

IRS Notice 2013-26 Supplements Earlier Refund Procedure Guidance for Certain Fuel Tax Credits Retroactively Extended by the American Taxpayer Relief Act of 2012

April 15, 2013

Overview

The American Taxpayer Relief Act of 2012 (“ATRA”),¹ signed into law by President Barack Obama on January 2, 2013, retroactively extended various termination dates applicable to certain federal alternative energy tax credits that had expired on December 31, 2011. In most cases, the credits were extended through the 2012 calendar year and are now scheduled to expire on December 31, 2013. Unlike prior retroactive extensions,² no U.S. Congressional guidance was provided as part of the ATRA regarding the procedure for claiming credits related to qualifying sales or use during 2012. However, on February 1, 2013, the Internal Revenue Service (“IRS”) issued “Fuel Tax Credit Extensions Frequently Asked Questions”³ (“FAQs”) to provide guidance in this regard. On April 3, 2013, the IRS issued Notice 2013-26,⁴ supplementing the FAQs with additional guidance regarding the filing of credit claims for the first three quarters of 2012.

In this Tax Alert we summarize the FAQs and Notice 2013-26.

The FAQs

The FAQs issued on February 1, 2013 addressed the mechanics of claiming the biodiesel mixture⁵ and alternative fuel⁶ credits for 2012 and distinguished between the portion of the credit attributable to the tax liability and the portion of the credit that exceeded the tax liability. For both the biodiesel mixture and alternative fuel credits, the portion of the credit exceeding the liability was claimed in a different manner, depending on the timing of when the credits were generated. For credits generated in the first, second and third quarters of 2012, the FAQs instructed taxpayers to file as follows:

1st, 2nd and 3rd Quarters of 2012:

- Form 720X (*Amended Quarterly Federal Excise Tax Return*) filed to claim the credit for both the biodiesel mixture and alternative fuels *up to the amount of excise tax liability*. All three quarters could be combined on the same Form 720X.
- Form 4136 (*Credit for Federal Tax Paid on Fuels*) filed as an attachment to the claimant’s federal income tax return⁷ to claim the portion of the credit that *exceeded* the excise tax liability previously reported on the Form 720X.

Pursuant to the FAQs, the only available option for claiming a refund of the portion of a credit exceeding the excise tax liability in the first three quarters of 2012 was to file Form 4136 and claim the excess as a credit against the income tax. In practice, this eliminated the ability of a taxpayer to receive a cash refund for the excess portion of the biodiesel mixture and alternative fuel credits normally claimed by filling the Form 8849 (*Claim for Refund of Excise Taxes*).⁸

¹ American Taxpayer Relief Act of 2012; P.L. 112-240; 2013 Enacted H.R. 8.

² Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010; P.L. 111-312; 2010 Enacted H.R. 4853 (See, IRC §704(c), providing a Special Rule for the 2010 claiming of the credit, specifically, incorporating IRC §6427(e), dealing with refundable payments of the amount exceeding the liability).

³ The FAQs are accessible at: <http://www.irs.gov/uac/Fuel-Tax-Credit-Extensions-Frequently-Asked-Questions>.

⁴ I.R.S. Notice 2013-26 (Apr. 3, 2013).

⁵ See, IRC §6426(c)(1) (“the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer”). See also, I.R.S. Notice 2005-62, 2005-2 C.B. 443, stating that “a biodiesel mixture is a mixture of biodiesel and diesel fuel containing at least 0.1 percent (by volume) of diesel fuel.”

⁶ See, IRC §6426(d)(1) (“the alternative fuel credit is the product of 50 cents and the number of gallons of an alternative fuel or gasoline gallon equivalents of a nonliquid alternative fuel sold by the taxpayer for use as a fuel in a motor vehicle or motorboat, sold by the taxpayer for use as a fuel in aviation, or so used by the taxpayer”).

⁷ IRC §34(a)(3).

⁸ IRC §6427(e).

By contrast, for the 2012 fourth quarter excise tax filings, the FAQs issued on February 1, 2013 allowed the biodiesel mixture and alternative fuel credits to be treated as refundable and to be claimed on the Form 8849 for the portion of the credit exceeding the excise tax liability, similar to how the credits are claimed in calendar year 2013. Pursuant to the FAQs issued on February 1, 2013, credits generated in the fourth quarter of 2012 were claimed as follows:

4th Quarter of 2012:

- Form 720 (*Quarterly Federal Excise Tax Return*) filed to claim the full amount of the credits for the biodiesel mixture and alternative fuels and to seek a refund for the portion exceeding the excise tax liability if filed by January 31, 2013 for calendar year taxpayers;
- OR
- Form 720 (*Quarterly Federal Excise Tax Return*) filed to claim the credit up to the amount of excise tax liability; and
 - Form 8849⁹ (*Claim for Refund of Excise Taxes*) filed to claim the portion of the credit that exceeded the excise tax liability if filed by March 31, 2013 for calendar year taxpayers.

Thus, under the original IRS guidance, a gallon of alternative fuel produced on September 30, 2012 did not have the potential to generate a refundable cash payment under IRC §6427(e)(2), but a gallon produced on October 1, 2012 could potentially generate a refundable cash payment under IRC §6427(e)(2).

Notice 2013-26

In an attempt to remedy this disparity, the IRS issued Notice 2013-26¹⁰ (the "Notice") on April 3, 2013, which provides the two following favorable benefits relative to the FAQs issued on February 1, 2013:

1. Form 8849 (*Claim for Refund of Excise Taxes*) may now be filed to seek a refund of the portion of the biodiesel mixture credit and alternative fuel credit that exceeded the excise tax liability for the first three quarters of 2012.
2. The Notice extends the statutory deadline under IRC §6427(i)(3)(c) until July 1, 2013 for claimants to file the Form 8849 and seek a refund. In addition, the Notice permits claimants to amend previously filed Form 4136 attachments to the 2012 income tax return in order to claim the refundable payment option provided by the filing of Form 8849.¹¹

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⁹ IRC §6427(e)(2).

¹⁰ I.R.S. Notice 2013-26 (Apr. 3, 2013).

¹¹ Section 3(a), I.R.S. Notice 2013-26 (Apr. 3, 2013).