

Notice 2018-21; 2018 IRB LEXIS 137

US Internal Revenue Service

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Reporter

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[*1]

Biodiesel and Alternative Fuels; Claims for 2017; Oil Spill Liability Tax; Excise Tax and Deposits

Core Terms

fuel, notice, claimant, biodiesel, mixture, deposit, excise tax, oil spill, semimonthly, calendar quarter, safe harbor, renewable, diesel, income tax, look-back, reinstate, modify, remind, income tax return, tax liability, prescribe

Text

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 2017 (collectively, 2017 biodiesel and alternative fuel incentives). These rules are prescribed under §§ 40406, 40407, and [40415, of the Bipartisan Budget Act of 2018, Pub. L. 115-123, 132 Stat. 64 \(2018\)](#) (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 2017, as well as instructions for how a claimant may make certain income tax claims relating to biodiesel, second generation biofuel, and alternative fuel. In addition, this notice provides a temporary modified safe harbor for semimonthly deposits of the oil spill liability tax imposed by [§ 4611](#), which was reinstated effective March 1, 2018, by § 40416 of the Act.

SECTION 2. BACKGROUND

.01 Fuel incentives.

[Section 6426 \(a\)](#) and [\(c\)](#) allow a blender of a biodiesel (including renewable diesel) mixture to claim a [*2] \$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. [Section 6426 \(a\)](#) and [\(d\)](#) allow a person that sells or uses alternative fuel as a fuel in a motor vehicle or motorboat or 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 or 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 [*3] 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](#), and [Notice 2016-5, 2016-6 I.R.B. 302](#).

The Code provisions that authorize these credits and payments expired for sales and uses after December 31, 2016, but were reinstated by the Act for sales and uses through 2017. Sections 40407 (b) (4) and 40414 (b) 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 2017. 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 40406 (a) and 40407 (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 [*4] biofuel producer credit expired for production after December 31, 2016, and was reinstated by the Act for production through 2017. The credit for biodiesel and renewable diesel used as fuel expired for sales and uses after December 31, 2016, and was reinstated by the Act for sales and uses through 2017.

.02 Oil Spill Liability Tax.

[Section 4611](#) imposes a tax of \$0.09 per barrel on crude oil received at a United States refinery, and on petroleum products entered into the United States for consumption, use, or warehousing (oil spill liability tax). The oil spill liability tax expired on December 31, 2017.

Section 40416 of the Act reinstates the oil spill liability tax for the period beginning on March 1, 2018, and ending on December 31, 2018.

SECTION 3. SCOPE

This notice provides the procedure for claiming 2017 biodiesel and alternative fuel incentives. Claimants that filed "protective" or anticipatory claims 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 [*5] 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 2017 biodiesel and alternative fuel incentives.

This notice also prescribes a method for submitting claims for the alternative fuel mixture credit relating to alternative fuel mixtures sold or used during 2017.

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

Finally, this notice provides a special rule for tax deposits related to the reinstatement of the oil spill liability tax.

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 credits and payments allowable under [§§ 6426 \(c\)](#), [6426 \(d\)](#), and [6427 \(e\)](#), relating to 2017 [*6] biodiesel and alternative fuel incentives.

- Claimants must submit claims for 2017 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 2017 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 2017 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 \(e\)](#). [*7] 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 are also reminded that they must have and maintain adequate records to substantiate eligibility for the 2017 biodiesel and alternative fuel incentives.

SECTION 5. CLAIM PERIOD AND DUE DATE FOR BIODIESEL AND ALTERNATIVE FUEL INCENTIVES

The 180-day claim period for 2017 biodiesel and alternative fuel incentives begins on April 2, 2018. Consequently, all claims for 2017 biodiesel and alternative fuel incentives must be filed on or before September 29, 2018. 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 April 2, 2018, as filed on April 2, 2018.

If the IRS does not pay a 2017 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 (April 2, 2018, in the case of claims submitted before that date) using the overpayment rate and method [*8] provided by [§ 6621 of the Code](#).

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

Claimants must follow the procedures listed below to claim the alternative fuel mixture credit allowable under [§ 6426 \(e\)](#) for 2017.

- For 2017, all alternative fuel mixture credit claims allowed by [§ 6426 \(e\)](#) must be made on Form 720X, *Amended Quarterly Federal Excise Tax Return*.
- Claimants must enter amounts for 2017 alternative mixture credit claims on Line 2 of Form 720X. In addition, on Line 6 of Form 720X, claimants must identify the type of alternative fuel(s) in the mixture(s) for which a credit is being claimed and the number of gallons of alternative fuel(s) used by the claimant in producing the mixture(s). This information is the same information claimants are required to report on Line 13 of Schedule C to Form 720, *Quarterly Federal Excise Tax Return*.
- Claimants must follow the instructions to Form 720X when preparing their submission to the extent that those instructions do not conflict with this notice.
- Each claimant must mail its submission to the address listed for Form 720X in the instructions under *Where to File*. Alternatively, claimants may electronically file Form [*9] 720X 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 mixture claims under [§ 6426 \(e\)](#). 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.
- Claimants are also 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.

- Claimants are further reminded that they must have and maintain adequate records to substantiate eligibility for the 2017 [§ 6426 \(e\)](#) credit.
- Failure to file a Form 720, *Quarterly Federal Excise Tax Return*, and remit the [§ 4081](#) tax due for any quarter in 2017 before submitting a claim allowed by [§ 6426 \(e\)](#) on **[*10]** Form 720X will result in delayed processing of the claim and delayed payment of refunds resulting from the credit or denial of claim.
- Failure to follow the claim procedure in this section will result in delayed processing or denial of claim(s).

SECTION 7. CLAIM PERIOD AND DUE DATE FOR ALTERNATIVE FUEL MIXTURE CREDITS

The claim period for the 2017 alternative fuel mixture credit begins on April 2, 2018. The IRS will deem any claim that is submitted by the method prescribed in Section 6 of this notice before April 2, 2018, as filed on April 2, 2018. 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 2017 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*. A taxpayer must submit Form 6478 with its income tax return in accordance with the instructions to its income tax return form. This notice **[*11]** also does not affect 2017 claims for the nonrefundable income tax credits under [§ 40A\(b\) \(1\)](#) for biodiesel 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 2017 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 **[*12]** 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. MODIFIED SAFE HARBOR RULE FOR SEMIMONTHLY DEPOSITS OF THE OIL SPILL LIABILITY TAX DURING THE THIRD QUARTER OF 2018

.01 Overview.

[Section 6302](#) authorizes the IRS to establish the mode and time for collecting certain taxes, including the taxes imposed by [§ 4611](#). [Section 40.6302 \(c\)-1 \(a\) \(1\)](#) of the Excise Tax Procedural Regulations requires each person that is required to file Form 720 to make deposits of tax for each semimonthly period in which the tax liability is incurred. A semimonthly period is the first 15 days of a calendar month or the portion of a calendar month following the 15th day of the month. See [§ 40.0-1 \(c\)](#).

Under [§ 40.6302 \(c\)-1 \(b\) \(1\)](#), the deposit for the oil spill liability tax for each semimonthly period must not be less than 95% of the amount of net tax liability incurred during the semimonthly period, unless the safe harbor in [§ 40.6302 \(c\)-1 \(b\) \(2\) \(ii\)](#) or (iii) applies. Under the safe harbor, **[*13]** any person that filed a Form 720 reporting the oil spill liability tax for the second preceding calendar quarter (the look-back quarter) is considered to have met the semimonthly deposit requirement for the current quarter if: (1) the deposit for each semimonthly period in the current calendar quarter is not less than 1/6 of the net tax liability reported for the look-back quarter; (2) each

deposit is made on time; (3) the amount of any underpayment is paid by the due date of the return; and (4) the person's liability does not include any tax that was not imposed at all times during the look-back quarter.

For deposits that will be made during the third calendar quarter of 2018, the look-back quarter will be the first calendar quarter of 2018. During that look-back quarter, the oil spill liability tax will be imposed for only one month (March). Therefore, the oil spill liability tax will not be imposed at all times during the look-back quarter as required by [§ 40.6302 \(c\)-1 \(b\) \(2\) \(ii\) \(D\)](#). Consequently, the safe harbor deposit rule will not be available to persons liable for the oil spill liability tax during the third calendar quarter of 2018, and each semimonthly deposit during the [*14] third calendar quarter of 2018 must not be less than 95% of the amount of net tax liability incurred during the semimonthly period.

In order to assist taxpayers in meeting their deposit obligations and in the interest of sound tax administration, the Treasury Department and the IRS have decided to allow persons liable for the oil spill liability tax to use a modified form of the safe harbor for the third calendar quarter of 2018. Use of the modified safe harbor described in section 9.02 below is voluntary.

.02 Modified Safe Harbor. For purposes of deposits of the oil spill liability tax during the third calendar quarter of 2018, persons will be considered to have met the semimonthly deposit requirement for that quarter if: (1) the deposit for each semimonthly period in the quarter is not less than 1/2 of the net tax liability reported for the look-back quarter; (2) each deposit is made on time; and (3) the amount of any underpayment is paid by the due date of the return. No affirmative election or other special filing is required in order for a person to avail themselves of the modified safe harbor provided in this notice. This modified safe harbor applies only with regard to deposits [*15] of the oil spill liability tax during the third calendar quarter of 2018.

SECTION 10. 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 Mr. Beker on (202) 317-6855 (not a toll-free call). For further information regarding the income tax treatment of the 2017 biodiesel and alternative fuel incentives, please contact Angella Warren at (202) 317-4718 (not a toll-free number).

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