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Sixth Circuit: Tax credit applied against fuel excise tax reduces excise tax liability

The U.S. Court of Appeals for the Sixth Circuit today affirmed a federal district court's grant of summary judgment for the government in a taxpayer's claim that a tax credit applied against the fuel excise tax reduces the taxpayer's gross income and therefore its income tax liability. The taxpayer asserted that the tax credit satisfied, but did not reduce its excise tax liability.

The Sixth Circuit rejected the taxpayer's argument and held that the tax credit did reduce the taxpayer's excise tax liability.

The case is *Delek US Holdings LLC v. United States*, No. 21-5257 (6th Cir. April 22, 2022). Read the Sixth Circuit's [decision](#) [PDF 180 KB]

Summary

Under section 6426, a fuel producer can earn "a credit" (the mixture credit) by mixing alcohol or biodiesel into its products. The mixture credit applies "against the [excise] tax imposed by section 4081."

Under section 6427(e), a producer can also receive the mixture credit amount in the form of direct, non-taxable payments, but only to the extent the mixture credit exceeds the excise tax liability.

The taxpayer, a fuel producer, claimed for 2010 and 2011 over \$64 million in mixture credits. When the taxpayer filed its 2010 and 2011 tax returns, it subtracted this mixture credit amount from its cost of goods sold—which in turn, increased its gross income and—by extension—its income tax burden.

In 2015, the taxpayer reconsidered this treatment and filed a refund claim for more than \$16 million. The taxpayer claimed that its section 6426 mixture credits were "payments" that could only satisfy, but not reduce, the excise tax amount and that subtracting the mixture credit from the cost of goods sold was a mistake. The IRS denied the refund claim, and the taxpayer file suit in federal district court seeking judgment in the amount of the alleged overpayment. The district court granted summary judgment for the government. The taxpayer appealed.

Today, the Sixth Circuit affirmed the grant of summary judgment for the government, and examining the statutory language, rejected the taxpayer's claim that the mixture credit was a "payment" that satisfies, but does not reduce, its excise tax liability.

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