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Update on the Mixture Credit Exclusion from Income

United States District Court for the Northern District of Texas Gives Deference to the Court of Federal Claims: Denies Request for Refund and Agrees with the Government that the Credit under § 6426 Constitutes a Reduction in Excise Tax Liability

In a decision filed on August 8, 2018, the United States District Court for the Northern District of Texas in *ExxonMobil Corporation v. The United States* (Civil Action No. 3:16-CV-2921-N), granted the government's cross-motion for summary judgment and denied ExxonMobil'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). In a brief three (3) page decision, the Court gave deference to the decision of the Federal Court of Claims in *Sunoco, Inc. v. United States*, 127 Fed. Cl. 322 (2016) saying that *"Exxon's cost of goods sold must include only its fuel excise tax liability actually paid after subtracting the Mixture Credit."* The Sunoco decision had held that the mixture credit is a reduction in excise tax liability and nothing more.

The arguments presented by the taxpayers in both decided cases have been simple and demonstrate a logical reading of the Code: the excise tax on the full gallon of fuel is paid by the taxpayer when the fuel is removed from the terminal and is then charged to the customer at the "rack" of the terminal. The customer, usually a fuel distributor or retailer, will pass the tax on to the ultimate consumer in the price at the pump. When the consumer uses the fuel in an exempt manner, the IRS refunds the FULL amount of the tax to the consumer, not reduced by any credit. The credit on the other hand is earned by the blender (the taxpayers in these cases) who use that credit to satisfy the tax payment owed on each gallon of fuel that was removed at the rack. The credit and the tax are completely unrelated.

While it is disappointing that the District Court did not have the courage to depart from the Court of Claims and recognize that the federal excise tax is paid in full by the taxpayer and therefore the Mixture Credit is not and cannot be a reduction in excise tax liability, it is not all that surprising. The Court of Claims acknowledged that the argument presented by the taxpayer was plausible but found a way to find in favor of the government having been made aware of the large dollar amounts involved. It is interesting to note that prior to the Federal Court of Claim hearing in November 2016, ExxonMobil filed their petition justifying the "large dollar amount" comment by the Court. By simply giving deference to the Court of Claims, the Northern District of Texas did not have to reach its own conclusions or provide its own reasoning for denying ExxonMobil's motion for summary judgment and granting the government's cross-motion for summary judgment. Moreover, by granting the government's motion, the Northern District of Texas does not "risk" a jury

understanding the workings of the Code and finding for ExxonMobil, leaving a split among the Court systems.

Additionally, the District Court punts the decision making to the Appeals level; the Court of Appeals for the Federal Circuit is expected to issue a decision any day now on the Sunoco appeal from the decision of the Court of Claims.

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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. For more information please contact:

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