

XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-499, title V, § 516(b)(4)(C), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99-514, title VII, § 701(d)(2), Oct. 22, 1986, 100 Stat. 2342; Pub. L. 100-203, title X, § 10301(b)(4), Dec. 22, 1987, 101 Stat. 1330-429.)

#### AMENDMENTS

1987—Subsec. (c). Pub. L. 100-203 substituted “section 6655(h)” for “section 6655(g)”.

1986—Subsec. (c)(1)(A). Pub. L. 99-514 amended subpar. (A) generally, restating existing provisions as cl. (i) and adding cl. (ii).

Pub. L. 99-499 amended subsec. (c)(1)(A), as amended by the Tax Reform Act of 1986 (Pub. L. 99-514), by striking out “plus” at end of cl. (i), substituting “plus” for “over” at end of cl. (ii), and adding cl. (iii).

1976—Subsecs. (a), (b), (d). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100-203, set out as a note under section 585 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Amendment by Pub. L. 99-499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99-499, set out as a note under section 26 of this title.

#### EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90-364, set out as notes under sections 6154 and 51 of this title, see section 103(f) of Pub. L. 90-364, set out as an Effective Date of 1968 Amendment note under section 6154 of this title.

#### APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100-647, set out as a note under section 861 of this title.

### § 6426. Credit for alcohol fuel, biodiesel, and alternative fuel mixtures

#### (a) Allowance of credits

There shall be allowed as a credit—

(1) against the tax imposed by section 4081 an amount equal to the sum of the credits described in subsections (b), (c), and (e), and

(2) against the tax imposed by section 4041 an amount equal to the sum of the credits described in subsection (d).

No credit shall be allowed in the case of the credits described in subsections (d) and (e) unless the taxpayer is registered under section 4101.

#### (b) Alcohol fuel mixture credit

##### (1) In general

For purposes of this section, the alcohol fuel mixture credit is the product of the applicable amount and the number of gallons of alcohol

used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

#### (2) Applicable amount

For purposes of this subsection—

##### (A) In general

Except as provided in subparagraphs (B) and (C), the applicable amount is—

(i) in the case of calendar years beginning before 2009, 51 cents, and

(ii) in the case of calendar years beginning after 2008, 45 cents.<sup>1</sup>

##### (B) Mixtures not containing ethanol

In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

##### (C) Reduction delayed until annual production or importation of 7,500,000,000 gallons

In the case of any calendar year beginning after 2008, if the Secretary makes a determination described in section 40(h)(3)(B) with respect to all preceding calendar years beginning after 2007, subparagraph (A)(ii) shall be applied by substituting “51 cents” for “45 cents”.

#### (3) Alcohol fuel mixture

For purposes of this subsection, the term “alcohol fuel mixture” means a mixture of alcohol and a taxable fuel which—

(A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(B) is used as a fuel by the taxpayer producing such mixture.

For purposes of subparagraph (A), a mixture produced by any person at a refinery prior to a taxable event which includes ethyl tertiary butyl ether or other ethers produced from alcohol shall be treated as sold at the time of its removal from the refinery (and only at such time) to another person for use as a fuel.

#### (4) Other definitions

For purposes of this subsection—

##### (A) Alcohol

The term “alcohol” includes methanol and ethanol but does not include—

(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

##### (B) Taxable fuel

The term “taxable fuel” has the meaning given such term by section 4083(a)(1).

#### (5) Volume of alcohol

For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol

<sup>1</sup> So in original.

shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 2 percent of the volume of such alcohol (including denaturants).

**(6) Termination**

This subsection shall not apply to any sale, use, or removal for any period after December 31, 2011.

**(c) Biodiesel mixture credit**

**(1) In general**

For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer.

**(2) Applicable amount**

For purposes of this subsection, the applicable amount is \$1.00.

**(3) Biodiesel mixture**

For purposes of this section, the term “biodiesel mixture” means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

(A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(B) is used as a fuel by the taxpayer producing such mixture.

**(4) Certification for biodiesel**

No credit shall be allowed under this subsection unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agribiodiesel in the product.

**(5) Other definitions**

Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

**(6) Termination**

This subsection shall not apply to any sale, use, or removal for any period after December 31, 2011.

**(d) Alternative fuel credit**

**(1) In general**

For purposes of this section, the alternative fuel credit is the product of 50 cents and the number of gallons of an alternative fuel or gasoline gallon equivalents of a nonliquid alternative fuel sold by the taxpayer for use as a fuel in a motor vehicle or motorboat, sold by the taxpayer for use as a fuel in aviation, or so used by the taxpayer.

**(2) Alternative fuel**

For purposes of this section, the term “alternative fuel” means—

(A) liquefied petroleum gas,

(B) P Series Fuels (as defined by the Secretary of Energy under section 13211(2) of title 42, United States Code),

(C) compressed or liquefied natural gas,

(D) liquefied hydrogen,

(E) any liquid fuel which meets the requirements of paragraph (4) and which is derived from coal (including peat) through the Fischer-Tropsch process,

(F) compressed or liquefied gas derived from biomass (as defined in section 45K(c)(3)), and

(G) liquid fuel derived from biomass (as defined in section 45K(c)(3)).

Such term does not include ethanol, methanol, biodiesel, or any fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp.

**(3) Gasoline gallon equivalent**

For purposes of this subsection, the term “gasoline gallon equivalent” means, with respect to any nonliquid alternative fuel, the amount of such fuel having a Btu content of 124,800 (higher heating value).

**(4) Carbon capture requirement**

**(A) In general**

The requirements of this paragraph are met if the fuel is certified, under such procedures as required by the Secretary, as having been derived from coal produced at a gasification facility which separates and sequesters not less than the applicable percentage of such facility’s total carbon dioxide emissions.

**(B) Applicable percentage**

For purposes of subparagraph (A), the applicable percentage is—

(i) 50 percent in the case of fuel produced after September 30, 2009, and on or before December 30, 2009, and

(ii) 75 percent in the case of fuel produced after December 30, 2009.

**(5) Termination**

This subsection shall not apply to any sale or use for any period after December 31, 2011 (September 30, 2014, in the case of any sale or use involving liquefied hydrogen).

**(e) Alternative fuel mixture credit**

**(1) In general**

For purposes of this section, the alternative fuel mixture credit is the product of 50 cents and the number of gallons of alternative fuel used by the taxpayer in producing any alternative fuel mixture for sale or use in a trade or business of the taxpayer.

**(2) Alternative fuel mixture**

For purposes of this section, the term “alternative fuel mixture” means a mixture of alternative fuel and taxable fuel (as defined in subparagraph (A), (B), or (C) of section 4083(a)(1)) which—

(A) is sold by the taxpayer producing such mixture to any person for use as fuel, or

(B) is used as a fuel by the taxpayer producing such mixture.

**(3) Termination**

This subsection shall not apply to any sale or use for any period after December 31, 2011

(September 30, 2014, in the case of any sale or use involving liquefied hydrogen).

**(f) Mixture not used as a fuel, etc.**

**(1) Imposition of tax**

If—

(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or biodiesel mixture, respectively, and

(B) any person—

(i) separates the alcohol or biodiesel from the mixture, or

(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

**(2) Applicable laws**

All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.

**(g) Coordination with exemption from excise tax**

Rules similar to the rules under section 40(c) shall apply for purposes of this section.

**(h) Denial of double benefit**

No credit shall be determined under subsection (d) or (e) with respect to any fuel with respect to which credit may be determined under subsection (b) or (c) or under section 40 or 40A.

**(i) Limitation to fuels with connection to the United States**

**(1) Alcohol**

No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States.

**(2) Biodiesel and alternative fuels**

No credit shall be determined under this section with respect to any biodiesel or alternative fuel which is produced outside the United States for use as a fuel outside the United States.

For purposes of this subsection, the term “United States” includes any possession of the United States.

(Added Pub. L. 108-357, title III, §301(a), Oct. 22, 2004, 118 Stat. 1459; amended Pub. L. 109-58, title XIII, §1344(a), Aug. 8, 2005, 119 Stat. 1052; Pub. L. 109-59, title XI, §§11113(b)(1)–(3)(A), 11151(e)(2), Aug. 10, 2005, 119 Stat. 1947, 1948, 1969; Pub. L. 110-172, §5(a)(2), (3), Dec. 29, 2007, 121 Stat. 2479; Pub. L. 110-234, title XV, §§15331(b), 15332(b), May 22, 2008, 122 Stat. 1516; Pub. L. 110-246, §4(a), title XV, §§15331(b), 15332(b), June 18, 2008, 122 Stat. 1664, 2278; Pub. L. 110-343, div. B, title II, §§202(a), (b)(2), 203(c)(1), 204(a)(1), (2), (b), (c), Oct. 3, 2008, 122 Stat. 3832, 3834; Pub. L. 111-312, title VII, §§701(b)(1), 704(a), (b), 708(b)(1), Dec. 17, 2010, 124 Stat. 3310-3312.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 6426, added Pub. L. 91-258, title II, §206(c), May 21, 1970, 84 Stat. 245; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, provided for a refund of aircraft use tax where plane transports for hire in foreign air commerce, prior to repeal by Pub. L. 97-248, title II, §280(c)(2)(G), (d), Sept. 3, 1982, 96 Stat. 564, 565, applicable with respect to transportation beginning after Aug. 31, 1982.

AMENDMENTS

2010—Subsec. (b)(6). Pub. L. 111-312, §708(b)(1), substituted “December 31, 2011” for “December 31, 2010”.

Subsec. (c)(6). Pub. L. 111-312, §701(b)(1), substituted “December 31, 2011” for “December 31, 2009”.

Subsec. (d)(2). Pub. L. 111-312, §704(b), substituted “biodiesel, or any fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp” for “or biodiesel” in concluding provisions.

Subsec. (d)(5). Pub. L. 111-312, §704(a), substituted “December 31, 2011” for “December 31, 2009”.

Subsec. (e)(3). Pub. L. 111-312, §704(a), substituted “December 31, 2011” for “December 31, 2009”.

2008—Subsec. (b)(2)(A). Pub. L. 110-246, §15331(b)(3), substituted “subparagraphs (B) and (C)” for “subparagraph (B)” in introductory provisions.

Pub. L. 110-246, §15331(b)(1), substituted “the applicable amount is—” for “the applicable amount is 51 cents” and added cls. (i) and (ii).

Subsec. (b)(2)(C). Pub. L. 110-246, §15331(b)(2), added subpar. (C).

Subsec. (b)(5), (6). Pub. L. 110-246, §15332(b), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(2). Pub. L. 110-343, §202(b)(2), amended par. (2) generally. Prior to amendment, text read as follows: “For purposes of this subsection—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

“(B) AMOUNT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, the applicable amount is \$1.00.”

Subsec. (c)(6). Pub. L. 110-343, §202(a), substituted “December 31, 2009” for “December 31, 2008”.

Subsec. (d)(1). Pub. L. 110-343, §204(b)(2), inserted “sold by the taxpayer for use as a fuel in aviation,” after “motorboat.”

Subsec. (d)(2)(E). Pub. L. 110-343, §204(c)(2), inserted “which meets the requirements of paragraph (4) and which is” after “any liquid fuel”.

Subsec. (d)(2)(F), (G). Pub. L. 110-343, §204(b)(1), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (d)(4). Pub. L. 110-343, §204(c)(1), added par. (4). Former par. (4) redesignated (5).

Pub. L. 110-343, §204(a)(1), substituted “December 31, 2009” for “September 30, 2009”.

Subsec. (d)(5). Pub. L. 110-343, §204(c)(1), redesignated par. (4) as (5).

Subsec. (e)(3). Pub. L. 110-343, §204(a)(2), substituted “December 31, 2009” for “September 30, 2009”.

Subsec. (i). Pub. L. 110-343, §203(c)(1), added subsec. (i).

2007—Subsec. (d)(2)(F). Pub. L. 110-172, §5(a)(2), substituted “fuel” for “hydrocarbons”.

Subsec. (h). Pub. L. 110-172, §5(a)(3), added subsec. (h). 2005—Pub. L. 109-59, §11113(b)(3)(A), substituted “alcohol fuel, biodiesel, and alternative fuel” for “alcohol fuel and biodiesel” in section catchline.

Subsec. (a). Pub. L. 109-59, §11113(b)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

“(1) the alcohol fuel mixture credit, plus  
“(2) the biodiesel mixture credit.”

Subsec. (c)(6). Pub. L. 109-58 substituted “2008” for “2006”.

Subsec. (d). Pub. L. 109-59, §11113(b)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (d)(2)(F). Pub. L. 109-59, §11151(e)(2), substituted “section 45K(c)(3)” for “section 29(c)(3)”.

Subsecs. (e) to (g). Pub. L. 109-59, §11113(b)(2), added subsec. (e) and redesignated former subsecs. (d) and (e) as (f) and (g), respectively.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 701(b)(1) of Pub. L. 111-312 applicable to fuel sold or used after Dec. 31, 2009, see section 701(d) of Pub. L. 111-312, set out as a note under section 40A of this title.

Pub. L. 111-312, title VII, §704(d), Dec. 17, 2010, 124 Stat. 3311, provided that: “The amendments made by this section [amending this section and section 6427 of this title] shall apply to fuel sold or used after December 31, 2009.”

Pub. L. 111-312, title VII, §708(b)(2), Dec. 17, 2010, 124 Stat. 3312, provided that: “The amendment made by this subsection [amending this section] shall apply to periods after December 31, 2010.”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 202(a), (b)(2) of Pub. L. 110-343 applicable to fuel produced, and sold or used, after Dec. 31, 2008, see section 202(g)(1) of Pub. L. 110-343, set out as a note under section 40A of this title.

Amendment by section 203(c)(1) of Pub. L. 110-343 applicable to claims for credit or payment made on or after May 15, 2008, see section 203(d) of Pub. L. 110-343, set out as a note under section 40 of this title.

Pub. L. 110-343, div. B, title II, §204(d), Oct. 3, 2008, 122 Stat. 3835, provided that: “The amendments made by this section [amending this section and section 6427 of this title] shall apply to fuel sold or used after the date of the enactment of this Act [Oct. 3, 2008].”

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15331(b) of Pub. L. 110-246 effective June 18, 2008, see section 15331(c) of Pub. L. 110-246, set out as a note under section 40 of this title.

Amendment by section 15332(b) of Pub. L. 110-246 applicable to fuel sold or used after Dec. 31, 2008, see section 15332(c) of Pub. L. 110-246, set out as a note under section 40 of this title.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-172, §5(b), Dec. 29, 2007, 121 Stat. 2479, provided that: “The amendments made by this section [amending this section and section 6427 of this title] shall take effect as if included in the provisions of the SAFETEA-LU [Pub. L. 109-59] to which they relate.”

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 11113(b)(1)–(3)(A) of Pub. L. 109-59 applicable to any sale or use for any period after Sept. 30, 2006, see section 11113(d) of Pub. L. 109-59, set out as a note under section 4041 of this title.

Amendment by section 11151(e)(2) of Pub. L. 109-59 effective as if included in the provision of the Energy Tax Incentives Act of 2005, Pub. L. 109-58, title XIII, to which such amendment relates, see section 11151(f)(3) of Pub. L. 109-59, set out as a note under section 38 of this title.

#### EFFECTIVE DATE

Section applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendment note under section 40 of this title.

#### SPECIAL RULES FOR 2010

Pub. L. 111-312, title VII, §701(c), Dec. 17, 2010, 124 Stat. 3310, provided that: “Notwithstanding any other provision of law, in the case of any biodiesel mixture credit properly determined under section 6426(c) of the Internal Revenue Code of 1986 for periods during 2010, such credit shall be allowed, and any refund or payment attributable to such credit (including any payment under section 6427(e) of such Code) shall be made, only in such manner as the Secretary of the Treasury (or the Secretary’s delegate) shall provide. Such Secretary shall issue guidance within 30 days after the date of the enactment of this Act [Dec. 17, 2010] providing for a one-time submission of claims covering periods during 2010. Such guidance shall provide for a 180-day period for the submission of such claims (in such manner as prescribed by such Secretary) to begin not later than 30 days after such guidance is issued. Such claims shall be paid by such Secretary not later than 60 days after receipt. If such Secretary has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621 of such Code.”

Pub. L. 111-312, title VII, §704(c), Dec. 17, 2010, 124 Stat. 3311, provided that: “Notwithstanding any other provision of law, in the case of any alternative fuel credit or any alternative fuel mixture credit properly determined under subsection (d) or (e) of section 6426 of the Internal Revenue Code of 1986 for periods during 2010, such credit shall be allowed, and any refund or payment attributable to such credit (including any payment under section 6427(e) of such Code) shall be made, only in such manner as the Secretary of the Treasury (or the Secretary’s delegate) shall provide. Such Secretary shall issue guidance within 30 days after the date of the enactment of this Act [Dec. 17, 2010] providing for a one-time submission of claims covering periods during 2010. Such guidance shall provide for a 180-day period for the submission of such claims (in such manner as prescribed by such Secretary) to begin not later than 30 days after such guidance is issued. Such claims shall be paid by such Secretary not later than 60 days after receipt. If such Secretary has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621 of such Code.”

### § 6427. Fuels not used for taxable purposes

#### (a) Nontaxable uses

Except as provided in subsection (k), if tax has been imposed under paragraph (2) or (3) of section 4041(a) or section 4041(c) on the sale of any fuel and the purchaser uses such fuel other than for the use for which sold, or resells such fuel, the Secretary shall pay (without interest) to him an amount equal to—

(1) the amount of tax imposed on the sale of the fuel to him, reduced by

(2) if he uses the fuel, the amount of tax which would have been imposed under section 4041 on such use if no tax under section 4041 had been imposed on the sale of the fuel.

#### (b) Intercity, local, or school buses

##### (1) Allowance

Except as otherwise provided in this subsection and subsection (k), if any fuel other than gasoline (as defined in section 4083(a)) on the sale of which tax was imposed by section 4041(a) or 4081 is used in an automobile bus while engaged in—