

TIPA 2014 Law Changes and IRS Guidance on Alternative Energy Tax Credits

January 26, 2015

Overview

On December 19, 2014, President Obama signed into law the Tax Increase Prevention Act of 2014 (“TIPA”),¹ which extended the termination dates applicable to various alternative energy credits and made other related law changes. On January 16, 2015, the Internal Revenue Service (“IRS”) issued IRS Notice 2015-3 (“Notice 2015-3”) as mandated under TIPA.² Notice 2015-3 outlines the procedures for filing a one-time claim for refund (due on or before August 8, 2015) for the credits allowed with respect to alternative fuel and biodiesel mixtures sold and used during the 2014 calendar year and provides other guidance and clarification.

In this Tax Alert we summarize these and other related law changes and procedural guidelines.

IRS Filing Guidance for Alternative Fuel and Biodiesel Incentives

TIPA Section 160 extended from December 31, 2013, to December 31, 2014, the termination dates applicable to the \$0.50 per gallon alternative fuel (e.g., CNG, LPG, and LPG)³ credit and the \$1.00 per gallon biodiesel mixture credit available under Internal Revenue Code (“IRC”) §6426(d)(1) and (c)(1), respectively.⁴

TIPA also extended from December 31, 2013, to December 31, 2014, the provisions under IRC §6427(e) that afford payments for claims that are in excess of the alternative fuel and biodiesel credits.⁵ TIPA further specifically mandates that the amendments to the alternative fuel and biodiesel credits and payments apply to fuel sold or used after December 31, 2013.⁶

TIPA and Notice 2015-3 provide for a one-time filing of all 2014 biodiesel and alternative fuel claims.⁷ Notice 2015-3 further explains that all 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.

TIPA also mandated a 180-day filing period for claimants to submit the one-time claim.⁸ Notice 2015-3 clarified that this 180-day filing period is to commence on February 9, 2015. However, claimants could have begun filing as early as January 16, 2015, but any such claims will be deemed to be filed on February 9, 2015 (i.e., the date the claim period commences). Taking into account the 180-day period, all claims for 2014 biodiesel and alternative fuel incentives must be filed on or before August 8, 2015.

As a prerequisite to filing an alternative fuel tax credit or refund, a claimant must first hold the proper registration, Form 637, *Application for Registration for Certain Excise Tax Activities*.⁹

Notice 2015-3 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*.

¹ Tax Increase Prevention Act of 2014; P.L. 113-295; 2014 Enacted H.R. 5771.

² IRS Notice 2015-3, 2015-6 IRB 1 (Jan. 16, 2015); See also, TIPA Sec. 160(e) (mandating the IRS to issue guidance on the filing of certain energy tax incentives extended through TIPA within 30 days after the enactment of TIPA).

³ See, IRC §6426(d)(2) (providing for the products included in the definition of “alternative fuel”).

⁴ TIPA Sec. 160(b), amending IRC §6426(d)(5); TIPA Sec. 160(a)(1), amending and IRC §6426(c)(6).

⁵ TIPA Sec. 160(a)(2), amending IRC §6427(e)(6)(B) (extending the biodiesel mixture payment); TIPA Sec. 160(b)(2), amending IRC §6427(e)(6)(C) (extending the alternative fuel payment).

⁶ TIPA Sec. 160(d)(1).

⁷ TIPA Sec. 160(e); IRS Notice 2015-3.

⁸ TIPA Sec. 160(e).

⁹ Notice 2015-3; IRC § 6426(a); IRC § 6427(e)(4).

TIPA also extended the termination date applicable to the income tax credit available under IRC §40A for biodiesel and renewable diesel used as fuel.¹⁰ Prior to TIPA, this credit did not apply to any sale or use after December 31, 2013. TIPA extended this termination date to December 31, 2014.¹¹ Notice 2015-3 has no applicability to this credit and thus any claim for the credit should continue to be filed on Form 8864, *Biodiesel and Renewable Diesel Fuels Credit*.¹²

Finally, Notice 2015-3 explicitly cautions claimants that any “protective” or anticipatory claims filed during 2014 must be refiled using the procedures provided for in the Notice.

IRS Filing Guidance for Alternative Fuel Mixture Incentives

TIPA Section 160 extended from December 31, 2013, to December 31, 2014, the termination date applicable to the \$0.50 per gallon alternative fuel mixture tax credit available under IRC §6426(e)(1).¹³ Likewise, TIPA extended from December 31, 2013, to December 31, 2014, the provisions under IRC §6427(e) that afford payments for claims that are in excess of the alternative fuel mixture credit.¹⁴

Notice 2015-3 provides that alternative fuel mixture credit claims sold or used in the 2014 calendar year must be made on Form 720X, *Amended Quarterly Federal Excise Tax Return*, including claims for the fourth quarter due to the timing of the enactment of TIPA. 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.¹⁵

Similar to the alternative fuel tax incentives, as a prerequisite to filing an alternative fuel mixture tax credit or refund, a claimant must first hold the proper registration, Form 637, *Application for Registration for Certain Excise Tax Activities*.¹⁶

Extension of the Alternative Fuel Vehicle Refueling Property Income Tax Credit

TIPA Section 161 extended from December 31, 2013, to December 31, 2014, the termination date applicable to the alternative fuel vehicle refueling property credit.¹⁷ This incentive, available under IRC § 30C, allows a 30% credit against income tax for “qualified alternative fuel vehicle refueling property” brought into service during the taxable year.¹⁸ For business/investment use property (depreciable property), the allowable credit may not exceed \$30,000.¹⁹

Tax Incentives Applicable to Second Generation Biofuel

The Food, Conservation, and Energy Act of 2008²⁰ (more commonly known as the “2008 U.S. Farm Bill”) created a production tax credit of \$1.01 per gallon²¹ for facilities involved in the production of second generation biofuel.²² TIPA extended this income tax credit for qualified second generation biofuel production from January 1, 2014, to January 1, 2015.²³ This extension is effective for qualified second generation biofuel production after December 31, 2013.²⁴ TIPA also extended the termination date applicable to the special depreciation allowance for second generation biofuel plant property.²⁵ Prior to TIPA, the allowance applied to property placed in service after December 31, 2012. TIPA extended the termination date to include property placed in service after December 31, 2013.²⁶

¹⁰ TIPA Sec. 153(a), amending IRC §40A(g).

¹¹ *Id.*

¹² Notice 2015-3.

¹³ TIPA Sec. 160(b), amending IRC §6426(e)(3).

¹⁴ TIPA Sec. 160(d)(1), amending IRC §6427(e)(6)(E).

¹⁵ Notice 2015-3.

¹⁶ Notice 2015-3; IRC § 6426(a); IRC § 6427(e)(4).

¹⁷ TIPA Sec. 161(a), amending IRC §30C(g). This amendment applies to property placed in service after December 31, 2013. See, TIPA Sec. 161(b).

¹⁸ IRC §30C(a), (c).

¹⁹ IRC §30C(b)(1).

²⁰ Food, Conservation, and Energy Act of 2008; P.L. 110-234; 2008 Enacted H.R. 2419.

²¹ The applicable amount of the credit may be reduced as specified in 26 U.S.C § 40(b)(6)(B).

²² 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”).

²³ TIPA Sec. 152(a), amending IRC §40(b)(6)(J)(i).

²⁴ TIPA Sec. 152(b).

²⁵ TIPA Sec. 157(a), amending IRC §168(l)(2)(D).

²⁶ TIPA Sec. 157(b).

Notice 2015-3 does not affect the second generation biofuel producer credit and the credit should continue to be claimed on Form 6478, *Biofuel Producer Credit*.

Contacts

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