules in Notice 2005-4, 2005-1 C.B. 289 (providing guidance on alcohol and biodiesel fuel tax credits and payments), as modified by Notice 2005-62, 2005-2 C.B. 443 (providing guidance for certain biodiesel issues not addressed in Notice 2005-4), and Notice 2006-92, 2006-2 C.B. 774 (providing guidance on alternative fuel and alternative fuel mixture taxes, credits, and payments), apply to claims for 2015 biodiesel and alternative fuel incentives.

This notice prescribes a method for submitting claims for the alternative fuel mixture credit relating to alternative fuel mixtures sold or used during 2015.

This notice does not affect the income tax claims described in Section 8 of this notice.

#### **Section 4. HOW TO MAKE A ONE-TIME CLAIM FOR CREDITS AND PAYMENTS ALLOWABLE UNDER §§ 6426(c), 6426(d), AND 6427(e)**

Claimants must follow the procedures listed below to make a one-time claim under this notice for payment of credits and payments allowable under §§ 6426(c), 6426(d), and 6427(e) relating to 2015 biodiesel and alternative fuel incentives.

- Claimants must submit claims for 2015 biodiesel and alternative fuel incentives on Form 8849, *Claim for Refund of Excise Taxes*.
- Claimants must include Schedule 3 (Form 8849), *Certain Fuel Mixtures and the Alternative Fuel Credit*, with their submission and enter amounts for 2015 biodiesel and alternative fuel incentives on Line 2 and Line 3 of Schedule 3, as appropriate.

- Claimants must follow the instructions to Form 8849 and Schedule 3 when preparing their submission to the extent that those instructions do not conflict with this notice.
- Each claimant must claim all 2015 biodiesel and alternative fuel incentives for which the claimant is eligible on a single Form 8849.
- Each claimant must mail its submission to the address listed for Schedule 3 in the instructions to Form 8849 under *Where to File*. Alternatively, claimants may electronically file Form 8849 and Schedule 3 through any electronic return originator, transmitter, or intermediate service provider participating in the IRS *e-file* program for excise taxes.
- Claimants are reminded that they must be registered by the IRS in order to make alternative fuel claims under §§ 6426(d) and 6427(e) and to make alternative fuel mixture claims under § 6426(e) (described in Section 6 of this notice). Claimants that are not already registered by the IRS may apply to the IRS for registration by filing Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions to Form 637.
- Claimants may not combine 2015 and 2016 claims for biodiesel and alternative fuel incentives. Claims for 2015 biodiesel and alternative fuel incentives must be made in accordance with the rules for one-time claims prescribed in this notice. Claims for 2016 biodiesel and alternative fuel incentives must be made in accordance with the normal rules for filing such claims.

## **Section 5. CLAIM PERIOD AND DUE DATE FOR BIODIESEL AND ALTERNATIVE FUEL INCENTIVES**

Although a claimant may submit its claim under this notice as early as January 15, 2016, the 180-day claim period for 2015 biodiesel and alternative fuel incentives begins on February 8, 2016. Consequently, all claims for 2015 biodiesel and alternative fuel incentives must be filed on or before August 8, 2016. The IRS will not process claims filed after that date. The IRS will deem any claim that is submitted by the method prescribed in this notice before February 8, 2016, as filed on February 8, 2016.

If the IRS does not pay a 2015 biodiesel and alternative fuel incentives claim that conforms to this notice within 60 days after the claim is received, the IRS will pay the claim with interest from the claim filing date (February 8, 2016, in the case of claims submitted before that date) using the overpayment rate and method provided by § 6621 of the Code.

## **Section 6. HOW TO MAKE AN ALTERNATIVE FUEL MIXTURE CLAIM UNDER § 6426(e)**

For 2015, all alternative fuel mixture credit claims allowed by § 6426(e), including claims for the fourth quarter, must be made on Form 720X, *Amended Quarterly Federal Excise Tax Return*. The IRS is unable to process 2015 claims on the fourth quarter Form 720 due to the timing of enactment of the Act. Failure to file a Form 720, *Quarterly Federal Excise Tax Return*, and remit the § 4081 tax due for any quarter in 2015 before submitting a claim allowed by § 6426(e) on Form 720X will result in delayed processing of the claim and delayed payment of refunds resulting from the

credit. Similarly, failure to follow the claim procedure in this section will result in delayed processing and payment of 2015 § 6426(e) claims. Claimants are reminded that the claim for a § 6426(e) credit for any quarter may not exceed the § 4081 liability incurred in the quarter for which the credit is being claimed. Form 720X allows claimants to adjust multiple quarters on a single Form 720X.

### **Section 7. CLAIM PERIOD AND DUE DATE FOR ALTERNATIVE FUEL MIXTURE CREDITS**

The claim period for the 2015 alternative fuel mixture credit begins on February 8, 2016. The IRS will deem any claim that is submitted by the method prescribed in section 6 of this notice before February 8, 2016, as filed on February 8, 2016.

Generally, claims for the § 6426(e) alternative fuel mixture credit must be made within three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

### **Section 8. CLAIMS NOT AFFECTED BY THIS NOTICE**

This notice does not affect 2015 claims for the nonrefundable income tax credit under § 40(b)(6) for second generation biofuel producers. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 6478, *Biofuel Producer Credit*. This notice also does not affect 2015 claims for the nonrefundable income tax credits under § 40A(b)(1) for biodiesel mixtures, § 40A(b)(2) for biodiesel (including renewable diesel), or under § 40A(b)(4) for the small agri-biodiesel producer credit. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 8864, *Biodiesel and Renewable Diesel Fuels Credit*. A taxpayer

must submit Form 8864 with its income tax return in accordance with the instructions to its income tax return form. Taxpayers are reminded that under § 40A(c), credits allowable under § 40A must be reduced to the extent that any benefit is claimed under §§ 6426 and 6427 with respect to the same biodiesel (including renewable diesel).

Similarly, this notice does not affect 2015 claims for the refundable income tax credit under § 34 for biodiesel mixtures or alternative fuel. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 4136, *Credit for Federal Tax Paid on Fuels*. A taxpayer must submit Form 4136 with its income tax return in accordance with the instructions to its income tax return form. Taxpayers are reminded that under § 34(b), credits are not allowed under § 34 for any amount properly payable under § 6427 and claimed in a timely filed claim. For this purpose, the IRS will treat as timely filed any claim submitted for amounts payable under § 6427 that conforms to the rules provided in this notice.

#### **Section 9. DRAFTING INFORMATION**

The principal author of this notice is Amanda F. Dunlap of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Amanda F. Dunlap at (202) 317-6855 (not a toll-free call). For further information regarding the income tax treatment of the 2015 biodiesel and alternative fuel incentives or Notice 2015-56, please contact Shareen Pflanz at (202) 317-7006.