

Superfund; Initial List of Taxable Substances; Registration; Procedural Rules; Request for Comments; Suspension of Notice 89-61

Notice 2021-66

## **SECTION 1. PURPOSE**

This notice relates to section 80201 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, 135 Stat. 429 (November 15, 2021), which reinstates, effective July 1, 2022, the excise taxes imposed on certain chemical substances by sections 4661 and 4671 of the Internal Revenue Code (Code) (collectively, Superfund chemical taxes) and modifies the applicable rates of tax and other provisions related to those taxes. (Unless otherwise stated, all section references in this notice are to the Code.)

Pursuant to section 80201(c)(3) of the IIJA, this notice provides the initial list of taxable substances under section 4672(a) required to be published by the Secretary of the Treasury or her delegate (Secretary) no later than January 1, 2022. This notice also addresses the registration requirements imposed by section 4662(b)(10)(C) and (c)(2)(B) to exempt certain sales and uses of taxable chemicals from tax, and provides the procedural rules that apply to taxpayers subject to the reinstated Superfund chemical taxes. In addition, pending further guidance, this notice suspends Notice 89-61, 1989-1 C.B. 717, as modified by Notice 95-39, 1995-1 C.B. 312, which prescribed the former process for certain persons to request that certain substances be added to or removed from the list of taxable substances under section 4672(a)(3) as previously in effect. Finally, this notice requests comments on whether any issues related to the reinstated Superfund chemical taxes require clarification or additional guidance.

## **SECTION 2. BACKGROUND**

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510, 94 Stat. 2767 (1980), informally referred to as “Superfund,” was enacted, in part, to create a hazardous substance cleanup program. Section 221 of CERCLA established the “Hazardous Substance Response Trust Fund,” which was funded, in part, by the section 4661(a) tax on sales of taxable chemicals (enacted by section 211 of CERCLA) and the section 4671(a) tax on sales or uses of imported taxable substances that use one or more taxable chemicals in their manufacture or production (enacted by section 515 of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613 (1986)). The Superfund chemical taxes as previously in effect expired on December 31, 1995.

Effective July 1, 2022, section 80201 of the IIJA reinstates the Superfund chemical taxes with several modifications, including to the applicable rates of tax. In addition, section 80201(c)(1) of the IIJA modifies the method under section 4672(a)(2)(B) for determining whether a substance is a taxable substance by lowering the required percentage of taxable chemicals used to produce the substance from 50 percent to 20 percent of the weight (or the value) of the materials used to produce such substance.

## **SECTION 3. LAW**

Section 4661(a) imposes a tax on any taxable chemical sold by the manufacturer, producer, or importer.

Section 4661(b) provides a list of taxable chemicals and the amount of tax imposed by section 4661(a) on those chemicals.

Section 4662 provides definitions and special rules applicable to the section 4661(a) tax.

Section 4662(b)(10)(C) and (c)(2)(B) requires parties to sales of certain intermediate hydrocarbon streams and inventory exchanges to be registered by the IRS in order to qualify for the exceptions in section 4662(b)(10)(A) and (c)(2)(A).

Section 4671(a) imposes a tax on any taxable substance sold or used by the importer.

Section 4671(b) provides that the amount of tax imposed by section 4671(a) with respect to any taxable substance is equal to the amount of tax that would have been imposed by section 4661 on the taxable chemicals used as materials in the manufacture of the taxable substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of the taxable substance.

Section 4672 provides definitions and special rules applicable to the section 4671(a) tax.

Section 4672(a)(1) generally provides that the term “taxable substance” means any substance which, at the time of sale or use by the importer, is listed as a taxable substance. Section 4672(a)(3) provides a list of taxable substances.

Section 4672(a)(2), as modified by section 80201(c)(1) of the IIJA, generally provides that a substance shall be listed under section 4672(a)(1) if (A) the substance is contained in the list in section 4672(a)(3), or (B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of U.S. Customs and Border Protection, that taxable chemicals constitute more than 20 percent of the weight (or more than 20 percent of the value) of the

materials used to produce such substance (determined on the basis of the predominant method of production). Section 4672(a)(2) further provides that an importer or exporter of any substance may request a determination on whether that substance should be added to or removed from the list of taxable substances.

Notice 89-61 provides rules for filing a petition to request a modification of the list of taxable substances under section 4672(a).

#### **SECTION 4. INITIAL LIST OF TAXABLE SUBSTANCES UNDER SECTION 4672(a)**

Section 80201(c)(2) of the IIJA creates a presumption that any substance that was determined to be a taxable substance under section 4672(a)(2) prior to November 15, 2021 (the date of enactment of the IIJA), continues to be treated as a taxable substance for purposes of section 4672(a)(2). As noted above, section 80201(c)(3) of the IIJA requires the Secretary to publish an initial list of taxable substances under section 4672(a) by January 1, 2022.

Based on the presumption in section 80201(c)(2) of the IIJA and other considerations, such as the reduction of the weight and value thresholds in section 4672(a)(2)(B) from 50 percent to 20 percent made by section 80201(c)(1) of the IIJA and determinations regarding taxable substances previously made pursuant to the process described in Notice 89-61, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have determined that the initial list of taxable substances required to be published by section 80201(c)(3) of the IIJA includes only the taxable substances listed in section 4672(a)(3) and the following substances:

1,4 butanediol

1,3-butylene glycol

1,5,9-cyclododecatriene

2-ethyl hexanol

2-ethylhexyl acrylate

2,2,4-trimethyl-1,3-pentanediol diisobutyrate

2,2,4-trimethyl-1,3-pentanediol monoisobutyrate

acetic acid

acetylene black

adipic acid

adiponitrile

allyl chloride

alpha-methylstyrene

aniline

benzaldehyde

benzoic acid

bisphenol-A

butanol

butyl acrylate

butyl benzyl phthalate

chlorinated polyethylene

cyclododecanol

decabromodiphenyl oxide

di-2 ethyl hexyl phthalate

di-n-hexyl adipate

diethanolamine

diglycidyl ether of bisphenol-A

diisopropanolamine

dimethyl terephthalate

dimethyl-2, 6-naphthalene dicarboxylate

diphenyl oxide

diphenylamine

epichlorohydrin

ethyl acetate

ethyl acrylate

ethyl chloride

ethylene dibromide

ethylenebistetra bromophthalimide

formic acid

glycerine

hexabromocyclododecane

hexamethylenediamine

isobutyl acetate

isopropyl acetate

linear alpha olefins

methyl acrylate

methyl chloroform

methyl isobutyl ketone

methyl methacrylate

monochlorobenzene

monoethanolamine

monoisopropanolamine

normal butyl acetate

normal propyl acetate

nylon 6/6

ortho-dichlorobenzene

ortho-nitrochlorobenzene

paraformaldehyde

para-dichlorobenzene

para-nitrochlorobenzene

para-nitrophenol

pentaerythritol

perchloroethylene

phenol

phosphorous pentasulfide

phosphorous trichloride

poly 1,4 butyleneterephthalate

poly (69/31 ethylene/cyclohexylenedimethylene terephthalate)

poly (96.5/3.5 ethylene/cyclohexylenedimethylene terephthalate)

poly (98.5/1.5 ethylene/cyclohexylenedimethylene terephthalate)

poly(ethyleneoxy)glycerol

poly(propylene)glycol

poly(propylene/ethylene)glycol

poly(propyleneoxy)glycerol

poly(propyleneoxy)sucrose

poly(propyleneoxy/ethyleneoxy)benzenediamine

poly(propyleneoxy/ethyleneoxy)diamine

poly(propyleneoxy/ethyleneoxy)glycerol

poly(propyleneoxy/ethyleneoxy)sucrose

polyalphaolefins

polybutene

polybutylene

polybutylene/ethylene

polycarbonate

polyethylene terephthalate pellets

propanol

sodium nitriolotriacetate monohydrate

synthetic linear fatty alcohols

synthetic linear fatty alcohol ethoxylates

terephthalic acid

tetrabromobisphenol-A

tetrachlorophthalic anhydride

tetrahydrofuran



texanol benzyl phthalate

toluene diisocyanate

toluenediamine

trichloroethylene

triethanolamine

triisopropanolamine

trimethylolpropane

vinyl acetate

## **SECTION 5. PETITIONS TO MODIFY THE LIST OF TAXABLE SUBSTANCES**

Notice 89-61, issued when the Superfund chemical taxes were previously in effect, prescribes the process under section 4672(a)(2) by which importers or exporters may request a determination that the list of taxable substances be modified by either adding or removing a substance. The Treasury Department and the IRS intend to update Notice 89-61 to reflect the changes made to section 4672(a)(2) by the IIJA, and to make other changes that may be necessary. Accordingly, Notice 89-61 is suspended pending the issuance of additional guidance. See IRM 32.2.2.8.1, para. 9 (Aug. 11, 2004) (providing that previously published guidance can be suspended in rare situations “to show that previously published guidance will not be applied pending some future action, such as the issuance of new or amended regulations”).

## **SECTION 6. REGISTRATION FOR CERTAIN EXCEPTIONS**

Section 4662(b)(10)(A) provides that no tax is imposed on any organic taxable chemical while the chemical is part of an intermediate hydrocarbon stream containing one or more organic taxable chemicals. Section 4662(b)(10)(C) provides that the

exception in section 4662(b)(10)(A) does not apply to the sale of any intermediate hydrocarbon stream unless the registration requirements of section 4662(c)(2)(B) are satisfied.

Section 4662(c)(2)(A) provides that no tax is imposed on inventory exchanges of taxable chemicals. Section 4662(c)(2)(B) provides that the exception in section 4662(c)(2)(A) does not apply to any inventory exchange unless the registration requirements of section 4662(c)(2)(B) are satisfied.

The registration requirements of section 4662(c)(2)(B) are not satisfied unless (i) both parties are registered by the IRS as manufacturers, producers, or importers of taxable chemicals; and (ii) the person receiving the taxable chemical has notified the manufacturer, producer, or importer of such person's registration number.

Application for section 4662(b)(10)(C) intermediate hydrocarbon stream registration and section 4662(c)(2)(B) inventory exchange registration must be made on Form 637, *Application for Registration (For Certain Excise Tax Activities)*, under Activity Letter "G" (persons making inventory exchanges of taxable chemicals under section 4662(c)(2) or persons selling or buying intermediate hydrocarbon streams under section 4662(b)(10)) in accordance with the instructions for that form. The IRS is revising Form 637 to add Activity Letter G. Until the revised Form 637 is released, applicants may use the current Form 637 by writing in Activity Letter G and providing the following information: (i) a list of the taxable chemicals the applicant exchanges and/or the intermediate hydrocarbon streams the applicant sells or buys; and (ii) a description of the applicant's processing plants, the products produced, the handling and storage facilities, and the processes involving hydrocarbon streams, as applicable.

**SECTION 7. APPLICABLE PROCEDURAL RULES**

The Superfund chemical taxes are part of Subtitle D, chapter 38 of the Code. Accordingly, the procedural rules in 26 C.F.R. part 40 regarding filing, deposits, etc., apply to persons subject to the reinstated Superfund chemical taxes. Such persons must report the reinstated Superfund chemical taxes on Form 6627, *Environmental Taxes*, which is attached to Form 720, *Quarterly Federal Excise Tax Return*.

**SECTION 8. REQUEST FOR COMMENTS**

The Treasury Department and the IRS request comments on whether any issues related to the reinstated Superfund chemical taxes require clarification or additional guidance. Comments should be submitted in writing by January 28, 2022, and should include a reference to Notice 2021-66. Comments may be submitted electronically via the Federal Rulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type IRS-2021-0018 or Notice 2021-66 in the search field on the [regulations.gov](http://www.regulations.gov) homepage to find this notice and submit comments). Alternatively, comments may be mailed to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice 2021-66), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington D.C. 20044. All commenters are strongly encouraged to submit public comments electronically. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Treasury Department and the IRS will publish for public availability any

comment submitted electronically, and, to the extent practicable, on paper, to its public docket.

## **SECTION 9. EFFECT ON OTHER DOCUMENTS**

Notice 89-61 is suspended.

## **SECTION 10. PAPERWORK REDUCTION ACT**

Section 6 of this notice sets forth a collection of information to be provided to the IRS with Form 637. This collection of information will be reflected in the submission to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) that is associated with Form 637 (OMB control number 1545-1835). This submission will be updated in the ordinary course. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

## **SECTION 11. DRAFTING INFORMATION**

The principal authors of this notice are Stephanie Bland, Amanda Dunlap, and Natalie Payne of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For questions regarding the registration process, contact Diane M. Williams at (856) 792-9362. For all other questions regarding this notice, contact Ms. Payne at (202) 317-6855.