

Part III - Administrative, Procedural, and Miscellaneous

Biodiesel and Alternative Fuels; Claims for 2010; Excise Tax

Notice 2011-10

Section 1. PURPOSE

This notice provides rules under which taxpayers may make a one-time claim for payment of the credits and payments allowable under §§ 6426 and 6427 of the Internal Revenue Code (Code) for biodiesel (including renewable diesel) mixtures, alternative fuels, and alternative fuel mixtures sold or used during calendar year 2010 (collectively, 2010 biodiesel and alternative fuel incentives). These rules are prescribed under §§ 701(c) (biodiesel) and 704(c) (alternative fuel) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Act) (Pub. L. 111-312).

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). The blender may claim any excess as a payment under § 6427(e) or as a refundable income tax credit under § 34. Similar rules apply to blenders of alternative fuel mixtures (§ 6426(e)) and to persons that sell or use

alternative fuel as a fuel in a motor vehicle or a motorboat and in aviation (§ 6426(d)), except that the credit amount is \$0.50 per gallon and the credit for alternative fuel is taken against the claimant's tax liability under § 4041 (relating to the tax imposed on diesel fuel and alternative fuel). 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 3 of this notice for additional information).

The Code provisions that authorize these credits and payments expired for sales and uses after December 31, 2009, but were reinstated by the Act for sales and uses during 2010 and 2011. Sections 701(c) and 704(c) of the Act direct the Secretary of the Treasury (Secretary) to issue guidance providing for a one-time submission of claims under §§ 6426 and 6427 covering periods during 2010. 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 not later than 30 days after the guidance is issued.

Section 3. SCOPE

This notice provides the only method for claiming 2010 biodiesel and alternative fuel incentives. The Internal Revenue Service (IRS) will neither process nor pay claims for 2010 biodiesel and alternative fuel incentives submitted by any method, or on any form, that is not described in this notice. Thus, the IRS will neither process nor pay 2010 biodiesel and alternative fuel incentive claims that are submitted on Form 720, Quarterly Federal Excise Tax Return. In addition, claimants that filed "protective" or

anticipatory claims during 2010 for biofuel and alternative fuel incentives covered by this notice must refile their claims pursuant to the procedures provided in this notice. The IRS will neither process nor pay protective or anticipatory claims previously filed with the IRS.

Except as provided by this notice, the rules in Notice 2005-4, 2005-1 C.B. 289 (as modified by Notice 2005-62, 2005-2 C.B. 443), and Notice 2006-92, 2006-2 C.B. 774, apply to claims for 2010 biodiesel and alternative fuel incentives. However, § 704(b) of the Act modifies the definition of alternative fuel under § 6426(d)(2) to exclude any fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp. Thus, black liquor, a byproduct of the paper milling process in kraft mills, is not eligible for credits and payments related to the sale or use of alternative fuel mixtures after December 31, 2009.

This notice does not affect 2010 claims for the alcohol fuel mixture credit under § 6426(b) or the alcohol fuel mixture payment under § 6427(e). Taxpayers should continue to submit these claims separately on, and in accordance with, the appropriate form and form instructions for those claims.

The credit for liquefied hydrogen did not expire at the end of 2009, and claims relating to liquefied hydrogen sold or used during 2010 may be submitted by the method prescribed in this notice (if the credit was not previously claimed) or by any method that was permitted for claims relating to liquefied hydrogen sold or used before calendar year 2010.

This notice does not affect 2010 claims for the nonrefundable income tax credit

under § 40A(b)(1) for biodiesel (including renewable diesel) mixtures, under § 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 2010 claims for the refundable income tax credit under § 34 for biodiesel mixtures, alternative fuel, or alternative fuel mixtures. 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 4. HOW TO MAKE A CLAIM FOR PAYMENT OF CREDITS AND PAYMENTS ALLOWABLE UNDER §§ 6426 AND 6427

Claimants must follow the procedures listed below to make a claim under this notice for payment of credits and payments allowable under §§ 6426 and 6427.

- Claimants must submit claims for 2010 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 2010 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 2010 biodiesel and alternative fuel incentives on a single Form 8849; the IRS will not process multiple submissions from a single claimant. Therefore, a claimant's single submission should encompass all 2010 biodiesel and alternative fuel incentives for which the claimant is eligible.
- 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 and alternative fuel mixture claims under §§ 6426(d), 6426(e), and 6427(e). 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.

Section 5. CLAIM PERIOD AND DUE DATE

Although a claimant may submit its claim under this notice as early as January 14, 2011, the 180-day claim period for 2010 biodiesel and alternative fuel incentives begins on February 2, 2011. The IRS will deem any claim that is submitted by the method prescribed in this notice before February 2, 2011, as filed on February 2, 2011. Consequently, all claims for 2010 biodiesel and alternative fuel incentives must be filed on or before August 1, 2011. The IRS will not process claims filed after that date. If the IRS does not pay a 2010 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 2, 2011, in the case of claims submitted before that date) using the overpayment rate and method provided by § 6621 of the Code.

Section 6. DRAFTING INFORMATION

The principal author of this notice is Michael H. Beker of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Michael H. Beker on (202) 622-3130 (not a toll-free call).