

Temporary Relief from Penalty for Failure to Deposit Superfund Chemical Taxes

Notice 2022-15

SECTION 1. PURPOSE

This notice provides relief for the third and fourth calendar quarters of 2022, and the first calendar quarter of 2023, regarding the failure to deposit penalties imposed by section 6656 of the Internal Revenue Code (Code) as those penalties relate to the excise taxes imposed on certain chemicals under section 4661 of the Code and on certain imported substances under section 4671 of the Code (collectively, Superfund chemical taxes). This notice also provides that during the first, second, and third calendar quarters of 2023, the Internal Revenue Service (IRS) will not withdraw a taxpayer's right to use the deposit safe harbor rules of § 40.6302(c)-1(b)(2) of the Excise Tax Procedural Regulations for failure to make required deposits of Superfund chemical taxes if certain requirements are met.

SECTION 2. BACKGROUND

(a) Superfund chemical taxes.

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 Superfund chemical taxes. The Superfund chemical taxes expired on December 31, 1995.

Effective July 1, 2022, section 80201 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, 135 Stat. 429 (November 15, 2021), reinstates the Superfund chemical taxes with certain modifications. Pursuant to section 80201(c)(3) of the IIJA, Notice 2021-66, 2021-52 I.R.B. 901, provided initial guidance related to the Superfund chemical taxes and requested comments on whether any issues related to the reinstated Superfund chemical taxes require clarification or additional guidance. To date, the Department of the Treasury (Treasury Department) and the IRS have received seven (7) public comments in response to Notice 2021-66. One of these comments requested relief from failure to deposit penalties, which is provided by this notice. The Treasury Department and the IRS continue to consider the other comments. All comments can be accessed via the Federal Rulemaking Portal at www.regulations.gov (type IRS-2021-0018 or Notice 2021-66 in the search field on the regulations.gov homepage to find the comments).

(b) Collection of Superfund chemical taxes.

The Superfund chemical taxes are codified in subtitle D, chapter 38 of the Code (chapter 38), which pertains to environmental excise taxes. Chapter 38 taxes are reported on Form 6627, *Environmental Taxes*, which is required to be attached to the tax return made on Form 720, *Quarterly Federal Excise Tax Return* (Form 720 return). See §§ 40.0-1(a) and 40.6011(a)-1(a)(1) of the Excise Tax Procedural Regulations.

Section 6302 of the Code authorizes the IRS to establish the mode and time for collecting certain taxes, including the taxes imposed by chapter 38. Section 40.6302(c)-

1(a)(1) requires each person that is required to file a Form 720 return to make deposits of tax for each semimonthly period in which the tax liability is incurred. A semimonthly period is the first fifteen (15) days of a calendar month or the portion of a calendar month following the 15th day of the month. See § 40.0-1(c) of the Excise Tax Procedural Regulations.

The tax deposit for each semimonthly period must not be less than ninety-five percent (95%) of the amount of net tax liability incurred during the semimonthly period unless a deposit safe harbor in § 40.6302(c)-1(b)(2)(ii) or (iii) applies (deposit safe harbor). See § 40.6302(c)-1(b)(1). Under the deposit safe harbor applicable to taxes imposed by chapter 38, any person that filed a Form 720 return for the second preceding calendar quarter (look-back quarter) is considered to have met the semimonthly deposit requirement for the current quarter if: (i) the deposit for each semimonthly period in the current calendar quarter is not less than 1/6 of the net tax liability reported for the look-back quarter; (ii) each deposit is made on time; (iii) the amount of any underpayment is paid by the due date of the Form 720 return; and (iv) the person's liability does not include any tax that was not imposed during the look-back quarter. Section 40.6302(c)-1(b)(2)(v) provides that if a person fails to make deposits as required, the IRS may withdraw the person's right to use the deposit safe harbor.

Section 40.6302(c)-1(c)(1) provides that, in general, the deposit of tax for any semimonthly period must be made by the 14th day of the following semimonthly period unless such day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which case the immediately preceding day which is not a Saturday, Sunday, or legal holiday in the District of Columbia is treated as the 14th day. Thus, generally, the

deposit of tax for the first semimonthly period in a month is due by the 29th day of that month and the deposit of tax for the second semimonthly period in a month is due fourteen (14) days after the close of the second semimonthly period. (See § 40.6302(c)-2 for special deposit rules for September.)

Section 6656 imposes a penalty in the case of any failure by any person to make timely deposits as required by section 6302, including as required by §§ 40.6302(c)-1 and 40.6302(c)-2. A taxpayer may avoid penalties under section 6656 for failure to make deposits of taxes if the taxpayer makes an affirmative showing that such failure is due to reasonable cause and not due to willful neglect. See section 6656(a).

(c) Deposit safe harbor not applicable until first calendar quarter of 2023.

As the Superfund chemical taxes are effective beginning July 1, 2022, the first deposit, covering the first fifteen (15) days of July 2022, is due by July 29, 2022. As noted in section 2(b) of this notice, § 40.6302(c)-1(b)(2) provides a deposit safe harbor for calculating the amount of semimonthly deposits. Because the deposit safe harbor rules require a second preceding calendar quarter (look-back quarter) in which the same taxes are imposed to determine deposit amounts in the current quarter, a person liable for any Superfund chemical taxes will be ineligible to use the deposit safe harbor to calculate semimonthly deposits of Superfund chemical taxes until the first calendar quarter of 2023. See § 40.6302(c)-1(b)(2)(ii) and (iii). For purposes of the deposit safe harbor, the third calendar quarter of 2022 is the look-back quarter for the semimonthly periods during the first calendar quarter of 2023.

The Treasury Department and the IRS recognize the short time frame between the reinstatement of the Superfund chemical taxes and the due date of the first deposit,

the unavailability of the § 40.6302(c)-1(b)(2) deposit safe harbor in 2022, the possible difficulties of computing the correct amount of tax during the third calendar quarter of 2022 (which is both the first calendar quarter the taxes are in effect and the look-back quarter for the first calendar quarter of 2023), and the number of new taxpayers owing Superfund chemical taxes that have not previously had to comply with the deposit requirements of section 6302. In consideration of these issues, the Treasury Department and the IRS have determined that it is in the interest of sound tax administration to provide relief regarding the section 6656 penalty with respect to deposits of Superfund chemical taxes for the last two calendar quarters of 2022, and the first calendar quarter of 2023, as described in section 3 of this notice. For the foregoing reasons, the Treasury Department and the IRS have also determined that during the first, second, and third calendar quarters of 2023, the IRS will not withdraw the taxpayer's right to use the deposit safe harbor of § 40.6302(c)-1(b)(2) for failure to make required deposits of Superfund chemical taxes if certain requirements are met.

SECTION 3. RELIEF REGARDING SECTION 6656 PENALTY

(a) Deemed satisfaction of reasonable cause standard.

As noted in section 2(b) of this notice, a taxpayer may avoid penalties under section 6656 for underpayment of deposits of the Superfund chemical taxes if the taxpayer makes an affirmative showing that such failure is due to reasonable cause and not due to willful neglect (reasonable cause standard). For semimonthly periods in the third and fourth calendar quarters of 2022 and the first calendar quarter of 2023, a taxpayer owing Superfund chemical taxes will be deemed to have satisfied the reasonable cause standard and no penalty under section 6656 for failure to deposit

Superfund chemical taxes will be imposed if (i) the taxpayer makes timely deposits of applicable Superfund chemical taxes, even if the deposit amounts are computed incorrectly, and (ii) the amount of any underpayment of the applicable Superfund chemical taxes for each calendar quarter is paid in full by the due date for filing the Form 720 return for that quarter.

(b) Non-exercise of authority to withdraw use of deposit safe harbor.

During the first, second, and third calendar quarters of 2023, the IRS will not exercise its authority under § 40.6302(c)-1(b)(2)(v) to withdraw the taxpayer's right to use the deposit safe harbor of § 40.6302(c)-1(b)(2) due to a failure to make deposits of Superfund chemical taxes as required, provided the taxpayer satisfies the requirements of section 3(a) of this notice for the look-back quarter at issue.

SECTION 4. 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 this notice, contact Stephanie Bland or Amanda Dunlap at (202) 317-6855 (not a toll-free number).