



## US Multistate Tax Alert

Budget and COVID Relief Deal Extends Certain Fuel Excise Taxes and Incentives

### Overview

On December 27, 2020, President Trump signed into law H.R. 133, the Taxpayer Certainty and Disaster Tax Relief Act of 2020.<sup>1</sup> The Act – which is part of an omnibus budget and COVID relief bill – includes in part the following modifications:

- A one-year extension of the federal alternative fuel credit;
- A one-year extension of the federal alternative fuel mixture credit;
- A two-year extension of the federal second generation biofuel incentive;
- A five-year extension of the Oil Spill Liability Trust Fund (OSLTF); and
- Reduced rates of federal excise tax on beer, wine, and distilled spirits.

### Extension of the alternative fuel incentives

H.R. 133 extends to December 31, 2021, the termination dates applicable to the \$0.50 per gallon alternative fuel (e.g., CNG, LNG, and LPG)<sup>2</sup> excise tax credit under Internal Revenue Code (IRC) section 6426(d)(1) and the alternative fuel mixture excise tax credit under IRC section 6426(e)(1).<sup>3</sup>

H.R. 133 also extends the termination dates applicable to the provisions under IRC section 6427(e) that afford payments for claims that are in excess of the alternative fuel and alternative fuel mixture excise tax credits.<sup>4</sup>

### Tax incentives applicable to second generation biofuel

The Food, Conservation, and Energy Act of 2008<sup>5</sup> (more commonly known as the 2008 U.S. Farm Bill) created a production tax credit, which is generally \$1.01 per gallon<sup>6</sup> for facilities involved in the production of second generation biofuel.<sup>7</sup> H.R. 1865 extends from January 1, 2020 to January 1, 2022, the termination date applicable to this income tax credit for qualified second generation biofuel production after December 31, 2020.<sup>8</sup>

### Reinstatement of OSLTF tax

The Oil Spill Liability Tax Fund (OSLTF) tax under IRC section 4611 was set to sunset on December 31, 2020,<sup>9</sup> but H.R. 133 extends the tax with a new termination date of December 31, 2025.<sup>10</sup>

## Reduced rate of alcohol excise taxes and incentives

H.R. 133 section 106 permanently extends the reduced rate of excise tax on beer, wine, and distilled spirits implemented by the Tax Cut and Jobs Act of 2017<sup>11</sup> and extended by the Further Consolidated Appropriations Act in 2019.<sup>12</sup>

The reduced rate of tax on certain beer produced and imported was set to sunset on December 31, 2020. H.R. 133 permanently extends the reduced rate of tax on beer as follows: a reduced rate of \$16 on the first 6,000,000 barrels of beer produced or imported, and a reduced rate of \$3.50 per barrel for the first 60,000 barrels of beer for brewers producing less than 2,000,000 barrels of beer per year.<sup>13</sup> Furthermore, H.R. 133 additionally allows breweries to transfer beer between bonded facilities without payment of tax.<sup>14</sup>

The Tax Cut and Jobs Act further provided for a credit against tax for small domestic wine producers set to sunset on December 31, 2020, of 90 cents per wine gallon of the first 100,000 wine gallons produced, and 5.6 cents per gallon of hard cider for the first 100,000 gallons produced.<sup>15</sup> H.R. 133 permanently extends this credit and extends the credit to all wine producers and importers. H.R. 133 applies the credit as follows: (1) \$1 per wine gallon on first 30,000 wine gallons; (2) 90 cents per wine gallon on first 100,000 wine gallons to which section (1) does not apply; and (3) 53.5 cents per wine gallon on the first 620,000 wine gallons, to which sections (1) and (2) do not apply. The credit applies to hard cider as indicated above at a reduced rate of 6.2 cents, 5.6 cents, 3.3 cents, respectively.

H.R. 133 further extends the reduced rate of tax on wine containing not more than 16 percent of alcohol by volume (previously 14 percent of alcohol by volume prior to the Tax Cut and Jobs Act).<sup>16</sup>

The reduced rate of tax on distilled spirits was set to sunset on December 31, 2020. H.R. 133 permanently extends the reduced rate of tax on distilled spirits as follows: (1) a reduced rate of \$2.70 per proof gallon on the first 100,000 gallons of distilled spirits and (2) a reduced rate of \$13.34 per proof gallon on the first 22,130,000 proof gallons of distilled spirits (to which (1) does not apply).<sup>17</sup> In addition, H.R. 133 also permanently extended the reduced tax rate for foreign manufacturers and importers of distilled spirits. H.R. 133 further permanently extends the transfer between bonded premises without regard to whether the distilled spirits are bulk distilled spirits.<sup>18</sup>

H.R. 133 further provides for a refund in lieu of reduced rates for the foreign production of certain craft beverages, including distilled spirits, beer, and wine, which are imported and removed after December 31, 2022.<sup>19</sup>

## Expiration of federal aviation excise tax holiday

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), enacted on March 27, 2020, provided an excise tax holiday that suspended certain aviation excise taxes through December 31, 2020.<sup>20</sup> The excise tax holiday for certain aviation excise taxes was not extended in H.R. 133 or other legislation.

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## Footnotes

- <sup>1</sup> H.R. 133 116th Cong. (Dec. 27, 2020). A copy of the bill is accessible [here](#).
- <sup>2</sup> See IRC § 6426(d)(2) (identifying the products included in the definition of “alternative fuel”).
- <sup>3</sup> H.R. 133, Division EE – Taxpayer Certainty and Disaster Relief Act of 2020, sec. 147(a).
- <sup>4</sup> H.R. 133 sec. 147(b), amending IRC § 6427(e)(6)(C) (extending the termination dates applicable to the alternative fuel and alternative fuel mixture payments to December 31, 2021).
- <sup>5</sup> H.R. 2419 110th Cong. (May 22, 2008).
- <sup>6</sup> The applicable amount of the credit may be reduced as specified in IRC § 40(b)(6)(B).
- <sup>7</sup> IRC § 40(b)(6).
- <sup>8</sup> H.R. 133 sec. 140.
- <sup>9</sup> IRC § 4611(f)(2) (prior to the amendments enacted by H.R. 133).
- <sup>10</sup> H.R. 133 sec. 117.
- <sup>11</sup> H.R. 1 115th Cong. (Dec. 22, 2017). A copy of the bill is accessible [here](#).
- <sup>12</sup> H.R. 1865 116th Cong. (Dec. 20, 2019). A copy of the bill is accessible [here](#).
- <sup>13</sup> IRC § 5051(a)(1)-(2).
- <sup>14</sup> IRC § 5414.
- <sup>15</sup> IRC § 5041(c) (prior to the amendments enacted by H.R. 133).
- <sup>16</sup> IRC § 5041(b).
- <sup>17</sup> IRC § 5001(c).
- <sup>18</sup> IRC § 5212.
- <sup>19</sup> H.R. 133 sec. 107; IRC §§ 5001(c); 5051(a); 5041(c).
- <sup>20</sup> H.R. 748 116th Cong. (Mar. 27, 2020), sec. 4007.

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