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Deloitte Tax LLP | February 8, 2024

MULTISTATE TAX

IRS releases additional guidance for sustainable aviation fuel credit

Tax Alert

Overview

The IRS released Notice 2024-6 (the "Notice") on December 15, 2023, providing additional guidance regarding the sustainable aviation fuel ("SAF") credits under Internal Revenue Code ("IRC") sections 40B and 6426(k). The guidance provides additional safe harbors for calculating the lifecycle greenhouse gas ("GHG") emissions reduction percentage for the SAF credits and for certifying the related sustainability requirements. Furthermore, the Notice updates the Model Certificate for SAF Synthetic Blending Component, which is required to make a claim for the SAF credits under IRC section 34(a)(3), 40B, 6426(k), or 6427(e)(1). Additionally, the Notice announces that a modified version of the Argonne National Laboratory's Greenhouse gases, Regulated Emissions, and Energy use in Transportation ("GREET") model, which will satisfy the lifecycle GHG emissions reduction percentage requirements in section 40B, is being developed.

IRC sections 40B and 6426(k)

The Inflation Reduction Act of 2022 added IRC sections 40B and 6426(k), which provide a credit for producing a qualified SAF mixture. The SAF used in the qualified mixture must be certified to have a lifecycle GHG emissions reduction percentage of at least 50 percent. The lifecycle GHG emissions reduction percentage is defined to mean, with respect to any SAF, the percentage reduction in lifecycle GHG emissions achieved by such SAF, as compared with petroleum-based jet fuel, as defined under either the most recent Carbon Offsetting and Reduction Scheme for International Aviation ("CORSIA"), or any similar methodology that satisfies certain criteria under the Clean Air Act.

The SAF credit is equal to (1) the number of gallons of SAF in a qualified SAF mixture, multiplied by (2) the sum of $1.25 plus the "applicable supplementary amount" with respect to such SAF. The applicable supplementary amount increases the $1.25 base credit amount by $0.01 for each percentage point by which the lifecycle GHG emissions reduction percentage of the SAF exceeds 50 percent, up to $0.50. Therefore, the highest potential credit for a SAF qualified mixture is $1.75 per gallon.

A SAF producer or importer must also submit with its claim a certificate that shows compliance with any general requirements, supply chain traceability requirements, and information transmission requirements under the CORSIA, or any similar methodology as provided under the Clean Air Act. SAF producers or importers are required to provide such other information with respect to such fuel as the Secretary may require for purposes of carrying out section 40B.

New safe harbors for lifecycle GHG emissions reduction percentages

The Notice provides new safe harbor lifecycle GHG emissions reduction percentages that are based on the EPA's Renewable Fuel Standard ("RFS") program determinations. Specifically, with respect to a SAF qualified mixture produced under ASTM standard D7566, the IRS will accept an emissions reduction percentage of the SAF synthetic blending component for a jet fuel that qualifies as renewable fuel under the RFS program. A SAF synthetic blending component that has generated biomass-based diesel or advanced biofuel Renewable Identification Numbers ("RINs") under the RFS program that have been validated under a quality assurance plan ("QAP") will be assigned a 50-percent emissions reduction percentage; cellulosic biofuel or cellulosic diesel RINs under the RFS program that have been validated under a QAP will be assigned a 60-percent emissions reduction percentage.

The IRS will also accept the emissions reduction percentage for a SAF synthetic blending component for a jet fuel that generated a D-code 3, 4, 5, or 7 RIN and that has been validated under a QAP pursuant to the EPA's facility-specific determinations for renewable jet fuel pathways under the RFS program.

The EPA has published specific lifecycle analysis point estimates, or a range of estimates, for some fuel pathways under the RFS program, but the IRS will not accept those point estimates to calculate emissions reduction percentages beyond the 50- or 60-percent safe harbor percentages mentioned above.

Unrelated party certification of sustainability requirements

A SAF producer or importer must provide a certification from an unrelated party demonstrating compliance with all sustainability requirements. The Notice provides that under the new RFS safe harbor, the IRS will consider the certification of sustainability requirements to be met if the SAF synthetic blending component has generated a Q-RIN (a RIN verified by a registered independent third-party auditor using a QAP that has met certain criteria) with an eligible D-code 3,4,5, or 7 RIN. The valid Q-RIN(s) must be included on the Certificate for SAF Synthetic Blending Component, a Model Certificate of which is required under the Notice and IRS Notice 2023-6 for the particular volume of fuel to which the certificate relates.

New model certificate for SAF synthetic blending component

The Notice provides a new Model Certificate for SAF Synthetic Blending Component that replaces the model certificate in Appendix B of IRS Notice 2023-6. The new model certificate adds information related to the new RFS safe harbor and should be used for claims filed after December 15, 2023.

Forthcoming SAF-specific GREET model

IRC section 40B(e)(2) allows for the lifecycle GHG emissions reduction percentage to be determined with a methodology that is "similar" to CORSIA and that satisfies the criteria under section 211(o)(1)(H) of the Clean Air Act. The EPA has determined that existing GREET-based models do not satisfy that criteria, and the only current methodology that satisfies the relevant criteria is the EPA's methodology, modeling, and analysis created in 2010 for the RFS program.

However, the DOE and other federal agencies are collaborating to make an IRC section 40B(e)(2) GREET model which will be available in early 2024. Taxpayers will be able to use this new IRC section 40B(e)(2) GREET model to calculate the lifecycle GHG emissions reduction percentage for SAF sold or used after December 31, 2022, and before January 1, 2025.

Observations

Companies currently producing SAF or with plans to produce SAF should review the Notice to understand the following:

- How to compute the lifecycle GHG emissions reduction percentages under the new RFS safe harbor;
- What sustainability certification is required under the new RFS safe harbor;
- Watch for future guidance related to an IRC section 40B(e)(2)-specific GREET model.

The forthcoming IRC section 40B(e)(2)-specific GREET model may be relevant for the IRC section 45Z clean fuel production credit, since IRC section 45Z(b)(1)(B)(iii)(II) has similar language to IRC section 40B(e)(2), regarding determining lifecycle GHG emissions of SAF in accordance with a methodology that is similar to the CORSIA and that satisfies the criteria under section 211(o)(1)(H) of the Clean Air Act. The IRC section 45Z clean fuel production credit will replace the SAF credits under IRC sections 40B and 6426(k) for transportation fuel produced after December 31, 2024.

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