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Handling the New Biodiesel Fuels Credit

-by Neil E. Harl*

The American Jobs Creation Act of 2004 authorized a new nonrefundable income tax credit for biodiesel fuels which is actually the sum of two credits— the "biodiesel mixture credit" and the "biodiesel credit." The resulting credit is treated as a general business credit. The biodiesel fuels credit is added to the list of qualified business credits that qualify for a deduction if they remain unused at the end of the applicable carryforward period.

The biodiesel fuels credit applies to fuel produced and sold or used after December 31, 2004 and expires for sales and uses after December 31, 2006. The biodiesel fuels credit is included in gross income.

For passthrough entities, the biodiesel fuels credit passes through and is apportioned between an estate or trust and its beneficiaries.

In late 2004, the Internal Revenue Service published guidance on the biodiesel fuels credit.

Nature of the credit

Effective January 1, 2005, the AJCA provided for a credit, termed the biodiesel mixture credit, of 50 cents per gallon of biodiesel "... used by the taxpayer in the production of a qualified biodiesel mixture." A qualified "biodiesel mixture" is defined as a mixture of biodiesel and diesel fuel, without regard to use of kerosene, which is sold by the taxpayer producing the mixture to any person for use as a fuel or used as a fuel by the taxpayer producing the mixture.

To qualify for the credit, the sale or use must be in a trade or business of the taxpayer and the biodiesel must be taken into account for the tax year in which the sale or use occurs. No credit is allowed for "casual off-farm production" of a qualified biodiesel mixture.

The second credit, the biodiesel credit, is 50 cents for each gallon of biodiesel that is not in a mixture with diesel fuel and is sold or used by the taxpayer as a fuel in a trade or business or sold by the taxpayer at retail to a person and placed in the tank of the retail purchaser’s vehicle. Such fuel is often referred to as 100 percent biodiesel or B100. No biodiesel credit is allowed for any biodiesel sold in a retail sale that is not in a mixture with diesel fuel.

A special rule applies to "agri-biodiesel." In that case, the biodiesel mixture credit or the biodiesel credit is set at $1 per gallon, rather than 50 cents per gallon. The term "agri-biodiesel" is defined in terms of the source of the oils including corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran and mustard seeds and from animal fats.

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A claim may be taken only once with respect to any particular gallon of alcohol or biodiesel.\textsuperscript{22}

**Claiming the credit**

To claim the biodiesel credit or the biodiesel mixture credit, the taxpayer must obtain a certification from the producer (or importer) of the biodiesel identifying the product produced and the percentage of biodiesel and agri-biodiesel in the product.\textsuperscript{23} IRS has published model certification forms.\textsuperscript{24}

The biodiesel fuels credit is claimed on Form 8864, Biodiesel Fuels Credit.\textsuperscript{25}

A credit is allowed\textsuperscript{26} against the tax imposed on taxable fuel.\textsuperscript{27} The credit is equal to the sum of the alcohol fuel mixture credit and the biodiesel mixture credit.\textsuperscript{28} The credit is allowable to the person who produces the mixture for sale or use in the producer’s trade or business.\textsuperscript{29} The credit is claimed on Form 720, “Quarterly Federal Excise Tax Return.”\textsuperscript{30}

To the extent the sum of the alcohol fuel mixture credit and biodiesel mixture credit exceeds a person’s I.R.C. § 4081 liability, for any quarter, an income tax credit or payment is allowable to the producer of the mixture.\textsuperscript{31} The credit is also claimed on Form 720, “Quarterly Federal Excise Tax return,” or Form 8849, “Claim for Refund of Excise Taxes.”\textsuperscript{32}

**Recapture of the credit**

If a credit was claimed for the retail sale of biodiesel and any person mixes the biodiesel or uses the biodiesel other than as a fuel, a tax is imposed on that person.\textsuperscript{33} The amount of the tax is the per-gallon rate originally used to compute the biodiesel credit multiplied by the number of gallons of biodiesel.\textsuperscript{34}

**Coordination with excise tax credit**

The biodiesel fuels credit is also coordinated with the excise tax credit allowed under newly enacted I.R.C. Secs. 6426 and 6427(e). The amount of the biodiesel fuels credit determined with respect to any biodiesel is reduced to take into account any benefit claimed with respect to the biodiesel under the excise tax credit provision.\textsuperscript{35}

**FOOTNOTES**


\textsuperscript{2} I.R.C. § 40A.

\textsuperscript{3} I.R.C. § 40A(a).

\textsuperscript{4} I.R.C. § 40A(b)(1).

\textsuperscript{5} I.R.C. § 40A(b)(2).

\textsuperscript{6} See I.R.C. § 38.

\textsuperscript{7} I.R.C. § 196(c).

\textsuperscript{8} I.R.C. § 40A(e).

\textsuperscript{9} I.R.C. § 87(2).

\textsuperscript{10} I.R.C. § 40A(d)(4).


\textsuperscript{12} I.R.C. § 40A(b)(1)(A).

\textsuperscript{13} I.R.C. § 40A(b)(1)(B).

\textsuperscript{14} I.R.C. § 40A(b)(1)(C).

\textsuperscript{15} I.R.C. § 40A(b)(1)(D).

\textsuperscript{16} I.R.C. § 40A(b)(2).

\textsuperscript{17} See Notice 2005-4, I.R.B. 2005-2, § 2(e).

\textsuperscript{18} I.R.C. § 40A(b)(2)(B).

\textsuperscript{19} I.R.C. § 40A(b)(3).

\textsuperscript{20} Id.

\textsuperscript{21} I.R.C. § 40A(d)(2).

\textsuperscript{22} I.R.C. § 40A(c).

\textsuperscript{23} I.R.C. § 40A(b)(4).


\textsuperscript{25} Notice 2005-4, I.R.B. 2005-2, § 2(e).

\textsuperscript{26} I.R.C. § 6426.

\textsuperscript{27} I.R.C. § 4081.


\textsuperscript{29} Id.

\textsuperscript{30} Id.

\textsuperscript{31} Notice 2005-4, I.R.B. 2005-2, § 2(d).


\textsuperscript{33} I.R.C. § 40A(d)(3).

\textsuperscript{34} Id.

\textsuperscript{35} I.R.C. § 40A(c).

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**CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr

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**BANKRUPTCY**

**GENERAL**

**EXEMPTIONS**

PENSION PLAN. The debtor claimed an exemption under Section 541(c)(2) for the debtor’s interest in an employer-provided pension plan. The pension plan was a tax sheltered annuity plan under I.R.C. § 403(b) and was subject to an anti-alienation clause. The Chapter 7 trustee objected to the exemption, arguing that the annuity plan did not qualify for the exemption which applied only to trusts. The court held that the annuity-trust distinction was not as important as whether the pension plan was subject to sufficient restrictions on the debtor’s ability to obtain or assign the funds. The court held that the debtor’s annuity pension plan had sufficient restrictions to qualify for the Section 541(c)(2) exemption. _In re_