

Extension of Temporary Relief Related to the Penalty for Failure to Deposit Superfund Chemical Taxes

Notice 2023-28

SECTION 1. PURPOSE

This notice extends temporary relief provided in Notice 2022-15, 2022-18 I.R.B. 1043, regarding deposits of the excise tax imposed on certain chemicals under § 4661 of the Internal Revenue Code (Code)¹ and the excise tax imposed on certain imported chemical substances under § 4671 (collectively, Superfund chemical taxes). This notice extends the temporary relief provided in section 3(a) of Notice 2022-15 related to the failure to deposit penalty imposed by § 6656. The extended relief is available in connection with deposits of the Superfund chemical taxes for semimonthly periods in the second, third, and fourth calendar quarters of 2023.

This notice also extends the temporary relief provided in section 3(b) of Notice 2022-15 related to the authority of the Internal Revenue Service (IRS) to withdraw a taxpayer's right to use the deposit safe harbor rules of § 40.6302(c)-1(b)(2), through the second calendar quarter of 2024.

SECTION 2. BACKGROUND

Section 2(b) of Notice 2022-15 notes that a taxpayer may avoid penalties under § 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

¹ Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Excise Tax Procedural Regulations (26 CFR part 40).

to willful neglect (reasonable cause standard).

Section 3(a) of Notice 2022-15 provides temporary relief regarding the failure to deposit penalty imposed by § 6656 as the penalty relates to the Superfund chemical taxes. Specifically, section 3(a) of Notice 2022-15 provides that 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 § 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, *Quarterly Federal Excise Tax Return* (Form 720 return), for that calendar quarter.

Section 2(c) of Notice 2022-15 notes that the deposit safe harbor rules of § 40.6302(c)-1(b)(2) require a second preceding calendar quarter (look-back quarter) in which the same taxes are imposed to determine deposit amounts in the current calendar quarter.

Section 3(b) of Notice 2022-15 provides that 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 a taxpayer's right to use the deposit safe harbor rules of § 40.6302(c)-1(b)(2) for failure to make required deposits if the requirements of section 3(a) of Notice 2022-15 are met for the look-back quarter at issue.

SECTION 3. EXTENSION OF RELIEF REGARDING § 6656 PENALTY

(a) Extension of deemed satisfaction of reasonable cause standard.

For semimonthly periods in the second, third, and fourth calendar quarters of 2023, a taxpayer owing Superfund chemical taxes will be deemed to have satisfied the reasonable cause standard and no penalty under § 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 calendar quarter.

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

During the fourth calendar quarter of 2023, and the first and second calendar quarters of 2024, the IRS will not exercise its authority under § 40.6302(c)-1(b)(2)(v) to withdraw a 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 author of this notice is Camille Edwards Bennehoff of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For questions regarding this notice, contact Ms. Edwards Bennehoff at (202) 317-6855 (not a toll-free number).