

## Update on the Mixture Credit Exclusion from Income

### **Sunoco, Inc. Files Appeal from Court of Federal Claims Decision Denying the Claim for a Refund of Federal Income Taxes Paid on the Alcohol Fuel Mixture Credit Under 26 U.S.C. § 6426(b)**

Following the November 22, 2016 decision by the Court of Federal Claims in *Sunoco, Inc. v. The United States* (No. 15-587T), to deny Sunoco's claim for a refund of federal income taxes paid on the alcohol fuel mixture credit claimed pursuant to 26 U.S.C. § 6426(b), Sunoco on March 23, 2017 filed an appeal to the U.S. Court of Appeals for the Federal Circuit. Under the rules of Court, the case will be reviewed *de novo*, meaning that Sunoco – and the government - will have another chance to present evidence and arguments in support of its position that the credit is an incentive that has no impact on the amount of excise tax liability a taxpayer owes under § 4081 and that such liability is fully deductible from gross income.

The crux of Sunoco's petition is that the Court of Federal Claims created a "legislative sham" doctrine and decided as it did based on its own speculative policy assessment of what it thought should be the correct result and in so doing overstepped its authority by disregarding statutory texts, settled rules of interpretation, preexisting law and the choices made by Congress. Had the Court of Federal Claims followed the long-standing position that Congress says what it means and means what it says, Sunoco argues, the outcome would have been different.

The 88-page petition includes a detailed explanation of legislative intent in enacting the mixture credit and removing the reduced tax rates in the Jobs Act. Among the issues addressed is the intent of Congress to increase funding to the Highway Trust Fund by imposing the full rate of excise tax on all alcohol blends and allowing a credit for blending alcohol with gasoline that would not reduce the amount of the taxpayer's excise tax liability but is to be used to satisfy the taxpayer's payment to the IRS. The Petition states that allowing a taxpayer to pay a portion of his excise tax liability by offsetting that liability with credits owed is not an unusual scheme as Congress often requires a taxpayer to satisfy any debt owed to the government before receiving any amounts that would be owed by the government; this practice, it is argued is more efficient than the government sending a check to the taxpayer in the amount of the credit and the taxpayer then sending that same amount back to the government to pay the taxes.

The Petition goes on to say that allowing a taxpayer to use the credit to satisfy the debt of the taxes owed is very different from reducing the amount of the tax liability itself and when Congress passed the Jobs Act it stated that "the taxes received in the Treasury...under...section 4081...shall be determined without reduction for credits under section 6426." If the tax is received without reduction for credits under section 6426, the Petition states, that means the Treasury receives the full tax rate and the only way that this can happen is if the taxpayer has paid the full tax rate. Congress did not, as the Court of Claims suggests, create a legal fiction whereby it stated that the full amount of taxes would be collected but in actuality the tax liability is reduced by the credit; this conclusion is the complete opposite of what Congress intended to – and did – achieve by amending the tax and credit structure.

The government must now respond to the Petition after which the case will proceed through the court. In addition to this case, there are currently three other cases pending on this matter, two in U.S. Tax Court and one in Federal District Court in Texas.

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Oscar L. Garza & Associates, P.C. is a Houston-based boutique law firm specializing in transactional tax and trade matters surrounding all aspects of the oil and petroleum industry. With over 20 years of experience counseling clients operating in all aspects of the oil and petroleum sector our lawyers have an in-depth knowledge of the industry, enabling us to provide quality service and creative solutions to our clients. Please visit our website at [www.olgarza.com](http://www.olgarza.com). For more information please contact:

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