



# TaxNewsFlash

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## U.S. Tax Court: Cost of goods sold includes only excise taxes actually paid in determining excise tax liability

The U.S. Tax Court today held that a taxpayer may claim as part of its cost of goods sold (COGS) in computing its excise tax liability under section 4081 only the excise tax that the taxpayer actually incurred or paid, taking into account any tax credits claimed by the taxpayer under section 6426.

The case is: *Growmark, Inc. v. Commissioner*, 160 T.C. No. 11 (May 16, 2023). Read the Tax Court's [opinion](#) [PDF 215 KB] (16 pages)

### Summary

The taxpayer, a fuel blender, was an agricultural supply cooperative serving the supply needs of its member-patrons operating independent farming businesses.

The taxpayer claimed tax credits under section 6426(b) and (c) in determining its excise tax liability under section 4081.

As a fuel blender, the taxpayer may reduce its taxable income from fuel mixture sales by subtracting its COGS, including certain federal excise taxes. As part of its COGS, the taxpayer originally claimed its actual excise tax expense, reduced by its tax credits under section 6426(b) and (c). However, the taxpayer later asserted that it was entitled to claim its gross excise tax liability, unreduced by the tax credits it received, as part of its COGS.

The Tax Court rejected the taxpayer's argument, finding that the legislative text was unambiguous, and the legislative history confirmed, that a taxpayer must use its actual excise tax expense, rather than gross excise tax liability, for purposes of calculating its COGS.

The Tax Court also acknowledged that three Courts of Appeals had already ruled on this issue and reached a similar conclusion, and the Tax Court found this reasoning persuasive. See *Sunoco, Inc. v.*

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*United States*, 129 Fed. Cl. 322 (2016), aff'd 908 F.3d 710 (Fed. Cir. 2018), cert denied No. 18-1474 (October 7, 2019); *Delek US Holdings, Inc. v. United States*, 515 F. Supp. 3d 812 (M.D. Tenn. 2021), aff'd 32 F.4th 495 (6th Cir. 2022); *Exxon Mobil Corporation v. United States*, 2018 U.S. Dist. LEXIS 149760 (N.D. Tex. 2018), aff'd 43 F.4th 424 (5th Cir. 2022), petition for rehearing denied September 30, 2022.

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