

TaxNewsFlash

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Notice 2018-21: Biodiesel, renewable fuel credits for 2017, one-time claim; oil spill liability tax safe harbor

The IRS today released an advance version of Notice 2018-21 that provides guidance for making a one-time claim for payment of the credits and payments allowable for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar year 2017.

[**Notice 2018-21**](#) [PDF 57 KB] also provides instructions for how to offset a section 4081 liability with the section 6426(e) alternative fuel mixture credit for 2017, as well as instructions for how to make certain income tax claims relating to biodiesel, second generation biofuel, and alternative fuel.

Lastly, Notice 2018-21 provides a temporary modified safe harbor for semi-monthly deposits of the oil spill liability tax.

Background

A short-term government spending and budget bill—the *Bipartisan Budget Act of 2018*, enacted on February 9, 2018—reinstated certain tax-related measures that had expired at the end of 2016 and extended them through December 31, 2017.

Among these extended measures were biodiesel and renewable diesel tax incentives or credits—specifically, under sections 6426(c), 6426(d), and 6427(e) for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar year 2017.

Section 4611 imposes a tax of \$0.09 per barrel on crude oil received at a U.S. refinery, and on petroleum products entered into the United States for consumption, use, or warehousing (oil spill liability tax). The oil spill liability tax expired at the end of 2017, but was also extended and reinstated for the period beginning on March 1, 2018, and ending on December 31, 2018.

Notice 2018-21

Today's notice sets forth the procedure for claiming 2017 biodiesel and alternative fuel incentives.

The IRS notice sets out the action steps for claimants to follow in filing claims for 2017 biodiesel and alternative fuel incentives. The notice states that all one-time claims for 2017 biodiesel and alternative fuel incentives must be filed on or before September 29, 2018, in accordance with the instructions in today's notice.

Notice 2018-21 also provides procedures to claim the alternative fuel mixture credit allowable under section 6426(e) for 2017. The period of limitations to file this claim is within three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

Today's notice does not affect 2017 claims for the nonrefundable income tax credits for second generation biofuel producers (section 40(b)(6)), biodiesel mixtures (section 40A(b)(1)), biodiesel (including renewable diesel) (section 40A(b)(2), or small agri-biodiesel production (section 40A(b)(4)).

Lastly, the IRS notice provides a modified safe harbor rule for semi-monthly deposits of the oil spill liability tax for the third quarter of 2018. In general, the deposit for the oil spill liability tax for each semi-monthly period generally must not be less than 95% of the amount of net tax liability incurred during the semi-monthly period. The IRS and Treasury Department decided to allow persons liable for the oil spill liability tax to use a modified form of the safe harbor for the third calendar quarter of 2018 on a voluntary basis. Among other things, for the third quarter of 2018, the deposit for each semimonthly period in the quarter must not be less than one half (1/2) of the net tax liability reported for the look-back quarter, as described in Notice 2018-21.

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