

January, 2020

FACT SHEET: TAX CREDITS

Alternative Fuel Tax Credit and Alternative Fuel Vehicle Refueling Property Tax Credit

General Information

At the end of 2019, President Trump signed into law the *Further Consolidated Appropriations Act, 2020*. The law extends both the Alternative Fuel Tax Credit and the Alternative Fuel Vehicle Refueling Property Tax Credit for three years – retroactively for 2018 and 2019 and prospectively for 2020.

Consult Your Tax Professional

This document was prepared to describe the tax credits and is for informational purposes only. It is not intended to be, nor should it be, relied upon as tax advice. Claimants should consult their tax advisors to determine eligibility for these tax credits and obtain guidance on filing claims with the Internal Revenue Service (IRS).

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Alternative Fuel Tax Credit

The Alternative Fuel Tax Credit is generally available to any individual or entity that:

- (1) sells “alternative fuel” for use in a motor vehicle or motorboat within the United States, or
- (2) uses the “alternative fuel” for such a purpose in the United States.

For these purposes, the term “alternative fuel” includes liquefied petroleum gas, and therefore propane.

The amount of the credit is 50 cents per gasoline gallon equivalent of propane, which equates to approximately 37 cents per gallon of propane.

Under IRS guidance, whether the seller or the user of propane is eligible for the Alternative Fuel Tax Credit depends on the circumstances. If a seller sells the propane for specific use as fuel in a motor vehicle or motorboat, the seller (and not the user) is the person eligible to claim the credit. Businesses, tax-exempt entities and individuals that purchase propane in bulk to fuel their own motor vehicles (often by means of a privately-owned fueling station) may also claim the credit, provided that the propane was not previously sold for the specific use as fuel in a motor vehicle or motorboat. In either case, only one claim for the credit may be made per gallon of fuel.

The reason for this is that the Alternative Fuel Tax Credit is only available when the sale or use of the alternative fuel is subject to the quarterly fuel excise tax (Internal Revenue Code Title 26, Section 4041) or would be so subject, absent an exemption. Under Section 4041(a)(2) and subject to certain exceptions not relevant here, a person is liable for an excise tax on (1) the sale of any liquid (including liquified propane) sold for use as fuel in a motor vehicle or motor boat in the United States, or (2) the use of any liquid (including liquified propane) for such a purpose in the United States.

The rate of tax varies depending on the liquid; in the case of propane the tax rate is 18.3 cents per energy equivalent of a gallon of gasoline, or approximately 13.5 cents per gallon. Significantly, the tax on use does not apply in situations where the alternative fuel was previously subject to tax on sale: if propane is sold to a user in a sale subject to the Section 4041 fuel excise tax, the seller (and not the user) is the person that can claim the Alternative Fuel Tax Credit. Thus, where the Section 4041 fuel excise tax applies, qualifying individuals and entities are generally able to use the Alternative Fuel Tax Credit to fully offset their liability.

In some cases, a person eligible for the Alternative Fuel Tax Credit may claim the credit as either a direct cash payment from the U.S. Treasury Department or as a refundable income tax credit to the extent its allowable Alternative Fuel Tax Credit exceeds its Section 4041 fuel excise tax liability in a given quarter. Under the relevant statutes and IRS guidance, the following requirements apply:

- A person can only claim the Alternative Fuel Tax Credit as a cash payment or a refundable income tax credit if the qualifying sale or use occurred as part of the person's trade or business. Individuals with qualifying nonbusiness uses of their propane are limited to using the credit to offset their Section 4041(a) fuel excise tax liability.
- A person can only claim the Alternative Fuel Tax Credit as a cash payment or a refundable income tax credit to the extent the credit exceeds its Section 4041 fuel excise tax liability for a given quarter. Any Alternative Fuel Tax Credit to which a person is entitled that does not exceed a person's quarterly Section 4041 fuel excise tax liability must first be used as a credit against that tax.
- Only tax-exempt entities and governmental entities can claim the "excess credit" as a cash payment, others are limited to claiming the "excess credit" as a refundable income tax credit.

Qualifying vehicles

The IRS regulations provide guidance on what constitutes a "motor vehicle" for purposes of the Alternative Fuel Tax Credit. Under these rules, the term includes "all

types of vehicles propelled by motor that are designed for carrying or towing loads from one place to another, regardless of the type of load or material carried or towed and whether or not the vehicle is registered or required to be registered for highway use.” The regulation explicitly includes “forklift trucks” as an example, and excludes “farm tractors, trench diggers, power shovels, bulldozers, road graders or rollers, and similar equipment which does not carry or tow a load.”

Registration requirement

Under IRS guidance, an individual or entity must be registered as an “alternative fueler” in order to claim the Alternative Fuel Tax Credit. Claimants can register using IRS Form 637, *Application for Registration (For Certain Excise Tax Activities)* (registration code “AL”). Persons who are registered under another category should consult their tax advisor with respect to their registration requirements to ensure that they receive the credit.

Taxpayer-specific situations

Businesses

Where a taxable business produces and sells propane for use as fuel in a motor vehicle or motorboat, that sale will generally both be subject to the Section 4041 fuel excise tax and eligible for the Alternative Fuel Tax Credit. To the extent the amount of the Alternative Fuel Tax Credit exceeds the applicable tax in a given quarter, the business will be eligible to claim a refundable income tax credit. The business generally will not be eligible for the Alternative Fuel Tax Credit if it purchased (rather than produced) the propane in a transaction that was previously subject to the Section 4041 fuel excise tax.

Tax-exempt entities

Entities that are exempt from income tax that own their own fueling stations or take title to propane prior to delivery into the tank of a motor vehicle or motorboat (thus potentially subjecting them to the Section 4041 fuel excise tax, unless they are exempt) can claim the Alternative Fuel Tax Credit regardless of whether they use the propane in their own motor vehicles and motorboats or sell the propane to other customers. These entities can claim any Alternative Fuel Tax Credit that exceeds their Section 4041 fuel excise tax liability in a given quarter as a direct cash payment from the U.S. Treasury Department.

Individuals

Individuals who are subject to the Section 4041 fuel excise tax on their use of propane as fuel in a motor vehicle or motorboat are eligible to claim the Alternative Fuel Tax Credit to “zero out” that tax liability, but generally will not be able to claim any benefit for the portion of the credit that exceeds their tax liability (either in cash or in a refundable income tax credit) unless they use the propane in their trade or business, in which case they can claim the full credit (with the excess amount claimed as a refundable income tax credit). Note that if an individual acquired the propane in a sale that was previously

subject to the Section 4041 fuel excise tax, the individual generally will neither be subject to the tax on his or her subsequent use of the propane as fuel in a motor vehicle or motorboat nor be eligible to claim the Alternative Fuel Tax Credit.

Forms and Procedure

Generally, and on a prospective basis for 2020, qualifying individuals and entities claim the Alternative Fuel Tax Credit on Schedule C of a timely-filed IRS Form 720, *Quarterly Federal Excise Return*, to the extent of their Section 4041 fuel excise tax liability for the quarter at issue. The IRS is expected to update Schedule C of Form 720 soon to reflect the reinstatement of the credit. To the extent that a qualifying individual or entity's Alternative Fuel Tax Credit exceeds its Section 4041 fuel excise tax liability, Form 8849, *Claim for Refund of Excise Tax*, Schedule 3, is used to claim a cash payment or Form 4136, *Credit for Federal Tax Paid on Fuels*, is used to claim a refundable income tax credit, as appropriate. Forms 720 and 8849 are standalone filings, while taxpayers attach Form 4136 to their federal income tax return.

Notwithstanding the generally applicable rules of the previous paragraph, the IRS has issued "special" guidance relating to the retroactive extension of the Alternative Fuel Tax Credit to 2018 and 2019. Under Notice 2020-8, there is a 180-day window to submit all retroactive claims. This one-time opportunity begins on February 14, 2020 and runs through August 11, 2020. Qualifying individuals and entities should submit their retroactive claims for 2018 and 2019 on a single Form 8849 only (regardless of whether the amount of the Alternative Fuel Tax Credit earned in a given quarter exceeds the claimant's Section 4041 fuel excise tax liability for that quarter).

IRS Forms:

- [Form 8849, Claim for Refund of Excise Taxes](#)
 - [Schedule 3 \(Form 8839\)](#)
- [Form 637, Application for Registration \(For Certain Excise Tax Activities\)](#)
- [Form 720, Quarterly Federal Excise Tax Return](#)
- [Form 4136, Credit for Federal Tax Paid on Fuels](#)

IRS Guidance Documents:

- [Notice 2020-8, Biodiesel and Alternative Fuels; Claims for 2018-2019](#)
- [Notice 2006-92, Alternative Fuel and Alternative Fuel Mixtures](#)

Alternative Fuel Vehicle Refueling Property Credit

Section 30C of the Internal Revenue Code provides for a nonrefundable income tax credit equal to 30% of the cost of "qualified alternative fuel vehicle refueling property" the taxpayer places in service in the United States during a given year. "Qualified alternative fuel vehicle refueling property" includes property that is used for the storage

or dispensing of a “clean burning fuel” into the fuel tank of a motor vehicle propelled by such fuel, but only if such storage or dispensing is at the point where such fuel is delivered into the fuel tank of the vehicle. “Clean burning fuel” includes any fuel at least 85 percent of the volume of which consists of one or more of ethanol, natural gas, compressed natural gas, liquefied natural gas, liquified petroleum gas (including propane), or hydrogen.

Because the Alternative Fuel Vehicle Refueling Property Credit is an income tax credit, tax-exempt entities cannot benefit. However, a person that sells qualifying property to a tax-exempt entity may be eligible to claim the credit if certain criteria are met, including the disclosure to the tax-exempt entity of the amount of the credit allowable. The credit is capped annually at \$30,000 per location for business property and \$1,000 per location for non-business property, which generally must be installed at an individual’s principal residence.

Qualifying individuals and entities claim the credit on Form 8911, *Alternative Fuel Vehicle Refueling Property Credit*, which is attached to the individual or entity’s federal income tax return. The IRS is expected to update Form 8911 to reflect the retroactive extension of the credit. In the absence of IRS guidance to the contrary, individuals and entities entitled to the Alternative Fuel Vehicle Refueling Property Credit in 2018 and/or 2019 should file an amended federal income tax return (e.g., Form 1040X for individuals or Form 1120X for corporations) and claim the credit for each year by attaching Form 8911.

IRS Forms:

- [Form 8911, Alternative Fuel Vehicle Refueling Property Credit](#)

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