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2015 Renewable Fuel Incentives

Taxpayers may now make a one-time claim related to biodiesel mixtures and alternative fuels sold for use or used during calendar year 2015. This article discusses the one-time claim rules and other renewable fuel incentives available to taxpayers.

Introduction

With the retroactive reinstatement of certain renewable fuel credits for 2015 and issuance of Notice 2016-5, taxpayers may now claim a one-time excise tax payment for alternative fuel sold for use or used in a motor vehicle, motorboat, or used in aviation during 2015. Examples include propane or liquefied hydrogen used in forklifts, and compressed natural gas (“CNG”) or liquefied natural gas (“LNG”) sold for use in delivery trucks or buses.

Taxpayers may also claim a one-time excise tax payment for production of qualifying biodiesel and renewable diesel mixtures in 2015.

Background

On December 18, 2015, President Obama signed the Protecting Americans from Tax Hikes Act of 2015 (Pub. L. 114-113) (“the PATH Act”). The PATH Act generally reinstates previously expired incentives for alternative fuels, alternative fuel mixtures, biodiesel, biodiesel mixtures, and second generation biofuel as of December 31, 2014, and extends those incentives through December 31, 2016. The applicable incentives are briefly described as follows:

- *Alternative fuel incentive*

Incentive of \$0.50 per gallon for alternative fuel sold for use or used in a motor vehicle, motorboat, or used in aviation.

Alternative fuel includes LPG (propane), CNG, LNG, liquefied hydrogen, and certain liquid fuels derived from biomass. The incentive is claimed first as a credit against alternative fuel excise tax; the remainder may be claimed as excise tax payment or refundable income tax credit.

- *Alternative fuel mixture credit*

Credit against taxable fuel excise tax of \$0.50 per gallon for production of a qualifying alternative fuel mixture sold for use or used in a trade or business.

- *Biodiesel mixture incentive*

Incentive of \$1.00 per gallon for production of qualifying biodiesel or renewable diesel mixture sold for use or used in a trade or business.

The incentive is claimed first as credit against taxable fuel excise tax; the remainder may be claimed as excise tax payment, refundable income tax credit, or nonrefundable income tax credit.

- *Biodiesel fuel credit*

Nonrefundable income tax credit of \$1.00 per gallon for biodiesel or renewable diesel used as a fuel in a trade or business or sold at retail and placed in the fuel tank of a vehicle.

- *Small agribiodiesel producer credit*

Nonrefundable income tax credit of \$0.10 per gallon for qualified agri-biodiesel production.

- *Second generation biofuel production credit*

Nonrefundable income tax credit of \$1.01 per gallon for qualified second generation biofuel production.

Notice 2016-5

Among other things, the PATH Act directed Treasury to issue guidance providing for a one-time submission of claims relating to the 2015 incentives for alternative fuels and biodiesel mixtures. Treasury issued Notice 2016-5, 2016-6 I.R.B. 302, on February 8, 2016. Notice 2016-5 provides guidance on:

- How to claim a one-time payment for 2015 biodiesel mixtures and alternative fuel;
- The claim period and due date for 2015 biodiesel mixtures and alternative fuel;

- How to claim the 2015 alternative fuel mixture credit; and
- The claim period and due date for the 2015 alternative fuel mixture credit.

One-Time Excise Tax Payment for 2015 Biodiesel Mixture and Alternative Fuel Incentives; Claim Period and Due Date

The entire amount payable for the 2015 biodiesel mixture and alternative fuel incentives may be claimed as an excise tax payment using the one-time claim method set forth in Notice 2016-5. The one-time claim relating to the 2015 biodiesel and alternative fuel incentives must be filed on or before August 8, 2016. Claimants for the alternative fuel credit must be registered by the IRS as an alternative fueler.

Alternative Fuel Mixture Claim; Claim Period and Due Date

The 2015 alternative fuel mixture credit must be claimed by amending a previously filed Form 720, *Quarterly Federal Excise Tax Return*. Alternative fuel mixture credit claims must be made generally within three years from the time the return was filed or two years from the time the tax was paid, whichever is later. Claimants for the alternative fuel mixture credit must be registered by the IRS as an alternative fuel mixture producer.

Claims for Other Renewable Fuel Incentives

Notice 2016-5 does not affect 2015 claims for the biodiesel fuel credit, the small agri-biodiesel production credit, or the second generation biofuel production credit. Taxpayers should continue to claim these credits on their income tax returns in accordance with the instructions on those forms.

Further, Notice 2016-5 does not affect claiming the biodiesel mixture or alternative fuel incentives as a refundable income tax credit for 2015. To the extent a taxpayer decides to claim these incentives as a refundable income tax credit (instead of as a one-time payment) or to the extent a taxpayer does not claim its one-time payment by August 8, 2016, these claims may be made on the taxpayer's income tax return in accordance with the instructions on that form.

Observations

The retroactive reinstatement of certain renewable fuel incentives is an opportunity for eligible taxpayers to claim excise tax payments or credits for alternative fuels and biodiesel mixtures for 2015, the income tax credit for the biodiesel fuel credit, the small agri-biodiesel production credit, and the second generation biofuel production credit for 2015.

The one-time claim for excise tax payment for alternative fuels and biodiesel mixtures for 2015 must be filed by August 8, 2016. Taxpayers claiming the alternative fuel incentives or alternative fuel mixture credit must be registered by the IRS.

Unlike previous extensions of expired renewable fuel incentives, Congress not only retroactively reinstated them, but also extended them through the end of 2016. Taxpayers are able to claim the 2016 renewable fuel incentives in "real time," perhaps as often as weekly throughout 2016. Taxpayers should review the existing claim rules for these incentives.



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