



MULTISTATE INDIRECT TAX

IRS Notice 2022-39 – Alternative fuel credit claims Tax Alert

Overview

On September 13, 2022, the Internal Revenue Service (“IRS”) issued [Notice 2022-39](#), which provides guidance that taxpayers must follow in claiming the alternative fuel tax credit under Internal Revenue Code (“IRC”) § 6426(d) and the alternative fuel mixture credit under IRC § 6426(e) for the 2022 claim period as outlined below for the different credits.

This Tax Alert summarizes some of the IRS guidelines outlined in Notice 2022-39.

Inflation Reduction Act

On December 31, 2021, both the alternative fuel tax credit and the alternative fuel mixture credit expired; however, the [Inflation Reduction Act of 2022](#) (“IRA”), which was enacted on August 16, 2022, retroactively reinstated the alternative fuel tax credit and the alternative fuel mixture credit from January 1, 2022 through December 31, 2024. The IRA further stipulates that all alternative fuel tax credit claims for the first three quarters of 2022 must be made “in such manner as the Secretary of the Treasury (or the Secretary’s delegate) shall provide.” The IRS provided such guidance in Notice 2022-39.

Alternative fuel tax credit

The alternative fuel tax credit provides a \$0.50 per gallon credit for “alternative fuel” used in a motor vehicle, motorboat, or in aviation. Eligible “alternative fuels” include compressed natural gas (CNG), liquefied natural gas (LNG), and liquefied petroleum gas (propane). As a prerequisite to filing for the alternative fuel tax credit, a claimant must first hold an active Form 637 Activity Letter “AL” license with the IRS.

The IRC prescribes three methods for a company to claim the alternative fuel tax credit. First, under IRC § 6426(d), a company may claim the credit against its excise tax liability on its Form 720, *Quarterly Federal Excise Tax Return* and corresponding semi-monthly deposits. Second, under IRC § 6427(e), a company may claim the credit as a refund on Form 8849, *Claim for Refund of Excise Taxes*. Third, under IRC § 34, a taxpayer may claim the credit as a refundable income tax credit on Form 4136, *Credit for Federal Tax Paid on Fuels*.

For the first three quarters of 2022, Notice 2022-39 stipulates that taxpayers are only permitted to file a single Form 8849 that includes all three quarters as part of the claim; alternatively, a taxpayer may claim a refundable income tax credit. Notably, Notice 2022-39 does not permit taxpayers to claim the alternative fuel tax credit against its excise tax liability on its Form 720. Commencing with the fourth quarter of 2022, a taxpayer can choose any of the three statutory methods listed above to claim the credit.

The claim period begins October 13, 2022 for the first, second, and third calendar quarters of 2022 (January 1 through September 30). The deadline for companies to file the one-time Form 8849 claim is April 11, 2023. Therefore, taxpayers have a 180-day period in which to file for this claim – from October 13, 2022 through April 11, 2023.

Alternative fuel mixture credit

The alternative fuel tax credit provides a \$0.50 per gallon credit for “alternative fuel mixtures” to companies which produce an alternative fuel mixture for sale or use in the trade or business of the taxpayer. Eligible “alternative fuel mixtures” include a mixture of alternative fuel with a taxable fuel. As a prerequisite to claiming the alternative fuel mixture credit, a taxpayer must first hold an active Form 637 Activity Letter “AM” license with the IRS.

Notice 2022-39 provides that alternative fuel mixture credit claims for the first and second calendar quarters of 2022 must be made on Form 720X, *Amended Quarterly Federal Excise Tax Return*. An alternative fuel mixture credit claim for any calendar quarter may not exceed a taxpayer’s fuel excise tax liability under § 4081.

The claim period begins October 13, 2022 for the first and second calendar quarters of 2022 (January 1 through June 30). The deadline for taxpayers to file the one-time Form 8849 claim is April 11, 2023. Therefore, taxpayers have a 180-day period in which to file for this claim – from October 13, 2022 through April 11, 2023.

Considerations

Notice 2022-39 does not affect claims for credits or payments under IRC § 6426(d) and 6426(e) for the fourth calendar quarter of 2022 or claims for credits under IRC § 6426(e) for the third quarter. Similarly, Notice 2022-39 does not affect 2022 claims for the refundable income tax credit under IRC § 34, which should continue to be claimed on Form 4136, *Credit for Federal Tax Paid on Fuels*.

Notice 2022-39 provides the mechanism through which to claim the alternative fuel credit and the alternative fuel mixture credit for the first through third quarters of 2022, as applicable. Companies impacted by these claims should review Notice 2022-39 to determine the appropriate procedural steps to take to claim these credits prior to April 11, 2023.

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