

Alternative Fuel Claims for First, Second, and Third Calendar Quarters of 2022; Alternative Fuel Mixture Claims for First and Second Calendar Quarters of 2022

Notice 2022-39

SECTION 1. PURPOSE

This notice provides rules that claimants must follow to make a one-time claim for the credit and payment allowable under §§ 6426(d) and 6427(e) of the Internal Revenue Code (Code) for alternative fuels sold or used during the first, second, and third calendar quarters of 2022. These rules are prescribed pursuant to § 13201(g) of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act (IRA). This notice also provides instructions for how a taxpayer's liability for the excise tax imposed by § 4081 may be reduced by claiming the alternative fuel mixture credit allowable under § 6426(e) for the first and second calendar quarters of 2022.

SECTION 2. BACKGROUND

Section 6426(a) and (d) allows a person that sells or uses alternative fuel as a fuel in a motor vehicle or motorboat or in aviation to claim a \$0.50 per gallon credit against the person's excise tax liability under § 4041 (relating to the tax imposed on diesel fuel and alternative fuel). Any excess credit under § 6426(d) may be claimed as a payment under § 6427(e) or as a refundable income tax credit under § 34. For federal income tax purposes, a person's expense for the § 4041 excise tax, whether taken as a deduction or as a component of cost of goods sold, is reduced by the amount of the

excise tax credit allowable under § 6426(d). See *Exxon Mobil Corp. v. United States*, 43 F.4th 424 (5th Cir. 2022); see also Notice 2015-56, 2015-35 I.R.B. 235.

Section 6426(a) and (e) allows a blender of an alternative fuel mixture to claim a \$0.50 per gallon credit against its excise tax liability under § 4081 (relating to the tax imposed on taxable fuel). A person's § 6426(e) alternative fuel mixture credit claim for any calendar quarter may not exceed the person's excise tax liability under § 4081 (without regard to the credit) incurred in the calendar quarter for which the credit is being claimed. Further, § 6430 provides in part that the alternative fuel mixture credit cannot be applied against tax imposed at the Leaking Underground Storage Tank (LUST) Trust Fund financing rate. For federal income tax purposes, a person's expense for the § 4081 excise tax, whether taken as a deduction or as a component of cost of goods sold, is reduced by the amount of the excise tax credit allowable under § 6426(e). See generally *Exxon Mobil Corp. v. United States*, 43 F.4th 424 (5th Cir. 2022).

No credits under § 6426(d) or (e) and no payment under § 6427(e) for any excess credit under § 6426(d) are authorized unless the person claiming the credit or receiving the payment is registered under § 4101. Prior to the enactment of the IRA, §§ 6426(d) and (e) and 6427(e) expired for sales and uses after December 31, 2021.

Section 13201 of the IRA reinstates these credits and payment for sales and uses through December 31, 2024. Under § 13201(g) of the IRA, the Secretary of the Treasury or her delegate (Secretary) is directed to issue guidance providing a 180-day period (beginning no later than 30 days after the guidance is issued) for a one-time submission of claims under §§ 6426(d) and 6427(e) (in such manner as prescribed by

the Secretary) for the period beginning January 1, 2022, and ending September 30, 2022 (2022 one-time alternative fuel claim).

Section 13202 of the IRA reinstates the § 40(b)(6) second generation biofuel producer credit for production before January 1, 2025. The second generation biofuel producer credit previously expired for production after December 31, 2021.

SECTION 3. SCOPE

For purposes of sections 4, 5, 6, or 7 of this notice, a “claimant” is the person eligible to make an alternative fuel claim under §§ 6426(d) and 6427(e), or an alternative fuel mixture claim under § 6426(e).

Pursuant to § 13201(g) of the IRA, this notice provides the exclusive procedure for making a 2022 one-time alternative fuel claim. Claimants that previously filed protective or anticipatory claims covered by this notice that do not conform with the procedures provided in this notice should refile their claims pursuant to the procedures provided in this notice. The Internal Revenue Service (IRS) will not treat as perfected any such protective or anticipatory claims previously filed with the IRS that are not timely supplemented in accordance with these procedures.

Except as provided by this notice, the rules in Notice 2006-92, 2006-2 C.B. 774 (providing guidance on alternative fuel and alternative fuel mixture taxes, credits, and payments), apply to claims for alternative fuel credits under § 6426(d) and payments under § 6427(e).

This notice also prescribes the method for submitting claims for the alternative fuel mixture credit allowable under § 6426(e) relating to alternative fuel mixtures sold or used during the first and second calendar quarters of 2022.

Section 8 of this notice describes the claims not affected by this notice.

SECTION 4. HOW TO MAKE A 2022 ONE-TIME ALTERNATIVE FUEL CLAIM

Claimants must follow the procedures listed in this section 4 to make a 2022 one-time alternative fuel claim.

- Claimants must submit claims on Form 8849, *Claim for Refund of Excise Taxes*.
- Claimants must include Schedule 3 (Form 8849), *Certain Fuel Mixtures and the Alternative Fuel Credit*, with their submission and enter any amounts on Line 3 of Schedule 3 (Form 8849), as appropriate.
- Each claimant must claim the alternative fuel credits and payments for which the claimant is eligible for the first, second, and third calendar quarters of 2022 on a single Form 8849 and Schedule 3 (Form 8849).
- Claimants must follow the instructions to Form 8849 and Schedule 3 (Form 8849) when preparing their submission to the extent that those instructions do not conflict with this notice.
- Claims may be submitted electronically or by mail. Electronic submission is strongly encouraged and will result in faster processing and payment of the claim. Claims may be submitted electronically through any electronic return originator, transmitter, or intermediate service provider participating in the IRS e-file program for excise taxes. Any claimant that prefers to submit a paper claim may mail its claim to the address listed for Schedule 3 (Form 8849) in the instructions to Form 8849 under *Where to File*.
- Claimants must be registered by the IRS to make a 2022 one-time alternative fuel claim. Claimants that are not already registered by the IRS may apply to the

IRS for registration by filing Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions to Form 637.

- Claimants must have and maintain adequate records to substantiate eligibility for the 2022 one-time alternative fuel claim.

SECTION 5. CLAIM PERIOD AND DUE DATE FOR 2022 ONE-TIME ALTERNATIVE FUEL CLAIMS

All 2022 one-time alternative fuel claims must be submitted during the 180-day claim period described in this section 5. The 180-day claim period for making a 2022 one-time alternative fuel claim begins on October 13, 2022, and ends on April 11, 2023. Consequently, all 2022 one-time alternative fuel claims must be filed by April 11, 2023. The IRS will not process claims filed after that date. The IRS will deem any claim that is submitted by the method prescribed in this notice before October 13, 2022, as filed on October 13, 2022.

If the IRS does not pay a one-time 2022 alternative fuel claim that conforms with the procedures in sections 4 and 5 of this notice within 60 days after the claim is received, the IRS will pay the claim with interest from the claim filing date (or from October 13, 2022, in the case of a claim submitted before that date that conforms with the procedures in section 4 of this notice) using the overpayment rate and method provided by § 6621.

SECTION 6. HOW TO MAKE AN ALTERNATIVE FUEL MIXTURE CREDIT CLAIM FOR THE FIRST AND SECOND CALENDAR QUARTERS OF 2022

Claimants must follow the procedures listed in this section 6 to claim the

alternative fuel mixture credit under § 6426(e) for the first and second calendar quarters of 2022.

- All 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*.
- Claimants must enter amounts for alternative fuel mixture credit claims on Line 2 of Form 720X by calendar quarter. In addition, on Line 6 of Form 720X, claimants must identify, by calendar quarter, the type of alternative fuel(s) in the mixture(s) for which a credit is being claimed and the number of gallons of alternative fuel(s) used by the claimant in producing the mixture(s). This information is the same information claimants are required to report on Line 13 of Schedule C to Form 720, *Quarterly Federal Excise Tax Return*.
- Claimants must follow the instructions to Form 720X when preparing their submission(s) to the extent that those instructions do not conflict with this notice.
- Each claimant must mail its submission(s) to the address listed for Form 720X in the instructions under *Where to File*.
- Claimants must be registered by the IRS in order to make alternative fuel mixture credit claims. Claimants that are not already registered by the IRS may apply to the IRS for registration by filing Form 637 in accordance with the instructions to Form 637.
- Alternative fuel mixture credit claims for any calendar quarter may not exceed the claimant's § 4081 excise tax liability (without regard to the credit) incurred in the calendar quarter for which the credit is being claimed. Further, § 6430 provides

in part that the alternative fuel mixture credit cannot be applied against tax imposed at the LUST Trust Fund financing rate.

- For purposes of alternative fuel mixture claims made pursuant to this section 6, the term “alternative fuel mixture” means a mixture of taxable fuel and alternative fuel¹ (other than liquefied petroleum gas, compressed natural gas, liquefied natural gas, liquefied gas derived from biomass, and compressed gas derived from biomass) that satisfies all of the requirements of section § 6426(e)(2).
- Claimants must have and maintain adequate records to substantiate eligibility for the alternative fuel mixture credit.
- Failure to file a Form 720 and remit the § 4081 excise tax due for the first or second calendar quarter of 2022 before submitting an alternative fuel mixture claim on Form 720X for that calendar quarter will result in delayed processing of the claim (and delayed payment of refunds resulting from the credit) or denial of the claim.
- Failure to follow the claim procedure in this section will result in delayed processing or denial of claim(s).

SECTION 7. CLAIM PERIOD FOR ALTERNATIVE FUEL MIXTURE CREDIT CLAIMS FOR THE FIRST AND SECOND CALENDAR QUARTERS OF 2022

All alternative fuel mixture credit claims for the first and second calendar quarters of 2022 must be submitted during the claim period described in this section 7. The

¹ Section 13204(d) of the IRA removes liquefied hydrogen from the list of alternative fuels in § 6426(d)(2) for fuel sold or used after December 31, 2022, and makes a conforming amendment to § 6426(e)(2). Therefore, the alternative fuel credit is not available for liquefied hydrogen sold or used after December 31, 2022, and the alternative fuel mixture credit is not available for mixtures of liquefied hydrogen and taxable fuel sold or used after December 31, 2022.

claim period for claims for the alternative fuel mixture credit for the first and second calendar quarters of 2022 begins on October 13, 2022. Generally, claims for the alternative fuel mixture credit must be made within three years from the time the return was filed or two years from the time the excise tax under § 4081 was paid, whichever is later.

The IRS will deem any alternative fuel mixture claim for the first or second calendar quarter of 2022 that is submitted by the method prescribed in section 6 of this notice before October 13, 2022, as filed on October 13, 2022.

SECTION 8. CLAIMS NOT AFFECTED BY THIS NOTICE

This notice does not affect claims for credit or payment under §§ 6426(d) and 6427(e) for the fourth calendar quarter of 2022. In addition, this notice does not affect claims for credit under § 6426(e) for the third and fourth calendar quarters of 2022.

This notice does not affect 2022 claims for the nonrefundable income tax credit under § 40(b)(6) for second generation biofuel producers. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 6478, *Biofuel Producer Credit*. A taxpayer must submit Form 6478 with its income tax return in accordance with the instructions to its income tax return form.

Similarly, this notice does not affect 2022 claims for the refundable income tax credit under § 34 for alternative fuel. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 4136, *Credit for Federal Tax Paid on Fuels*. A taxpayer must submit Form 4136 with its income tax return in accordance with the instructions to its income tax return form. Under § 34(b), credits are not allowed under § 34 for any amount properly payable under § 6427 if a claim for such amount is

timely filed. For this purpose, the IRS will treat as timely filed any claim submitted for amounts payable under § 6427 that conforms to the rules provided in this notice.

SECTION 9. DRAFTING INFORMATION

The principal author of this notice is Camille Edwards Bennehoff of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Edwards Bennehoff at (202) 317-6855 (not a toll-free number). For further information regarding the income tax treatment of the alternative fuel credits, please contact Dominic DiMattia of the Office of the Associate Chief Counsel (Income Tax & Accounting) at (202) 317-4718 (not a toll-free number).