

## Budget bill extends and addresses fuel excise taxes and incentives

### Overview

On December 20, 2019, President Trump signed H.R. 1865, Further Consolidated Appropriations Act, 2020 (H.R. 1865),<sup>1</sup> which includes the following modifications:

- A two-year retroactive extension and one-year prospective extension of the federal alternative fuel credit;
- A two-year retroactive extension and one-year prospective extension of the federal alternative fuel mixture credit;
- A one-year retroactive extension and three-year prospective extension of the federal biodiesel mixture credit;
- A one-time filing of all retroactive alternative fuel and biodiesel claims;
- Changes the definition of an eligible “alternative fuel mixture” under the federal alternative fuel mixture credit;
- A two-year retroactive extension and one-year prospective extension of the federal second generation biofuel incentives; and
- Reinstatement of the Oil Spill Liability Trust Fund (OSLTF).

This tax alert summarizes these federal excise tax changes as well as offers some taxpayer considerations.

### Extension of the alternative fuel and biodiesel incentives

H.R. 1865 section 133 retroactively extends from December 31, 2017, to December 31, 2020, 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>

In addition, H.R. 1865 section 121 retroactively extends from December 31, 2017, to December 31, 2022, the termination dates applicable to the \$1.00 per gallon biodiesel mixture excise tax credit available under IRC section 6426(c)(1) and the \$1.00 per gallon biodiesel income tax credit available under IRC section 40A(b).<sup>4</sup> H.R. 1865 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, alternative fuel mixture,<sup>5</sup> and biodiesel excise tax credits.<sup>6</sup>

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<sup>1</sup> H.R. 1865 116th Cong. (Dec. 20, 2019). 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. 1865 Sec 133(a).

<sup>4</sup> H.R. 1865 Sec 121(a)-(b).

<sup>5</sup> H.R. 1865 Sec 133(a)(2), amending IRC §6427(e)(6)(C) (extending the termination dates applicable to the alternative fuel and alternative fuel mixture payments from December 31, 2017 to December 31, 2020).

<sup>6</sup> H.R. 1865 Sec 121(b)(1)(B), amending IRC §6427(e)(6)(B) (extending the termination dates applicable to the biodiesel mixture payment from December 31, 2017 to December 31, 2022).

### Alternative fuel mixture credit – butane mixtures

IRC section 6426(e)(2) provides that for the purposes of the alternative fuel mixture excise tax credit, the term “alternative fuel mixture” means a mixture of taxable fuel and alternative fuel.<sup>7</sup> H.R. 1865 section 133 amends to IRC section 6426(e)(2) to specify that only mixtures of taxable fuel and alternative fuel *other than liquefied petroleum gas, compressed or liquefied natural gas, and compressed or liquefied gas derived from biomass* are eligible alternative fuel mixtures.<sup>8</sup> H.R. 1865 section 133 also provides that the definitional amendment to “alternative fuel mixture” is effective for fuels that have not been paid by December 20, 2019 (i.e., the effective date of H.R. 1865), and were made on or after January 8, 2018).<sup>9</sup>

### Procedure for claiming energy incentives

H.R. 1865 provides taxpayers with a one-time filing of all 2018 and 2019 alternative fuel and biodiesel claims and mandates a 180-day filing period for claimants to submit this claim.<sup>10</sup> Further, H.R. 1865 requires the Secretary of the Treasury issue guidance within 30 days of the H.R. 1865 enactment date for the submission of the one-time claim.<sup>11</sup>

### 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, which is generally \$1.01 per gallon<sup>13</sup> for facilities involved in the production of second generation biofuel.<sup>14</sup> H.R. 1865 extends from January 1, 2018 to January 1, 2021, the termination date applicable to this income tax credit for qualified second generation biofuel production after December 31, 2017.<sup>15</sup> H.R. 1865 also extends from January 1, 2018 to January 1, 2021 the termination date applicable to the special depreciation allowance for second generation biofuel plant property placed in service after December 31, 2017.<sup>16</sup>

### Reinstatement of OSLTF tax

The Oil Spill Liability Tax Fund (OSLTF) tax under IRC section 4611 terminated on December 31, 2018,<sup>17</sup> but H.R. 1865 reinstates the tax with an effective date “on and after the first day of the first calendar month beginning after the date of the [bill’s] enactment” and a termination date of December 31, 2020.<sup>18</sup>

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<sup>7</sup> IRC §6426(a)(1); IRC §6426(e)(1).

<sup>8</sup> H.R. 1865 Sec 133(b)(1) (emphasis added). *See also*, H.R. 1865 Sec 133(b)(3) (stating that “nothing contained in this subsection or the amendments made by this subsection shall be construed to create any inference as to a change in law or guidance in effect prior to the enactment of this subsection”).

<sup>9</sup> H.R. 1865 Sec 133(b)(2).

<sup>10</sup> H.R. 1865 Sec 133(a)(3); H.R. 1865 Sec 121(b)(3); IRC §6426(a)(2) (providing that “[n]o credit shall be allowed in the case of the credits described in subsections (d) and (e) unless the taxpayer is registered under section 4101”).

<sup>11</sup> H.R. 1865 Sec 133(a)(3); H.R. 1865 Sec 121(b)(3).

<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> H.R. 1865 Sec 122(b).

<sup>16</sup> H.R. 1865 Sec 130, amending IRC §168(l)(2)(D).

<sup>17</sup> IRC §4611(f)(2) (prior to the amendments enacted by H.R. 1865).

<sup>18</sup> H.R. 1865 Sec 134.

## Contacts:

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