

IRS Guidance for the Alternative Fuel Vehicle Refueling Property Credit

On May 2, 2007 the Internal Revenue Service (IRS) issued interim guidance with regard to the tax credit for alternative fuel vehicle refueling property.

Background

In 2005 Congress passed, and the President signed, the Energy Policy Act (Public Law 109-58). Contained in that legislation was the alternative fuel vehicle refueling property credit, otherwise known as the infrastructure credit. Propane is among the alternative fuels whose infrastructure is eligible for the credit. This credit can be applied to infrastructure placed in service after December 31, 2005 and before January 1, 2010.

IRS Notice 2007-43 and Details Regarding the Credit

While the IRS had issued the appropriate 2006 tax form (Form 8911) and instructions for this new credit, it had been anticipated that the IRS might provide further guidance on the subject. Notice 2007-43 represents that guidance although it is possible that further guidance may be issued depending upon what issues may arise related to Form 8911 and Notice 2007-43.

Frankly, the guidance does not provide much new information because the type of property that is eligible for this credit is the same type of property that was eligible for the special clean fuel vehicle refueling property expensing provision under Section 179A of the tax code (Section 179A has now expired). In a nutshell, alternative fuel vehicle refueling property constitutes property for the storage or dispensing of a clean burning vehicle fuel such as propane, but only if the storage or dispensing of the fuel is at the point where such fuel is delivered in the fuel tank of the motor vehicle. Under the provision, qualifying fuels are defined as any fuel with at least 85% volume consisting of ethanol, natural gas, CNG, LNG, LPG, and hydrogen and any mixture of diesel fuel and biodiesel containing at least 20% biodiesel. Motor vehicle is defined as one which is primarily used on “public roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.”

The provision permits taxpayers to claim a 30% credit for the cost of installing this infrastructure to be used in a trade or business of the taxpayer or installed at the principal residence of the taxpayer. In the case of retail property, the credit may not exceed \$30,000 for each property placed in service and in the case of residential property the credit may not exceed \$1,000. IRS Form 8911 and the instructions thereto explain how to file for the credit and how the credit interacts with the expensing and deductibility of that same property.

The guidance appears to indicate that the \$30,000 credit can be taken “per property” meaning one business could take up to a \$30,000 credit for Fueling Station A and also take up to a \$30,000 credit for Fueling Station B in a different location. What is not yet

clear is whether one business that has more than one piece of qualifying equipment at the same location could take up to \$30,000 per piece of equipment. In other words, if a business had three qualifying pieces of equipment at one location could they take a credit for each piece of equipment, meaning in this example that they could take up to \$90,000 in credits at the same location? We have asked the IRS for clarification on this matter but have yet to receive guidance.

As usual we must advise you of the following disclaimer -- this discussion is for information purposes and is not intended, and cannot be relied upon, as tax advice. We urge interested parties to consult their own tax advisers for further information regarding this credit. IRS Form 8911 may be viewed and downloaded by going to www.irs.gov/formspubs/index.html .

IRS Contact Information

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