

## Federal PATH act extends alternative energy tax credits

### Overview

On December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act of 2015 (PATH),<sup>1</sup> which includes the following modifications to current law:

- A one-year retroactive extension and one-year prospective extension of the federal alternative fuel credit
- A one-year retroactive extension and one-year prospective extension of the federal alternative fuel mixture credit
- A one-year retroactive extension and one-year prospective extension of the federal biodiesel mixture credit
- An extension of second generation biofuel incentives

This Tax Alert summarizes these federal excise tax law changes.

### Extension of the alternative fuel, alternative fuel mixture, and biodiesel incentives

PATH section 185 extends from December 31, 2014, to December 31, 2016, the termination dates applicable to the \$1.00 per gallon biodiesel mixture excise tax credit available under Internal Revenue Code (IRC) §6426(c)(1) and the \$1.00 per gallon biodiesel income tax credit available under IRC §40A(g).<sup>2</sup>

PATH section 192 extends from December 31, 2014, to December 31, 2016, the termination dates applicable to the \$0.50 per gallon alternative fuel (e.g., CNG, LNG, and LPG)<sup>3</sup> excise tax credit under IRC §6426(d)(1) and the alternative fuel mixture excise tax credit under IRC §6426(e)(1).<sup>4</sup>

PATH further adjusts the alternative fuel excise tax credit for LNG based on the energy equalization legislation, effective January 1, 2016.<sup>5</sup> Signed into law in July 2015 by President Obama, the LNG equalization legislation provides a diesel gallon equivalency for LNG.<sup>6</sup>

PATH also extends from December 31, 2014, to December 31, 2016, the termination dates applicable to the provisions under IRC §6427(e) that afford payments for claims that are in excess of the alternative fuel, alternative fuel mixture, and biodiesel excise tax credits.<sup>7</sup> PATH further mandates the amendments to the alternative fuel and biodiesel excise tax credits.<sup>8</sup>

### Procedure for claiming energy incentives

PATH provides for a one-time filing of all 2015 biodiesel and alternative fuel claims and a 180-day filing period for claimants to submit a one-time claim for companies with an existing Form 637 (*Application for Registration (For Certain Excise Tax Activities)*) registration.<sup>9</sup> PATH mandates the Secretary of the Treasury to issue guidance within 30 days of the PATH enactment date for the submission of the one-time claim.<sup>10</sup> Following Congress' most recent retroactive extension of the energy incentives in December 2014, the IRS issued Notice 2015-3, which provided guidance for issuing a one-time refund claim for all eligible 2014 purchases.<sup>11</sup> It is, therefore, conceivable that the IRS may issue a similar notice that provides guidance regarding how to file a one-time refund claim for all eligible 2015 purchases.

<sup>1</sup> P.L. 114-113; H.R. 2029 114th Cong. (Dec. 18, 2015). See Deloitte Tax LLP's *Tax News & Views* (Dec. 18, 2015), located [here](#), for more details on this federal legislation.

<sup>2</sup> PATH Sec 185(a)-(b).

<sup>3</sup> See IRC §6426(d)(2) (identifying the products included in the definition of "alternative fuel").

<sup>4</sup> PATH Sec 192(a).

<sup>5</sup> PATH Sec 342(a).

<sup>6</sup> See H.R. 3236 114th Cong. (Jul. 31 2015).

<sup>7</sup> PATH Sec 185(b)(2), amending IRC §6427(e)(6)(B) (extending the biodiesel mixture payment); PATH Sec 192(a)(2), amending IRC §6427(e)(6)(C) (extending the alternative fuel payment).

<sup>8</sup> PATH Sec. 185(b)(3), PATH Sec 192(b).

<sup>9</sup> PATH Sec. 185(b)(4), PATH Sec 192(c).

<sup>10</sup> PATH Sec. 185(b)(4), PATH Sec 192(c).

<sup>11</sup> IRS Notice 2015-3, 2015-6 IRB 1 (Jan. 16, 2015).

For calendar year 2016, the alternative fuel and biodiesel incentives must first be applied against a taxpayer's excise tax liability owed for the quarterly reporting period as reported by the taxpayer on Form 720 (*Quarterly Federal Excise Tax Return*). To the extent that the alternative fuel and biodiesel credits exceed a taxpayer's excise tax liability, the taxpayer may request payment of the excess amount under IRC §6427(e) on either the Form 720 or by submitting a Form 8849 (*Claim for Refund of Excise Taxes*), or may claim a refundable income tax credit under IRC §34 by attaching a Form 4136 (*Credit for Federal Tax Paid on Fuels*) to its annual income tax return.

### Tax incentives applicable to second generation biofuel

The Food, Conservation, and Energy Act of 2008<sup>12</sup> (more commonly known as the 2008 U.S. Farm Bill) created a production tax credit of \$1.01 per gallon<sup>13</sup> for facilities involved in the production of second generation biofuel.<sup>14</sup> PATH extends from January 1, 2015 to January 1, 2017, the termination date applicable to this income tax credit for qualified second generation biofuel production.<sup>15</sup> This extension is effective for qualified second generation biofuel production after December 31, 2014.<sup>16</sup> PATH also extends from January 1, 2015 to January 1, 2017, the termination date applicable to the special depreciation allowance for second generation biofuel plant property placed in service after December 31, 2014.<sup>17</sup>

### Considerations

A taxpayer must register with the IRS by submitting Form 637 to be eligible to claim an alternative fuel or biodiesel credit under IRC §6426.<sup>18</sup> Claimants should consult with their tax advisers regarding obtaining the appropriate registration.

### Contacts

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<sup>12</sup> H.R. 2419 110th Cong. (May 22, 2008).

<sup>13</sup> The applicable amount of the credit may be reduced as specified in IRC §40(b)(6)(B).

<sup>14</sup> IRC §40(b)(6); see also, IRC §168(l)(2)(a) (providing for a six-part test for a product to meet the definition of a "second generation biofuel").

<sup>15</sup> PATH Sec 184(a), amending IRC §40(b)(6)(J)(i).

<sup>16</sup> PATH Sec 184(b).

<sup>17</sup> PATH Sec 189(a), amending IRC §168(l)(2)(D).

<sup>18</sup> See IRC §6426(a); see also IRC §4101(a)(1).