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## Claiming Retroactively Reinstated Renewable Fuel Incentives

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Renewable fuel incentives have been retroactively reinstated and taxpayers may make a one-time claim related to biodiesel mixtures and alternative fuels sold for use or used during calendar years 2018 and 2019. Current claims for qualifying fuel may be made as often as weekly during 2020. 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 2018 and 2019 and the issuance of Notice 2020-8, taxpayers may now claim a one-time excise tax payment for alternative fuels sold for use or used in a motor vehicle, motorboat, or used in aviation during 2018 and 2019. Examples include propane or liquefied hydrogen used in forklifts, and compressed natural gas (“CNG”) or liquified 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 2018 and 2019.

In addition, taxpayers may currently claim the incentives for qualifying fuel through 2020 (biodiesel through 2022). These claims are made in “real time,” perhaps as often as weekly.

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## Background

On December 20, 2019, the Taxpayer Certainty and Disaster Tax Relief Act of 2019 was enacted as part of the Further Consolidated Appropriations Act, 2020 (“The Act”).<sup>1</sup> The Act generally:

- Reinstated previously expired incentives for alternative fuels, alternative fuel mixtures, biodiesel, biodiesel mixtures, and second generation biofuel as of December 31, 2017, and extends those incentives through December 31, 2020 (2022 for biodiesel)
- Clarified the types of alternative fuels that may be used to produce a qualifying alternative fuel mixture
- Directed Treasury to issue guidance providing for a one-time submission of claims relating to the 2018 and 2019 incentives for alternative fuels and biodiesel mixtures; Treasury issued Notice 2020-8 on January 17, 2020<sup>2</sup>

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. A claimant for the alternative fuel credit must be registered by the IRS as an alternative fueler.

There are seven types of alternative fuels, including liquefied petroleum gas (“LPG”), CNG, LNG, liquefied hydrogen, certain P Series Fuels, 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 an excise tax payment or as a 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. A claimant for the alternative fuel mixture credit must be registered by the IRS as an alternative fuel mixture producer.

The Act provided a “clarification” that limits the alternative fuels eligible for the alternative fuel mixture credit: LPG, CNG, LNG, and compressed or liquefied gas derived from biomass do not qualify. The effective date of the limitation varies depending on when the taxpayer filed a claim for those alternative fuel mixtures and whether the IRS paid or allowed the claim. If a taxpayer filed a claim before January 18, 2018, the limitation does not apply. If a taxpayer filed a claim on or after that date, the limitation (1) does not apply if the IRS paid or allowed the credit but (2) does apply if the IRS did not pay or allow the credit.

**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.

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<sup>1</sup> Pub. L. No. 116-94.

<sup>2</sup> 2020-7 I.R.B.

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 Agri-biodiesel 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 2020-8 Claim Procedures

### *One-Time Claim for 2018 and 2019 Biodiesel Mixture and Alternative Fuel Incentives; Due Date*

The entire amount payable for the 2018 and 2019 biodiesel mixture and alternative fuel incentives may be claimed as an excise tax payment on Form 8849, *Claim for Refund of Excise Taxes*, using Schedule 3 (Form 8849), *Certain Fuel Mixtures and Alternative Fuel Credit*. For 2018 and 2019 claims, the incentive does not need to first be claimed against excise tax liability.

The one-time claim relating to the 2018 and 2019 biodiesel and alternative fuel incentives must be filed on or before August 11, 2020.

### *Alternative Fuel Mixture Claim; Due Date*

The 2018 and 2019 alternative fuel mixture credit must be claimed by amending a previously filed excise tax return on Form 720X, *Amended Quarterly Federal Excise Tax Return*. Claimants must file separate amended returns for the 2018 claim and the 2019 claim.

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.

### *Claims for Other Renewable Fuel Incentives*

Notice 2020-8 does not affect the procedure for claiming the alternative fuel incentive or biodiesel mixture incentive as a refundable income tax credit for 2018 and 2019. 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 11, 2020, these claims may be made on the taxpayer's income tax return in accordance with the instructions on that form.

Further, 2020-8 does not affect 2018 and 2019 claims for the nonrefundable income tax credits for biodiesel, 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.

## Observations

2018 and 2019 claims may now be filed by eligible taxpayers for tax payments or credits for alternative fuels and biodiesel mixtures, the income tax credit for the biodiesel fuel credit, the small agri-biodiesel production credit, and the second generation biofuel production credit for 2018 and 2019.

The deadline to file the one-time claim for 2018 and 2019 alternative fuels and biodiesel mixtures is August 11, 2020.

2020 claims for the renewable fuel incentives may be filed by eligible taxpayers in “real time”, perhaps as often as weekly.

Registration requirements apply to taxpayers claiming the alternative fuel incentives or alternative fuel mixture credits.

Litigation has been initiated by a number of taxpayers with respect to disallowed claims for alternative fuel mixtures involving mixtures that are now excluded under the clarification. The IRS issued Revenue Ruling 2018-02 on January 8, 2018, determining these claims do not qualify for the alternative fuel mixture credit. The Act uses the January 8, 2018 revenue ruling date as a determinative factor for whether a claim may be allowable, potentially resulting in similarly situated taxpayers being treated differently. The Act also provides a “no inference” provision stating nothing in the clarification shall be construed to create any inference as to a change in law or guidance in effect prior to enactment. Whether these provisions of the Act are constitutional may be an issue for future litigation.

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