

Biodiesel and Alternative Fuels; Claims for 2018-2019

Notice 2020-8

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 years 2018 and 2019 (collectively, 2018 - 2019 biodiesel and alternative fuel incentives). These rules are prescribed under §§ 121 and 133 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as part of the Further Consolidated Appropriations Act, 2020, Division Q, Pub. L. 116-94 (December 20, 2019) (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 2018 and 2019, and provides instructions for how a claimant may make certain income tax claims for biodiesel, second generation biofuel, and alternative fuel.

SECTION 2. BACKGROUND

Section 6426(a) and (c) allows 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) allows 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) allows 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 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, 2017. Sections 121(b)(1)(A) and (B) and 133(a)(1) and (2) of the Act reinstate the biodiesel mixture credit for sales and uses through 2022, and the alternative fuel credit and alternative fuel mixture credit for sales and uses through 2020. Sections 121(b)(3) and 133(a)(3) of the Act direct the Secretary of the Treasury or the Secretary's delegate (Secretary) to issue guidance providing for a one-time submission of claims under §§ 6426(c), 6426(d), and 6427(e) for 2018 and 2019. 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 121(a) and 122 of the Act also reinstate Code provisions authorizing credits for biodiesel and renewable diesel used as fuel (§ 40A), and second generation biofuel producers (§ 40(b)(6)), respectively. The credit for biodiesel and renewable diesel used as fuel expired for sales and uses after December 31, 2017, and was reinstated by the Act for sales and uses through 2022. The second generation biofuel producer credit expired for production after December 31, 2017, and was reinstated by the Act for production through 2020.

SECTION 3. SCOPE

This notice provides the procedure for claiming 2018 - 2019 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 Internal Revenue Service (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 2018 - 2019 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 2018 and/or 2019.

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 credits and payments allowable under §§ 6426(c), 6426(d), and 6427(e), relating to 2018 - 2019 biodiesel and alternative fuel incentives.

- Claimants must submit claims for 2018 - 2019 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 any amounts for 2018 - 2019 biodiesel and alternative fuel incentives on Line 2 and Line 3 of Schedule 3 (Form 8849), as appropriate.
- Each claimant must claim all 2018 - 2019 biodiesel and alternative fuel incentives for which the claimant is eligible on a single Form 8849 and Schedule 3 (Form 8849).
- Claimants must follow the instructions to Form 8849 and Schedule 3 (Form 8849) 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 Schedule 3 (Form 8849) in the instructions to Form 8849 under Where to File. Alternatively, claimants may electronically file Form 8849 and Schedule 3 (Form 8849) 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). 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 must have and maintain adequate records to substantiate eligibility for the 2018 - 2019 biodiesel and alternative fuel incentives.

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

The 180-day claim period for 2018 - 2019 biodiesel and alternative fuel incentives begins on February 14, 2020. Consequently, all claims for 2018 - 2019 biodiesel and alternative fuel incentives must be filed on or before August 11, 2020. 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 14, 2020, as filed on February 14, 2020.

If the IRS does not pay a 2018 - 2019 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 14, 2020, 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)

Claimants must follow the procedures listed below to claim the alternative fuel mixture credit allowable under § 6426(e) for 2018 and/or 2019.

- For 2018 and 2019, all alternative fuel mixture credit claims allowed by § 6426(e) must be made on Form 720X, Amended Quarterly Federal Excise Tax Return.
- Claimants must file one Form 720X for 2018 claims and a separate Form 720X for 2019 claims.
- Claimants must enter amounts for 2018 or 2019 alternative fuel mixture credit claims on Line 2 of Form 720X by quarter. In addition, on Line 6 of Form 720X, claimants must identify, by quarter, 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(s) to the extent that those instructions do not conflict with this notice.
- Each claimant must mail its submission(s) to the address listed for Form 720X in the instructions under *Where to File*.
- Claimants must be registered by the IRS in order to make alternative fuel mixture credit 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 reminded that § 6426(e) alternative fuel mixture credit claims for any quarter may not exceed the claimant's § 4081 liability incurred in the quarter for which the credit is being claimed. Further, § 6430 provides in part that the alternative fuel mixture credit shall not be applied against tax imposed at the Leaking Underground Storage Tank Trust Fund financing rate.
- Claimants must have and maintain adequate records to substantiate eligibility for the 2018 or 2019 § 6426(e) credit.
- Failure to file a Form 720, Quarterly Federal Excise Tax Return, and remit the § 4081 tax due for any quarter in 2018 or 2019 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) or denial of the 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 2018 or 2019 alternative fuel mixture credit claims begins on February 14, 2020. The IRS will deem any claim that is submitted by the method prescribed in section 6 of this notice before February 14, 2020, as filed on February 14, 2020. 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 2018 or 2019 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 also does not affect 2018 or 2019 claims for the nonrefundable income tax credits under § 40A(b)(1) for biodiesel mixtures, § 40A(b)(2) for biodiesel (including renewable diesel), or § 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 2018 or 2019 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 Natalie A. Payne of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Payne at (202) 317-6855 (not a toll-free number). For further information regarding the income tax treatment of the 2018 - 2019 biodiesel and alternative fuel incentives, please contact Angella Warren at (202) 317-4718 (not a toll-free number).