

District Court Denies Alternative Fuel Credit to Taxpayer Incorrectly Issued Alternative Fueler Registration

Earlier this year, the U.S. District Court for the Middle District of Florida determined that the IRS which a revoked a taxpayer's "AL," Alternative Fueler registration, mistakenly issuing it was permitted to assess and collect tax credits that had been paid to the taxpayer pursuant to that registration. The case, *Affordable Bio Feedstock, Inc. v. U.S.*, 128 AFTR 2d 2021-XXXX (DC FL), 03/29/2021, concerned Plaintiff Affordable Bio Feedstock, Inc.'s ("AFB") alternative fuel business. The issue in the case was not whether the taxpayer qualified for the tax credits but whether the IRS, after having mistakenly issued a registration could assess and collect refunds of the credits.

AFB purchased oil and food waste from restaurants and processed it for use as an alternative fuel. AFB sold the processed fuel to Florida Biodiesel who resold it to Green Energy Group. In 2013, AFB applied for, and was issued, an "AL" Alternative Fueler registration on IRS Form 637. On the basis of this registration, AFB claimed the alternative fuel credit (this credit is available to the alternative fueler who sells alternative fuel at retail to an end-user for use as a fuel in a motor vehicle, boat or aviation). In October 2016, the IRS initiated an audit of AFB's alternative fuel credits. In January 2018, the IRS revoked the "AL" registration with immediate effect and in September 2018 the IRS assessed the amount of the paid credits plus penalties and interest. After unsuccessfully appealing the assessment at the administrative level, AFB paid a portion of the assessment under protest and filed suit seeking a refund.

In granting summary judgment for the government, the Court relied on the Appropriations Clause of the U.S. Constitution and found, in part, that "a valid registration does not shield a claimant from an assessment, and although the IRS cannot retroactively *revoke* a registration, it can *collect* overpaid sums from claimants to correct the injury done to the Treasury. Any other interpretation gives the regulation precedence over the statute, which is clearly impermissible." The Court pointed out that a registration letter is not the same as a determination letter and that the existence of a registration letter does not, on its own, allow the taxpayer to claim credits. The Court used an analogy of a registrant miscalculating their claim amount; in that case the IRS would be allowed to assess and collect the overpaid amount. So too, in this case, the Court determined that the IRS could assess and collect the overpaid amount, no matter that issuing the registration was its mistake in the first place.

This case serves as a reminder that the IRS is imperfect. The granting of a registration letter for an activity on Form 637 does not guarantee the taxpayer any related benefits that may be connected to that activity such as excise tax credits. The case also shows that where the IRS issues a registration by mistake and the taxpayer relies on that action, such reliance may not be deemed reasonable and may not preclude a subsequent tax assessment.