

IRS guidance on alternative energy tax credits

Overview

On January 14, 2016, the Internal Revenue Service (IRS) issued Notice 2016-05,¹ which provides guidance relative to the various alternative energy credits extended by the Protecting Americans from Tax Hikes Act of 2015 (PATH).² Notice 2016-05 outlines the procedures for filing a one-time claim for refund for the excise tax credits allowed with respect to alternative fuel and biodiesel mixtures sold and used during the 2015 calendar year and provides other guidance and clarification.

This Tax Alert summarizes this IRS guidance.

Protecting Americans from Tax Hikes Act of 2015

PATH section 185 extends from December 31, 2014, to December 31, 2016, the termination dates applicable to the \$1 per gallon biodiesel mixture excise tax credit available under Internal Revenue Code (IRC) § 6426(c)(1), and the \$1 per gallon biodiesel income tax credit available under IRC § 40A(g).³

In addition, 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)⁴ excise tax credit under IRC § 6426(d)(1), and the \$0.50 per gallon alternative fuel mixture excise tax credit under IRC § 6426(e)(1).⁵

PATH also 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. PATH requires the Secretary of the Treasury to issue guidance within 30 days of the PATH enactment date for the submission of the one-time claim.⁶

Notice 2016-05

Notice 2016-05, issued on January 14, 2016, provides that all 2015 alternative fuel and biodiesel claims should be made on a single Form 8849, *Claim for Refund of Excise Taxes*. Schedule 3, *Certain Fuel Mixtures and the Alternative Fuel Credit*, must be included with the submission. A claimant may submit the one-time claim between January 15, 2016, and August 8, 2016.⁷

Notice 2016-05 explicitly cautions claimants that any “protective” or anticipatory claims filed during 2015 must be refiled using the procedures provided for in the Notice. Further, claimants may not combine 2015 and 2016 claims for biodiesel and alternative fuel incentives. Claims for 2016 biodiesel and alternative fuel incentives must be made in accordance with normal filing procedures.⁸

Notice 2016-05 does not affect the claims for refundable *income* tax credit for biodiesel mixtures and alternative fuel under IRC § 34, which should continue to be claimed on Form 4136, *Credit for Federal Tax Paid on Fuels*. Notice 2016-05 also has no applicability to the *income* tax credit available under IRC § 40A for biodiesel and renewable diesel used as fuel; thus, any claim for the credit should continue to be filed on Form 8864, *Biodiesel and Renewable Diesel Fuels Credit*.⁹

Notice 2016-05 provides that 2015 alternative fuel mixture credit claims must be made on Form 720X, *Amended Quarterly Federal Excise Tax Return*, including claims for the fourth quarter, due to the timing of PATH.¹⁰ Generally, these claims must be filed within three years from the time the return was filed or two years from the date the tax was paid, whichever is later.

¹ IRS Notice 2016-05, 2016-06 IRB 1 (Feb 8, 2016).

² P.L. 114-113; H.R. 2029 114th Cong. (Dec. 18, 2015). See Deloitte Tax LLP's Multistate Tax Alert (Jan. 13, 2016), located [here](#), for more details on this federal legislation.

³ PATH Sec. 185(a)-(b).

⁴ See IRC § 6426(d)(2) (identifying the products included in the definition of “alternative fuel”).

⁵ PATH Sec. 192(a).

⁶ PATH Sec. 185(b)(4), PATH Sec. 192(c).

⁷ Notice 2016-05.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Notice 2016-05 further reminds claimants that as a prerequisite to filing an alternative fuel tax credit or refund, a claimant must first hold the proper registration by submitting Form 637, *Application for Registration (For Certain Excise Tax Activities)*.¹¹

Notice 2016-05 does not affect the second generation biofuel producer credit. This credit should continue to be claimed on Form 6478, *Biofuel Producer Credit*.¹²

Contacts

If you have questions regarding the guidance contained in Notice 2016-05 or alternative energy credits generally, please contact any of the following Deloitte Tax professionals:

[Dominic Greco](#)

Director
Deloitte Tax LLP, Chicago
+1 312 486 9271

[Marshal Sulayman](#)

Principal
Deloitte Tax LLP, Houston
+1 713 982 4886

[Richard Little](#)

Senior Manager
Deloitte Tax LLP, Houston
+1 713 982 2632

[Frank Falvo](#)

Senior Manager
Deloitte Tax LLP, Houston
+1 713 982 2078

[Jeff Marks](#)

Manager
Deloitte Tax LLP, Houston
+1 713 982 4254

The authors of this alert would like to acknowledge the contributions of SaraBeth Smith to the drafting process. SaraBeth is a Tax Senior working in the Houston Multistate Tax practice of Deloitte Tax LLP.

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¹¹ Notice 2016-05; IRC § 6426(a); IRC § 6427(e)(4).

¹² Notice 2016-05.