

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2022-29
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These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

EMPLOYEE PLANS

Notice 2022-31, page 85.

This notice provides guidance regarding the changes made by section 9707 of the American Rescue Plan Act of 2021 to the election of alternative minimum funding standards under section 430(m) of the Internal Revenue Code for a defined benefit pension plan that is a community newspaper plan or any other plan that is sponsored by an eligible newspaper plan sponsor.

EXCISE TAX

Rev. Proc. 2022-26, page 90.

The Infrastructure Investment and Jobs Act, Public Law 117-58, 135 Stat. 429 (November 15, 2021), reinstates the Superfund excise taxes imposed by sections 4661 and 4671 of the Internal Revenue Code, effective July 1, 2022. This revenue procedure provides the exclusive procedures for importers, exporters, and interested persons to request a determination under § 4672(a)(2) of the Internal Revenue Code (Code) that a substance be added to or removed from the list of taxable substances under § 4672(a) of the Code.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III

Guidance Regarding the Changes Made by the American Rescue Plan Act to the Election of Alternative Minimum Funding Standards for Community Newspaper Plans under Section 430(m)

Notice 2022-31

I. Purpose

This notice provides guidance regarding the changes made by section 9707 of the American Rescue Plan Act of 2021 (the ARP), Pub. L. 117-2, 135 Stat. 4 (March 11, 2021) to the election of alternative minimum funding standards under section 430(m) of the Internal Revenue Code (Code) for a defined benefit pension plan that is a community newspaper plan or any other plan that is sponsored by an eligible newspaper plan sponsor.

II. Background

Section 430(m) of the Code was added by section 115 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted as Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019).¹ Section 430(m) provides alternative minimum funding standards that may be elected for certain community newspaper plans and other defined benefit plans sponsored by members of a controlled group that includes the sponsor of the community newspaper plan. Pursuant to section 430(m)(2), as added by the SECURE Act, any election to apply section 430(m) is to be made at such

time and in such manner as prescribed by the Secretary, and once an election is made with respect to a plan year, it will apply to all subsequent plan years unless revoked with the consent of the Secretary. Under section 115(c) of the SECURE Act, section 430(m) of the Code applies to plan years ending after December 31, 2017.

Notice 2020-60, 2020-36 I.R.B. 514, provides guidance regarding the election to apply the alternative minimum funding standards of section 430(m). Notice 2020-60 also provides additional flexibility to facilitate retroactive elections under section 430(m) (including deemed immaterial treatment under section 436 for changes in a plan's adjusted funding target attainment percentage due to an election to apply section 430(m)) and provides instructions for completing Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information," of Form 5500, "Annual Return/Report of Employee Benefit Plan," to reflect the election.

Section 9707 of the ARP revised section 430(m) in a number of ways, including by modifying the requirements for eligibility to make an election to apply section 430(m). Prior to the ARP, section 430(m)(1) provided that the election to apply the alternative minimum funding standards of section 430(m) was made by the plan sponsor of a community newspaper plan under which no participant has had an increase in accrued benefits after December 31, 2017 (whether because of service or compensation), and the election applied to all other defined benefit plans sponsored by any member of that plan sponsor's controlled group as of December 20, 2019 (the date of enactment of the SECURE Act). As amended by section 9707 of the ARP, section 430(m)(1) now provides that the election to apply section 430(m) is made by an eligible newspaper plan sponsor of a plan under which no participant has had an increase in accrued

benefits after April 2, 2019 (whether because of service or compensation), and the election applies only to the plan for which the election is made. Section 430(m)(2)(A) was added to define an "eligible newspaper plan sponsor" as the plan sponsor of a community newspaper plan.² Under section 430(m)(2)(B), the definition of an eligible newspaper plan sponsor also includes a member of the controlled group of a plan sponsor described in the preceding sentence (determined as of December 20, 2019) if that member is in the trade or business of publishing one or more newspapers, and that member sponsored the plan for which it is making the election as of April 2, 2019. Section 430(m) as amended by the ARP is effective for plan years ending after December 31, 2017 (the same as the original effective date of section 430(m) under the SECURE Act).

III. Modifications to Notice 2020-60

In light of the changes to section 430(m) made by the ARP, this notice modifies the guidance provided in Notice 2020-60. Any guidance provided in Notice 2020-60 that is not addressed in this notice continues to apply.

A. Definition of a community newspaper plan

The term "community newspaper plan" means any plan to which section 430 applies that is maintained as of December 31, 2018, by an employer that satisfies the following three conditions:

- The employer maintains the plan on behalf of participants and beneficiaries with respect to employment in the trade or business of publishing one or more newspapers which were published by the employer at any time during the 11-year period ending on December 20, 2019;

¹ Section 115(b) of the SECURE Act also added section 303(m) to the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (88 Stat. 829), as amended (ERISA). Section 303(m) of ERISA provides rules that generally are parallel to the rules of section 430(m) of the Code, and section 9707 of the ARP includes amendments to section 303(m) of ERISA that are parallel to the amendments made to section 430(m) of the Code. Under section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App., as amended, and section 3002(c) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in this notice for purposes of ERISA, as well as the Code. Thus, the provisions of this notice relating to section 430 of the Code also apply for purposes of section 303 of ERISA.

² Section 430(m)(5)(A), as revised by section 9707 of the ARP, includes minor changes to the definition of community newspaper plan (which was formerly in section 430(m)(4)(A)). Section 430(m)(5)(B) defines the term "newspaper" to exclude any newspaper that: is not in general circulation, is published (on newsprint or electronically) less frequently than 3 times per week, has not ever been regularly published on newsprint, or does not have a bona fide list of paid subscribers.

- The employer is either:
 - (1) Not a company the stock of which is publicly traded (on a stock exchange or in an over-the-counter market), and is not controlled, directly or indirectly, by such a company, or
 - (2) Controlled, directly or indirectly, during the entire 30-year period ending on December 20, 2019, by individuals who are members of the same family, and does not publish or distribute a daily newspaper that is carrier-distributed in printed form in more than five States; and
- The employer is controlled, directly or indirectly--
 - (1) By one or more persons residing primarily in a State in which the community newspaper has been published on newsprint or carrier-distributed,
 - (2) During the entire 30-year period ending on December 20, 2019, by individuals who are members of the same family,
 - (3) By one or more trusts, the sole trustees of which are persons described in (1) or (2), or
 - (4) By a combination of persons described in (1), (2), or (3).

Section 430(m)(5)(C) provides a definition of “control” for purposes of these rules. Under that provision, a first person is treated as controlled by a second person if the second person possesses, directly or indirectly, the power to direct or cause the direction and management of the first person (including the power to elect a majority of the members of the board of directors of that person) through the ownership of voting securities.

B. Definition of eligible newspaper plan sponsor and applicability of election to controlled group members

The term “eligible newspaper plan sponsor” means an employer that sponsors any of the following plans:

- A community newspaper plan, or
- A defined-benefit plan sponsored by the employer as of April 2, 2019, provided that the employer is a member of the same controlled group as the plan sponsor of a community newspaper plan, and the employer is in the trade or business of publishing one or more newspapers.

Under section 430(m)(1) as originally enacted, an election to apply section 430(m) made by a plan sponsor of a community newspaper plan also applies to any plan sponsored by any member of its controlled group, and section IV.D of Notice 2020-60 provides rules for determining how long that election continues to apply to a plan sponsored by a controlled group member. Because amended section 430(m) now requires a separate election to be made by each plan sponsor, the rules of section IV.D under Notice 2020-60 no longer apply.

If an eligible newspaper plan sponsor that is not the sponsor of a community newspaper plan elects to apply section 430(m), that election will continue to apply (unless revoked) until the plan year following the plan year in which the employer ceases to be an eligible newspaper plan sponsor. Thus, the election ceases to apply beginning with the plan year following the plan year in which the controlled group member either leaves the controlled group or is no longer in the trade or business of publishing newspapers.

Section IV.C of Notice 2020-60 provides that a sponsor of a community newspaper plan that has made an election to apply section 430(m) to its plan may request permission to revoke that election under section 430(m) using the procedures for obtaining a private letter ruling set forth in Rev. Proc. 2020-4, 2020-1 I.R.B. 148, or its successor. Pursuant to this notice, other eligible newspaper plan sponsors may request permission to revoke an election under section 430(m) using those same procedures.

C. Renumbering of paragraphs of section 430(m)

The numbering of several paragraphs of section 430(m) that are referenced in Notice 2020-60 has been changed by the enactment of the ARP. Those references in Notice 2020-60 are replaced as follows:

- The reference to section 430(m)(2) is replaced by a reference to section 430(m)(3).
- References to section 430(m)(3) are replaced by references to section 430(m)(4).

- References to section 430(m)(5) are replaced by references to section 430(m)(6).

D. Manner and content of election

Pursuant to the amendments made by the ARP, an election to apply section 430(m) that was made by a sponsor of a community newspaper plan no longer applies to other defined benefit plans sponsored by members of the sponsor’s controlled group. Therefore, this notice modifies the manner of the election set forth in section IV.A of Notice 2020-60 to eliminate the requirement to notify other controlled group members of the election (so that the election need only be provided to the plan’s enrolled actuary and the plan administrator).

An election to apply section 430(m) to a plan must be made by a sponsor of that plan, and that election does not apply to other plans. The information that must be included in the election set forth in section IV.A of Notice 2020-60 is modified by this notice. The election now must include the following:

- The name and Employer Identification Number (EIN) of the employer,
- The name and plan number of the plan,
- The first plan year for which the election applies,
- The date as of which the employer first sponsored the plan,
- The date as of which benefit accruals ceased under the plan,
- The name of the newspaper(s) published by the employer, and
- A certification that the sponsor of the community newspaper plan satisfies the trade or business standard in section 430(m)(5)(A)(i) and satisfies the ownership and control standards under section 430(m)(5)(A)(ii) and (iii).

If the employer is an eligible newspaper plan sponsor but is not the sponsor of a community newspaper plan, the election must also include the following:

- A certification that, as of December 20, 2019, the employer was a member of a controlled group that includes the sponsor of a community newspaper plan and that the employer is in the

trade or business of publishing one or more newspapers, and

- The name and EIN of the employer that is the sponsor of the community newspaper plan.

If a plan sponsor made an election to apply section 430(m) on or after March 11, 2021, and that election did not comply with the requirements set forth in this section III.D, the plan sponsor must make a new election that complies with these requirements no later than September 15, 2022, in order to retain the election.

The Appendix to this notice sets forth a model for the written section 430(m) election. This model replaces the model election in Notice 2020-60.

E. Extension of time to make retroactive section 430(m) elections and associated funding balance elections

Section VI of Notice 2020-60 provides flexibility in several areas to facilitate retroactive section 430(m) elections in light of the retroactive effective date of section 430(m). Section VI.A of Notice 2020-60 provides an exception to the general timing rule restricting changes in actuarial assumptions after they have been established for a plan year, to allow an election to apply section 430(m) to be made for a plan year for which Schedule SB has already been filed. In order to fully reflect the impact of the reduced minimum funding requirement resulting from a retroactive section 430(m) election, section VI.B of Notice 2020-60 provides an extended period of time for certain plan sponsor elections to increase the plan's prefunding balance and to revoke an election to use the plan's prefunding balance or funding standard carryover balance (or reduce the portion of that balance to which an election applied). Pursuant to section VI of Notice 2020-60, the extended deadline for the actions was December 31, 2020.

Like the original provisions of section 430(m) of the Code, the provisions of section 430(m), as revised by section 9707 of the ARP, apply to plan years ending after December 31, 2017. As a result of the changes made to section 430(m) of the Code by the ARP, some plan sponsors that publish newspapers and that were not previously eligible to make an election to apply section 430(m) may now be eligible.

In addition, some plan sponsors that were eligible to elect to apply section 430(m) may not have made that election because of the effect of the election on other controlled group members and may now wish to do so. To facilitate retroactive section 430(m) elections and to fully reflect the impact of the reduced minimum funding requirement resulting from a retroactive section 430(m) election, the guidance in section VI of Notice 2020-60 is modified by substituting September 15, 2022, for December 31, 2020, as the extended deadline for the actions specified in that section.

IV. Plan Sponsors That Applied the Pre-ARP Provisions of Section 430(m)

Under section 430(m) prior to the amendments made by the ARP, if an election to apply section 430(m) was made by a plan sponsor of a community newspaper plan, that election also applied to all other defined benefit plans sponsored by members of the controlled group. However, after the amendments made by the ARP, the election to apply section 430(m) is made separately for each plan and is available only to a plan sponsor that is in the trade or business of publishing one or more newspapers.

If the sponsor of a community newspaper plan made an election to apply section 430(m) prior to the enactment of the ARP (that is, prior to March 11, 2021), and a plan sponsored by a member of that sponsor's controlled group is eligible for an election to apply section 430(m) after the amendments made by the ARP, that member will be deemed to have made an election to apply section 430(m) after the amendments made by the ARP. Thus, if that member wishes to continue applying section 430(m) for its plan, it does not need to make a new election. However, if that member does not wish to apply section 430(m) for its plan, then this notice grants automatic approval to revoke that deemed election retroactively for all previous plan years for which the election applied, provided that the plan sponsor provides written notice of the revocation to the plan's actuary and plan administrator no later than September 15, 2022, and, for all plan years for which the election has been revoked, amended Forms

5500 with the revocation reflected on revised Schedules SB are filed no later than October 17, 2022. For a member that revokes this deemed section 430(m) election for all years for which it applies, the elections described in section IV of Notice 2021-48, 2021-33 I.R.B. 305 (relating to timing of implementation of certain statutory changes made by the ARP) are considered timely if they are made no later than October 17, 2022, and the actions described in sections V.A through V.C of Notice 2021-48 (permitting an extended time for certain changes relating to a plan's funding balances) are considered timely if they are completed by that date.

If the sponsor of a community newspaper plan made an election to apply section 430(m) prior to the enactment of the ARP (that is, prior to March 11, 2021), and a plan sponsored by a member of that sponsor's controlled group is not eligible for an election to apply section 430(m) after the amendments made by the ARP (for example, the sponsor of that plan is not in the trade or business of publishing a newspaper, or a participant accrued a benefit under that plan after April 2, 2019, and before the original election to apply section 430(m) was made), then the plan's minimum required contribution under section 430 must be redetermined, and the plan may not be compliant with section 436. However, the IRS will not treat such a plan as failing to satisfy qualification requirements or minimum funding requirements merely because the plan sponsor does not apply the changes made to section 430(m) by the ARP until the first plan year that begins after March 11, 2021.

V. Effect on Other Documents

Notice 2020-60 is modified.

Paperwork Reduction Act

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2095.

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.

The collections of information in this notice are in the Appendix of this notice. The collections of information are required for a plan sponsor to elect to apply the alternative minimum funding standards under section 430(m). The collections of information are mandatory for those plan sponsors making a new election to apply section 430(m) to a plan.

The likely respondents are sponsors of defined benefit plans whose eligibility to apply section 430(m) was affected by

the enactment of the ARP or who have become eligible not to apply a section 430(m) election that was made by a controlled group member prior to the enactment of the ARP.

Any potential changes on burden will be reported through the renewal of the current OMB approval numbers.

Estimates of the annualized cost to respondents are not available at this time.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by section 6103.

Drafting information

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan or Linda Marshall at 202-317-6700 (not a toll-free number).

Appendix

Model election

As an officer of the employer sponsoring a community newspaper plan as defined in section 430(m)(5) of the Internal Revenue Code, or an officer of another eligible newspaper plan sponsor as defined in section 430(m)(2)(B), I hereby elect to apply the alternative minimum funding standards under section 430(m)(4), beginning with the plan year beginning _____. I also provide the following information about the employer and plan and hereby certify that the plan sponsor of the community newspaper plan meets the trade or business standard described in section 430(m)(5)(A)(i) and the ownership and control standards under section 430(m)(5)(A)(ii) and (iii) as set forth below:

Information about the employer and plan:

- Name of employer
- Employer Identification Number (EIN) of employer
- Name of plan for which election is made
- Plan number
- Date as of which employer first sponsored the plan
- Date as of which benefit accruals ceased
- Name of newspapers published by the employer
- Name and EIN of the sponsor of the community newspaper plan (if the election is being made by an eligible newspaper plan sponsor described in section 430(m)(2)(B))

Certifications relating to trade or business, ownership, and control:

- For an employer that sponsors a community newspaper plan:
 - o The employer maintains the plan on behalf of participants and beneficiaries with respect to employment in the trade or business of publishing one or more newspapers which were published by the employer at any time during the 11-year period ending on December 20, 2019;
 - o The employer sponsoring the community newspaper plan is (indicate all that apply):
 - (1) Not publicly traded, and is not controlled, directly or indirectly, by a publicly traded company _____, or
 - (2) Controlled, directly or indirectly, during the entire 30-year period ending on December 20, 2019, by individuals who are members of the same family, and does not publish or distribute a daily newspaper that is carrier-distributed in printed form in more than five States _____; and
 - o The employer is controlled directly or indirectly (indicate all that apply):
 - (1) By one or more persons residing primarily in the state in which the community newspaper is published or carrier-distributed _____
 - (2) For not less than the 30-year period ending on December 20, 2019, by individuals who are members of the same family _____
 - (3) By one or more trusts, the sole trustees of which are persons described in (1) or (2) _____
 - (4) By a combination of persons described in (1), (2), or (3) _____
- For an eligible newspaper plan sponsor described in section 430(m)(2)(B):
 - o As of December 20, 2019, the employer is a member of a controlled group that includes the sponsor of a community newspaper plan
 - o The employer is in the trade or business of publishing one or more newspapers

Signature of employer _____ Date _____

Name _____ Title _____

Rev. Proc. 2022-26

SECTION 1. PURPOSE

This revenue procedure provides the exclusive procedures for requesting a determination under § 4672(a)(2) of the Internal Revenue Code (Code) that a substance be added to or removed from the list of taxable substances under § 4672(a) of the Code. The sale or use of any such taxable substances by importers of such substances is subject to the excise tax imposed by § 4671(a) of the Code, subject to certain exceptions. Unless otherwise stated, all section references in this revenue procedure are to the Code.

SECTION 2. BACKGROUND

.01 *Overview.* 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 tax imposed by § 4661(a) on sales or uses of taxable chemicals (enacted by § 211 of CERCLA) and the tax imposed by § 4671(a) on sales or uses of imported taxable substances that use one or more taxable chemicals in their manufacture or production (enacted by § 515 of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613 (1986)), collectively, referred to as the “Superfund chemical taxes.” The Superfund chemical taxes previously expired on December 31, 1995. As explained in section 2.04 of this revenue procedure, the Superfund chemical taxes have been reinstated, effective July 1, 2022, with several modifications.

.02 *Tax on taxable chemicals.* Section 4661(a) imposes a tax on any taxable chemical sold or used by the manufacturer, producer, or importer. *See also* § 4662(c) (1). Section 4661(b) provides a list of taxable chemicals and the amount of tax imposed by § 4661(a) on those chemicals. Section 4662 provides definitions and

special rules applicable to the § 4661 tax, including definitions of the terms “taxable chemical” and “United States.”

.03 *Tax on taxable substances.*

(1) *Overview.* Section 4671(a) imposes a tax on any taxable substance sold or used by the importer. Section 4671(b) generally provides that the amount of tax imposed by § 4671(a) with respect to any taxable substance is equal to the amount of tax that would have been imposed by § 4661 on the taxable chemicals used as materials in the manufacture or production 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, in part, provides definitions for purposes of the tax imposed by § 4671(a). As described in section 2.03(2) of this revenue procedure, § 4672(a) defines the term “taxable substance.” Section 4672(b)(1) defines the term “importer” as the person entering the taxable substance for consumption, use, or warehousing. Section 4672(b)(2) provides that the terms “taxable chemical” and “United States” have the respective meanings given such terms by § 4662(a).

(2) *List of taxable substances.* 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 by the Secretary of the Treasury or her delegate (Secretary). Section 4672(a)(2) provides that a substance “shall be listed” under § 4672(a)(1) if (A) the substance is contained in the statutory list of taxable substances under § 4672(a)(3), or (B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency (EPA) and the Commissioner of U.S. Customs and Border Protection (CBP), that taxable chemicals constitute more than a specified percent of the weight (or more than a specified percent of the value) of the materials used to produce such substance (determined on the basis of the predominant method of production). For purposes of the tax imposed by § 4671(a) as previously in effect before January 1, 1996, the specified percent required to be met by either the weight or value test of § 4672(a)(2)(B) was 50 percent.

(3) *Addition or removal of listed taxable substances.* The last sentence of

§ 4672(a)(2) provides that if an importer or exporter of any substance requests that the Secretary determine that such substance be added to or removed from the list of taxable substances under § 4672(a)(1), the Secretary must make that determination within 180 days after the date the request was filed. Similarly, § 4672(a)(4) provides that the Secretary “shall add to the list” under § 4672(a)(3) substances that meet either the weight or value tests of § 4672(a)(2)(B) and that the Secretary “may remove from such list only substances which meet neither of such tests.” For purposes of the tax imposed by § 4671(a) as previously in effect before January 1, 1996, Notice 89-61, 1989-1 C.B. 717, as modified by Notice 95-39, 1995-1 C.B. 312, and suspended by Notice 2021-66, 2021-52 I.R.B. 901, prescribed the former process for certain persons to request that certain substances be added to or removed from the list of taxable substances under § 4672(a).

.04 *Reinstatement of Superfund chemical taxes.* Effective July 1, 2022, § 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 several modifications, including adjustments to the applicable rates of tax. Specifically, § 4672(a)(2)(B), as modified by § 80201(c)(1) of the IIJA, provides that a substance is listed under § 4672(a)(1) if the Secretary determines, in consultation with the EPA Administrator and the CBP Commissioner, 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). In this regard, § 80201(c)(2) of the IIJA provides that except as otherwise determined by the Secretary, any substance that was determined to be a taxable substance by reason of § 4672(a)(2) prior to November 15, 2021 (that is, the date of enactment of the IIJA), “shall continue to be treated as a taxable substance for purposes of such section after such date.” As required by § 80201(c)(3) of the IIJA, Notice 2021-66 was published to provide the initial list of taxable substances under § 4672(a). Section 4 of Notice 2021-66 provides that the initial list of taxable substances required

to be published by § 80201(c)(3) of the IJA includes the taxable substances listed in § 4672(a)(3) and the 101 taxable substances listed in the notice, based on the presumption in § 80201(c)(2) of the IJA and other considerations, such as determinations regarding taxable substances made pursuant to the process described in Notice 89-61 prior to November 15, 2021, and the reduction of the weight and value thresholds in § 4672(a)(2)(B) made by § 80201(c)(1) of the IJA. Therefore, as of the date of publication of this revenue procedure, the list of taxable substances under § 4672(a) consists of the statutory list of 50 taxable substances in § 4672(a)(3), and the list of 101 additional taxable substances listed in section 4 of Notice 2021-66. The Secretary will add substances to or remove substances from the list of taxable substances under § 4672(a) in accordance with § 4672(a)(2) and (4). Substances may be added to or removed from the list of taxable substances under § 4672(a) through the determination process described in this revenue procedure.

SECTION 3. DEFINITIONS

The following definitions apply for purposes of this revenue procedure:

.01 *Conversion factor.* The term “conversion factor” means the ratio of the weight of an individual taxable chemical used in the production of a substance to the total weight of the substance.

.02 *Exporter.* The term “exporter” means the person named as shipper or consignor in the export bill of lading.

.03 *Harmonized Tariff Schedule of the United States number.* The term “Harmonized Tariff Schedule of the United States (HTSUS) number” means the 10-digit tariff number within the HTSUS used to determine customs duties to be paid on all merchandise imported into the United States and its statistical annotation. Additional information on HTSUS numbers is available at: https://www.usitc.gov/harmonized_tariff_information.

.04 *Importer.* The term “importer” means the person entering the taxable substance for consumption, use, or warehousing.

.05 *List.* The term “List” means the list of taxable substances under § 4672(a). Unless the Secretary determines under

§ 4672(a)(2) or (4) that the taxable substance is removed from the List, every taxable substance described in section 3.12 of this revenue procedure is on the List.

.06 *Material.* The term “material” means a chemical component used in the predominant method of production of the substance. The term “material” may include a taxable chemical.

.07 *Molecular formula.* The term “molecular formula” means a chemical formula that shows the number and kinds of atoms in the substance.

.08 *Schedule B number.* The term “Schedule B number” is a 10-digit international export code used to classify goods for export to another country. Schedule B numbers are administered by the United States Census Bureau. Additional information on Schedule B numbers is available at: <https://www.census.gov/newsroom/blogs/global-reach/2017/12/finding-your-schedule-b-number.html>.

.09 *Structural formula.* The term “structural formula” means a chemical formula that provides a graphic representation of how the atoms are arranged and bonded in the smallest unit of the substance.

.10 *Substance.* The term “substance” means the chemical substance to which the petition described in sections 5 and 6 of this revenue procedure relates. For synthetic organic chemical substances, the term “substance” does not include a textile fiber (other than a polymer in extruded fiber form), yarn, or staple, or a fabricated product that is molded, formed, woven, or otherwise finished into an end-use product. For inorganic chemical substances, the term “substance” does not include fabricated products that are molded, formed, or otherwise finished into end-use products.

.11 *Taxable chemical.* The term “taxable chemical” means a chemical listed under § 4661(b).

.12 *Taxable substance.* Except as provided in this section 3.12, the term “taxable substance” means—

(1) any substance that is one of the 50 taxable substances in the list under § 4672(a)(3),

(2) any substance that is one of the 101 taxable substances listed in section 4 of Notice 2021-66, and

(3) any substance that the Secretary has determined under § 4672(a)(2) or (4)

to add to the List described in section 3.05 of this revenue procedure.

The term “taxable substance” does not include any substance that the Secretary has removed from the List pursuant to § 4672(a)(2) or (4).

.13 *United States.* The term “United States” has the meaning given such term by § 4612(a)(4) by reason of §§ 4662(a)(2) and 4672(b)(2).

.14 *Value.* The term “value” means the average market price, during the preceding twelve months, of each material in the stoichiometric material consumption equation describing the production of the substance.

SECTION 4. REQUESTS FOR MODIFICATIONS TO THE LIST OF TAXABLE SUBSTANCES UNDER § 4672(a)

.01 *Importers, exporters, and interested persons.* An importer or exporter of any substance, or a person other than an importer or exporter of such substance (interested person), may request to add such substance to the List or remove such substance from the List by submitting a petition to the IRS in accordance with the procedures described in sections 5 and 6 of this revenue procedure. Any requests to modify the List that were submitted prior to publication of this revenue procedure or in response to the request for comments in Notice 2021-66 do not meet the requirements of sections 5 and 6 of this revenue procedure. Such requests will not be processed and must be submitted in accordance with the procedures described in sections 5 and 6 of this revenue procedure.

.02 *Threshold requirements.* An importer, exporter, or interested person may submit a petition to add a substance to the List if such person determines that taxable chemicals constitute more than 20 percent of the weight or value of the materials used to produce such substance, determined on the basis of the predominant method of production. An importer, exporter, or interested person may submit a petition to remove a substance from the List if such person determines that taxable chemicals constitute 20 percent or less of the weight and 20 percent or less of the value of the materials used to produce

such substance, determined on the basis of the predominant method of production.

.03 *Separate petitions required.* An importer, exporter, or interested person must submit a separate petition for each substance that the person seeks to have added to or removed from the List.

.04 *Publication of information in the Federal Register.* The determination process described in this revenue procedure is a public process that is designed to provide the public with notice of any proposed modifications to the List and the opportunity to comment on those proposed modifications. Petitioners are strongly discouraged from submitting confidential business information or trade secrets, because the determination process is a public process. As described in sections 9.02 and 10.04 of this revenue procedure, information the petitioner submits relating to the petition, including the petitioner's name, will be published in the Federal Register as part of the notice and comment process.

SECTION 5. HOW TO SUBMIT PETITIONS

.01 *Overview.* An importer, exporter, or interested person (each, a petitioner) may submit a petition using electronic facsimile, email, or certified mail as described below. Petitioners are encouraged to submit petitions by electronic facsimile.

.02 *When a petition is considered filed.* A submitted petition is considered "filed" for purposes of the 180-day determination period set forth in § 4672(a)(2) only when it is accepted by the IRS. The filing date of a submitted petition is the date of the acknowledgement letter from the IRS accepting the submitted petition, as described in section 5.03 of this revenue procedure. The IRS will accept a submitted petition only if the petition includes all of the information required in section 6 of this revenue procedure.

.03 *Acknowledgement of petition's receipt.* The IRS will acknowledge receipt of a submitted petition by letter. Any petition received before July 1, 2022, will be deemed received on July 1, 2022. The IRS will acknowledge receipt of a submitted petition by letter regardless of whether the

petition is submitted by electronic facsimile, email, or certified mail. The acknowledgement letter will indicate whether the IRS has accepted the submitted petition, or whether the IRS has rejected the submitted petition due to incomplete or insufficient information. If the IRS accepts the submitted petition, the filing date of the submitted petition is the date of the acknowledgment letter accepting the petition. If the IRS rejects the submitted petition, the petitioner may submit a new petition with the required additional information. The filing date is the date of the acknowledgment letter accepting the new petition.

.04 *Submission by electronic facsimile.* A petitioner may submit a petition by electronic facsimile to the following number: (855) 578-0543. Petitioners and their representatives are encouraged to use a secure electronic facsimile service for submitting petitions. When compiling the petition for submission, petitioners should provide clear titles for the documents and number all pages. If the submission is over 10MB or over 50 pages, petitioners should break it into smaller components, number the components sequentially, and indicate the total number of components (such as "1 of 4," "2 of 4," "3 of 4," and "4 of 4"). Petitioners should use a cover sheet when submitting the petition by electronic facsimile. The cover sheet should provide the petitioner's contact information, state that the electronic facsimile contains a determination request under Revenue Procedure 2022-26, and provide the total number of pages of the electronic facsimile.

.05 *Submission by email*

(1) *Overview.* Until further notice, a petitioner may submit a petition by emailing the petition to: sbse.excise.policy@irs.gov. There are more risks associated with submitting information by email than by electronic facsimile, such as the possibility that sensitive taxpayer information could be intercepted. Accordingly, the IRS encourages petitioners to use a secure electronic facsimile service for submitting petitions. As an alternative, section 5.05(2) of this revenue procedure provides procedures for using encrypted email attachments for submitting a petition.

(2) *Submission using encrypted email attachments.* Petitioners using encrypted email attachments may choose to use a compression utility compatible with SecureZIP (note that many open-source utilities are not compatible with SecureZIP), Adobe Acrobat Pro password encryption, or Microsoft Office 2016/365 Protect Document to encrypt and send password-protected files. Because these programs do not encrypt the subject line or body of an email or the file name of the attachment, all sensitive information should be included only in the encrypted attachment. These programs require that a sender create a password for the recipient to use to decrypt the attachments. The password should never be sent in the same email as the encrypted attachment. Instead, it should be provided to the IRS in a separate email with a subject line that makes it easy to connect the password to the email with the encrypted attachment. When compiling the petition package for submission, the petitioner should provide clear titles for the documents and file names. The petitioner should also encrypt the files or enable the encryption utility on the email system before generating the email. If the submission is over 5 MB or over 50 pages, the petitioner should break it into smaller components that do not exceed 5 MB each, number the components sequentially, and indicate the total number of components (such as "1 of 4," "2 of 4," "3 of 4," and "4 of 4"). Petitioners should refer to www.irs.gov/UsingEmail for additional information about encrypting files and sending documents to the IRS by email. Petitioners should use strong passwords for encrypting files (at least twelve characters, including a mix of upper- and lower-case letters, numbers, and special characters).

.06 *Submission by certified mail.* A petitioner may submit a petition by certified mail, return receipt requested to:

Director SB/SE Exam, Specialty Policy
Internal Revenue Service
SE:S:E:HQ:SEP
c/o Specialty Exam Policy, Tech Advisor
5000 Ellin Rd., Mail Stop C3-255
Office C2-156
Lanham, MD 20784

SECTION 6. WHAT MUST BE INCLUDED IN THE PETITION

.01 *Required information for all petitions.* Except as specifically provided in this section 6.01, the IRS will accept a submitted petition only if the petition includes all of the following information:

(1) A statement identifying whether the petitioner is an importer or exporter of the substance, or an interested person.

(2) The name, address, taxpayer identification number (TIN) of the petitioner; if someone is filing the petition on behalf of the petitioner, the name of the person filing the petition and that person's relationship to the petitioner. An interested person submitting a petition is not required to provide a TIN.

(3) A Form 2848, *Power of Attorney and Declaration of Representative*, if the petition is submitted by the petitioner's authorized representative.

(4) The name of the substance.

(5) A description of the substance and its use.

(6) The molecular formula of the substance, the structural formula of the substance, and the physical form of the substance, as determined by the physical state of the substance (gas, liquid, solid).

(7) The HTSUS number and the Schedule B number of the substance; the Chemical Abstract Service Registry (CAS) number of the substance, if applicable. In connection with the HTSUS number of the substance, the petitioner should also indicate whether the imported substance is in forms or packings for retail sale at entry; however, the information regarding forms and packings is not required and a petition will not be rejected if this information is not included.

(8) The name of the production process that the petitioner has identified as the predominant method of production of the substance.

(9) The data supporting the petitioner's position that the production process identified as the predominant method of

production of the substance is, in fact, the predominant method of production.

(10) An explanation of the production process identified as the predominant method of production of the substance that emphasizes the overall chemical reaction used to process the underlying taxable chemical or chemicals into the substance. The petitioner must include a brief description of all reaction pathways for materials used in the predominant method of production that are derived from a taxable chemical, as shown in the example in section 7.02 of this revenue procedure.

(11) The names, HTSUS numbers, Schedule B numbers, and CAS numbers (to the extent CAS numbers are applicable) of all taxable chemicals used as materials in the production of the substance, based on the process identified as the predominant method of production of the substance.

(12) The molecular formula and the structural formula for each material used in the production of the substance, based on the process identified as the predominant method of production of the substance.

(13) The stoichiometric material consumption equation based on the process identified as the predominant method of production of the substance, assuming a 100-percent yield. The equation must include all materials that are consumed in the process.

(14) The conversion factor for each taxable chemical used to produce the substance, based on the process identified as the predominant method of production of the substance. Petitioner must use the stoichiometric material consumption equation to determine the conversion factor(s). If the request is to add a substance to the List, the petitioner must show that taxable chemicals constitute over 20 percent of the weight or the value of the materials used to produce the substance. If the request is to remove a substance from the List, the petitioner must show that the substance meets neither the weight nor the value test described in § 4672(a)(2)(B).

(15) If the substance is a mixture, the percent composition by weight of each component in the mixture, including solvents, stabilizers, and additives, as well as a description of each component's function in the mixture.

(16) Any tariff classification rulings the petitioner has received from CBP under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177) with regard to the substance. If a petitioner has submitted a tariff classification ruling request under the provisions of 19 C.F.R. 177 for the substance, the petitioner must so indicate, and include that ruling request's identification number in the petition. To the extent the petitioner is aware of any tariff classification rulings that classify the same or a substantially similar substance for which a petitioner seeks a determination, the petitioner should include such ruling(s) in the petition; however, this information is not required and a petition will not be rejected if this information is not included.¹

(17) A statement identifying the extent to which any information included in the petition, other than the information described in section 9.02 and 10.04 of this revenue procedure, is confidential business information that should not be published as part of the Notice of Filing or Notice of Determination. As noted in section 4.04 of this revenue procedure, petitioners are strongly discouraged from submitting confidential business information because of the public nature of the determination process. A determination to add or remove a substance from the List will not be based on confidential business information.

(18) A statement, signed under penalties of perjury, that the petitioner has examined the petition and to the best of petitioner's knowledge and belief, the information in the petition is true, correct, and complete.

.02 *Additional information for petitions based on value.* For petitions based on value, the following additional information is required:

¹ Such rulings may be researched on the Customs Rulings Online Search Service at <https://rulings.cbp.gov/home>. Pursuant to 19 CFR 177.1(c), any person who, as an importer or exporter of merchandise, has a direct and demonstrable interest in the classification question presented in the ruling request, or their authorized agent, may request a binding Customs ruling at <https://erulings.cbp.gov/s/>

(1) The per-unit value of each taxable chemical used in the production of the substance, based on the predominant method of production.

(2) The total value of all materials used in the production of the substance, based on the per-unit value of each material used in the predominant method of production. The units of measurement must be the same as those used in section 6.02(1) of this revenue procedure.

.03 *Optional summary of information for Notice of Filing.* As part of any submission, a petitioner may include a separate document that specifically identifies or summarizes the information from the petition that should be included in the Notice of Filing described in section 9.02 of this revenue procedure.

SECTION 7. STOICHIOMETRIC MATERIAL CONSUMPTION EQUATION EXPLANATION AND EXAMPLE

.01 *Overview.* Section 6.01(13) of this revenue procedure requires the petitioner to include the stoichiometric material consumption equation for the substance, based on the process identified as the predominant method of production of the substance. The petitioner must determine the stoichiometric material consumption equation by examining the established chemical process. Some of the materials used in the predominant method of production may be derived from one or more taxable chemicals. If so, such materials must be examined stoichiometrically

to capture all taxable chemicals used to produce the substance. In such instances, the established chemical process must be further expanded to include individual chemical reactions/processes that may be required to produce the substance from the taxable chemical or chemicals. The final stoichiometric material consumption equation is produced by summing any individual reactions of taxable chemicals.

.02 *Example.* The following is an example that satisfies the requirements of section 6.01(13) of this revenue procedure. This example is for illustrative purposes only. In addition, this example assumes that the syngas used to produce the methanol was not derived from coal. See § 4662(b)(4).

Substance: Dimethyl terephthalate

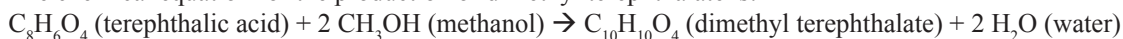
HTSUS item number of substance: 2917.37.00.00

CAS number of substance: 120-61-6

Schedule B number of substance: 2917.37.0000

Predominant method of production: Dimethyl terephthalate is produced by the esterification of terephthalic acid with methanol. Terephthalic acid is made from p-xylene (an isomer of xylene) and oxygen. Methanol is made from syngas. Hydrogen for the syngas is made from methane via the steam methane reforming process.

The chemical equation for the production of dimethyl terephthalate is:



Derived taxable chemicals:

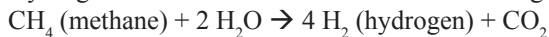
Terephthalic acid is made from p-xylene and oxygen:



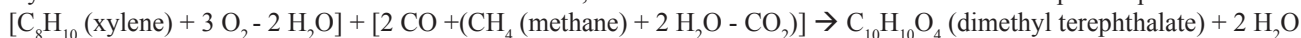
Methanol is made from syngas:



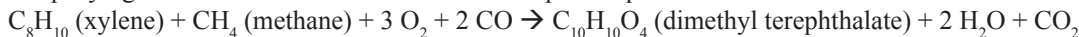
Hydrogen is made from steam-methane reforming:



Xylene and methane are taxable chemicals. Therefore, the derived stoichiometric material consumption equation is:



Simplifying to the stoichiometric material consumption equation:



SECTION 8. CONVERSION FACTOR EXPLANATION AND EXAMPLE

.01 *Overview.* When submitting a petition to the IRS, the petitioner must

identify the predominant method of production of the substance. The petitioner must also provide the stoichiometric material consumption equation for the substance, based on the process identified as the predominant method of production,

as shown in section 7.02 of this revenue procedure. In addition, the petitioner must use the stoichiometric material consumption equation to determine the conversion factor for each taxable chemical used to produce the substance. The conversion

factors are used to determine whether taxable chemicals constitute more than 20 percent, by weight, of the materials used in the production of the substance, based on the predominant method of production. If the taxable chemicals used in the production of the substance meet the 20 percent weight (or value) threshold, the conversion factors may be used to determine the tax rate of the substance.

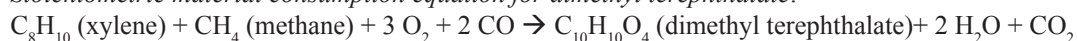
.02 *Percent composition of taxable chemicals in a substance.* The petitioner

must use consistent weight units and should note the units in the petition (the example in section 8.03 of this revenue procedure uses grams). The petitioner must add the weights of all the taxable chemicals used to produce the substance (the Tax Weight). The petitioner must also add the weights of all materials, including taxable chemicals, used to produce the substance (the Total Weight). If the ratio of Tax Weight to Total Weight multiplied by 100 percent ((Tax Weight/Total Weight

x 100%) is greater than 20 percent, the substance meets the weight threshold for a taxable substance set forth in § 4672(a)(2)(B).

.03 *Example.* The following is an example that satisfies the requirements of section 6.01(14) of this revenue procedure. This example is for illustrative purposes only.

Stoichiometric material consumption equation for dimethyl terephthalate:



Stoichiometric material consumption equation used to determine the weight (in grams) of materials used to produce dimethyl terephthalate:

C_8H_{10} (xylene) + CH_4 (methane)	+	$3 O_2 + 2 CO$	→	$C_{10}H_{10}O_4$	+	$2 H_2O + CO_2$
106.16 g + 16.06 g = 122.22 g		96.00 g + 56.02 g = 152.02 g		194.19 g		

Total Weight = 122.22 g + 152.02 g = 274.24 g

Percent of dimethyl terephthalate produced with taxable chemicals:

$$(122.22 \text{ g Tax Weight}) / (274.24 \text{ g Total Weight}) \times 100\% = 44.57\%$$

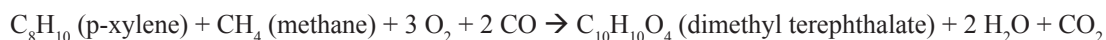
Conversion factors of taxable chemicals: The weight of an individual taxable chemical used in the stoichiometric material consumption equation is divided by the weight of the substance. This ratio is a multiplier, i.e. a *conversion factor*, that is used for each taxable chemical used in the predominant method of production of the substance to determine an overall tax rate for the substance.

For example:

If: Taxable chemical A + Taxable chemical B → Substance X

Then: A conversion factor = (Chemical Weight A) / (Chemical Weight X)

B conversion factor = (Chemical Weight B) / (Chemical Weight X)



Both p-xylene and methane are taxable chemicals.

Conversion factor p-xylene: (106.16 g p-xylene) / (194.19 g dimethyl terephthalate) = 0.55

Conversion factor methane: (16.06 g methane) / (194.19 g dimethyl terephthalate) = 0.08

In summary, dimethyl terephthalate should be added to the list of taxable substances and p-xylene and methane are the taxable chemicals used to produce dimethyl terephthalate.

Percent Composition Taxable	44.57 %
Conversion factor for p-xylene	0.55
Conversion factor for methane	0.08

The tax rate for dimethyl terephthalate is calculated as follows: [(\$9.74 rate of tax for p-xylene) x 0.55] + [(\$6.88 rate of tax for methane) x 0.08]

Total tax rate for dimethyl terephthalate = \$5.91 per ton

SECTION 9. PUBLIC NOTICE, COMMENTS, REQUESTS FOR A PUBLIC HEARING

.01 *Notice of Filing.* After a submitted petition has been filed, the IRS will publish a “Notice of Filing” in the Federal Register on www.federalregister.gov and on www.regulations.gov. The Notice of Filing will summarize the petition and request comments.

.02 *Information included in Notice of Filing.* The Notice of Filing will be based upon the information provided by the petitioner in the filed petition and will include all of the following information:

(1) The name of the substance that is the subject of the petition.

(2) The name of the petitioner and whether the petitioner is an importer of the substance, an exporter of the substance, or an interested person.

(3) The HTSUS number and the Schedule B number of the substance, and the CAS number of the substance, if applicable.

(4) The filing date of the petition.

(5) A brief description of the petition.

(6) The process identified in the petition as the predominant method of production of the substance.

(7) The stoichiometric material consumption equation for the substance, based on the process identified as the predominant method of production of the substance.

(8) In the case of a petition to add a substance to the List, the rate of tax for the substance, based upon the conversion factors of the taxable chemicals used in the production of the substance, as provided by the petitioner.

(9) The public docket on www.regulations.gov for the Notice of Filing and other information needed for submitting comments.

.03 *Written comments.* As part of the determination process, the Secretary will consider all written comments submitted within 60 days of the date the Notice of Filing is published in the Federal Register on www.federalregister.gov, provided the comments are submitted in accordance with the comment submission instructions contained in the Notice of Filing. All

commenters are strongly encouraged to submit public comments electronically via the Federal Rulemaking Portal at www.regulations.gov in accordance with the instructions for submitting comments contained in the Notice of Filing. The Treasury Department and the IRS will publish any comment submitted in response to the Notice of Filing to the public docket for the Notice of Filing on www.regulations.gov.

.04 *Public hearing.* Any person submitting a written comment in response to the Notice of Filing may include a request for a public hearing in such person’s written comment. If a public hearing is scheduled, notice of the time and place of the hearing will be published in the Federal Register.

SECTION 10. DETERMINATIONS

.01 *Actions prior to making determination.* The Secretary will make a determination under § 4672(a)(2) or (4) on a filed petition only after each of the following has occurred:

(1) Publication of the Notice of Filing.

(2) Consideration of all written comments received in response to the Notice of Filing.

(3) A public hearing, if held.

(4) Consultation with the EPA Administrator and the CBP Commissioner.

.02 *Petition by importer or exporter.* In the case of a petition submitted by an importer or exporter of a substance, the Secretary will make a determination within 180 days after the date the petition is filed. The 180-day determination period may be extended by agreement between the petitioner and the IRS.

.03 *Petition by interested person.* The 180-day determination period does not apply to petitions submitted by interested persons.

.04 *Notice of Determination.* When the Secretary makes a determination on a petition, the IRS will publish a “Notice of Determination” in the Federal Register. The Notice of Determination will include the following information:

(1) The name of the petitioner.

(2) The Secretary’s determination regarding whether to add the substance to the List or remove the substance from the List.

(3) The HTSUS number and the Schedule B number of the substance, and the CAS number of the substance, if applicable.

(4) The predominant method of production of the substance.

(5) A synopsis of the reasons for the determination.

(6) The date of the determination.

(7) The effective date for any modification to the List.

(8) In the case of substances added to the List, the rate of tax prescribed by the Secretary for the substance, based upon conversion factors and the predominant method of production of the substance.

SECTION 11. EFFECTIVE DATE FOR MODIFICATIONS TO THE LIST

.01 *In general.* The date the Secretary’s determination is filed with the Federal Register is not the same date that a substance is added to or removed from the List. Determinations made during a calendar quarter will be effective and reflected in the List as of the first day of the second quarter following the quarter in which the determination is made. Therefore, importers that will be liable for the tax imposed by § 4671(a) on the sale or use of taxable substances added to the List, and persons that will no longer be eligible to claim a credit or refund of the tax imposed by § 4661(a) paid on taxable chemicals used in the manufacture, for export, of substances removed from the List, will have a minimum of 90 days’ notice of the changes. Because the tax imposed by § 4671(a) is reported on a quarterly basis on Form 6627, *Environmental Taxes*, which is attached to Form 720, *Quarterly Federal Excise Tax Return*, the effective dates of modifications to the List align with the beginning of a calendar quarter. Thus, the effective date of any modification to the List will be as follows:

Determinations made between Effective date²
July 1 and September 30 January 1
October 1 and December 31 April 1
January 1 and March 31 July 1
April 1 and June 30 October 1

²The Secretary may prescribe the extent, if any, to which any ruling relating to the internal revenue laws shall be applied without retroactive effect. See § 7805(b)(8).

.02 *Retroactive effect of determinations for purposes of refund claims under § 4662(e); protective claims for refund of § 4661(a) tax paid.*

(1) If the Secretary makes a determination to add a substance to the List and that substance is exported, for purposes of claims for refund, that substance is deemed to have been added to the List as of the date the petition was filed. As a result, a person that paid the § 4661(a) tax to the IRS on taxable chemicals used in the production of a substance that was exported on or after the filing date of the petition may be entitled to a refund, if a determination is ultimately made to add the substance to the List. A refund is available to the person that paid the tax if the person establishes that it has repaid or agreed to repay the amount of the tax to the exporter of the taxable substance or has obtained the written consent of the exporter to the making of the refund. *See* § 4662(e)(2). Under certain circumstances, the exporter of the taxable substance may claim the refund if the person that paid the tax waives its claim to the amount of the refund. *See* § 4662(e)(3).

(2) Taxpayers are reminded of the need to file a claim for refund of tax within the applicable period of limitations, even if a determination to add a substance to the List has not yet been made. Under § 6511, a claim for refund of an overpayment of tax for which a return is required must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later. A person that paid the § 4661(a) tax to the IRS on the taxable chemicals used as materials in the production of the substance may file a protective claim for refund of the tax while the petition is pending.

(3) Refunds of tax related to a substance for which a petition is pending are available only for exports made on or after the filing date of the pending petition and only if a determination is ultimately made to add the substance to the List. In addition, a refund of tax is available only if the claim is filed within the statutory period of limitations.

(4) In order to expedite processing, claims for refund should be filed on Schedule 6 (Form 8849), *Other Claims*.

If the claim is filed while the petition is pending, the claimant should write “PROTECTIVE REFUND CLAIM-EXPORT OF SUBSTANCE FOR WHICH A PETITION IS PENDING” across the top of the claim form to alert the IRS Service Center of the nature of the claim.

.03 *Petitions filed between July 1, 2022, and December 31, 2022.* The Treasury Department and the IRS recognize the short time frame between publication of this revenue procedure and reinstatement of the Superfund chemical taxes. If certain substances are listed as taxable substances under § 4672(a) at the time of export, then § 4662(e) allows the taxpayer or exporter to claim a credit or refund of the tax paid under § 4661(a) with respect to the taxable chemicals used in the production of the exported substance. In consideration of this issue, the Treasury Department and the IRS have determined that for purposes of section 11.02 of this revenue procedure, it is in the interest of sound tax administration to deem any submitted petition by an importer or exporter that is accepted by the IRS between July 1, 2022, and December 31, 2022, as filed on July 1, 2022. However, for purposes of the time frame within which the Secretary must make a determination, a petition submitted by an importer or exporter will be considered filed on the date it is accepted by the IRS as described in section 5.02 of this revenue procedure.

SECTION 12. EFFECT ON OTHER DOCUMENTS

.01 Notice 89-61, as modified by Notice 95-39 and suspended by Notice 2021-66, and Notice 95-39, are superseded.

.02 The following notices that were issued pursuant to Notice 89-61 are revoked: Notice 90-47, 1990-2 C.B. 338; Notice 90-48, 1990-2 C.B. 338; Notice 90-50, 1990-2 C.B. 340; Notice 90-51, 1990-2 C.B. 342; Notice 91-31, 1991-2 C.B. 631; Notice 91-32, 1991-2 C.B. 631; Notice 91-33, 1991-2 C.B. 632; Notice 91-34, 1991-2 C.B. 632; Notice 92-11, 1992-1 C.B. 500; Notice 94-7, 1994-1 C.B. 332; Notice 94-8, 1994-1 C.B. 333; Notice 94-9, 1994-1 C.B. 334; Notice 94-10, 1994-1 C.B.

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.03 The substance of the notices revoked by section 12.02 of this revenue procedure was often published concurrently in the Federal Register in the form of a determination. The determinations published in the Federal Register may no longer be relied upon.

SECTION 13. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been submitted to the Office of Management and Budget for review under OMB control number 1545-2304 in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)). 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. The collections of information in this revenue procedure are in sections 5 and 6 of this revenue procedure. This information is necessary and will be used to determine whether a substance should

be added to or removed from the list of taxable substances under § 4672(a). The collections of information are required for an importer, exporter, or interested person to obtain a determination regarding whether a substance is subject to tax under § 4671(a).

SECTION 14. DRAFTING INFORMATION

The principal authors of this revenue procedure are Stephanie Bland and Amanda Dunlap of the Office of Associate Chief Counsel (Passthroughs & Special

Industries). For legal questions regarding this revenue procedure, contact Elisabeth Shellan or Camille Edwards Bennehoff at (202) 317-6855 (not a toll-free number). For questions regarding submitting a petition, please contact Alan Anderson at (503) 265-3736 (not a toll-free number).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
FR.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021–27 through 2021–52 is in Internal Revenue Bulletin 2021–52, dated December 27, 2021.

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