



TaxNewsFlash

United States



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Rev. Proc. 2022-26: Procedures for requesting that substances be added or removed from Superfund list

The IRS today released an advance version of [Rev. Proc. 2022-26](#) [PDF 221 KB] that provides the exclusive procedures for requesting a determination under section 4672(a)(2) that a substance be added to or removed from the list of substances under section 4672(a) subject to the excise tax imposed by section 4671(a).

Background

A provision of the “Infrastructure Investment and Jobs Act” (Pub. L. No. 117-58, enacted November 15, 2021) reinstated excise taxes imposed on certain chemicals and substances under sections 4661 and 4671 (often referred to as “Superfund” excise taxes) and modified the applicable rates of tax and other provisions related to such taxes. Read [TaxNewsFlash](#)

The Superfund excise taxes, which expired more than 25 years ago and are now effective July 1, 2022, include two separate but interrelated excise taxes applicable to chemicals and hazardous substances, which fund the Hazardous Substance Superfund for the cleanup of hazardous waste sites.

- Section 4661(a) imposes a tax on any taxable chemical sold or used by the manufacturer, producer or importer. Section 4661(b) provides a list of such taxable chemicals.
- Section 4671(a) imposes a tax on any taxable substance sold or used by the importer. Section 4672(a) 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 Treasury Department or IRS. Section 4672(a)(2) provides that a substance “shall be listed” under section 4672(a)(1) if:
 - The substance is contained in the statutory list of taxable substances under section 4672(a)(3).
 - The Treasury Department and IRS determine, 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). Under the reinstated Superfund excise taxes, that percentage was lowered from 50% to 20%.

The IRS previously provided guidance regarding the reinstated Superfund excise taxes in [Notice 2021-66](#) [PDF 175 KB], which:

- Provided the initial list of taxable substances under section 4672(a) (which included the same hazardous substances that were previously taxable by statute or IRS determination)
- Addressed the registration requirements imposed by section 4662(b)(10)(C) and (c)(2)(B) to exempt certain sales and uses of taxable chemicals from tax
- Provided the procedural rules that apply to taxpayers subject to the reinstated Superfund excise taxes
- Suspended Notice 89-61 (as modified by Notice 95-39) which prescribed the former process for certain persons to request that certain substances be added to or removed from the list of taxable substances under section 4672(a)(3)
- Included a request for comments as to whether there are issues related to the reinstated Superfund excise taxes that require clarification or additional guidance

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In addition, a recent IRS release—[IR-2022-131](#) (June 24, 2022)—explains that, currently, 151 substances are listed as taxable substances but that this number is expected to change as substances are added to or removed from the list of taxable substances. The IRS also announced the prescribed tax rates for 121 taxable substances that are subject to the Superfund chemical excise tax imposed by section 4671(a). Read [TaxNewsFlash](#)

Rev. Proc. 2022-26

Rev. Proc. 2022-26 provides that 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 of taxable substances under section 4672(a) (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 the revenue procedure. Any requests to modify the List that were submitted prior to publication of the 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 the revenue procedure. Such requests will not be processed and must be submitted in accordance with the procedures described in sections 5 and 6 of the revenue procedure.

- Rev. Proc. 2022-26 includes detailed information regarding the information and statements that must be submitted with any request, as well as examples with respect to the stoichiometric material consumption equation for a particular substance.
- After a submitted petition has been filed, the IRS will publish a “Notice of Filing” in the Federal Register which will summarize the petition and request comments. Any person submitting a written comment in response to the notice of filing may include a request for a public hearing.
- In the case of a petition submitted by an importer or exporter of a substance, a determination will be made 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. The 180-day determination period does not apply to petitions submitted by interested persons.
- When a determination is made on a petition, the IRS will publish a “Notice of Determination” in the Federal Register.
- The date the notice of 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 section 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 section 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.

KPMG observation

- The revenue procedure provides some useful definitions. For example, it defines “exporter” to mean the person named as shipper or consignor in the export bill of lading. It clarifies that 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. Further, it clarifies that for inorganic chemical substances, the term “substance” does not include fabricated products that are molded, formed, or otherwise finished into end-use products.
- The revenue procedure revokes all prior IRS notices adding certain hazardous substances to the list of taxable substances, and describing any chemical formula and conversion factor used to determine the IRS tax rate for those taxable substances.
- The revenue procedure deems any petition submitted by an importer or exporter that is submitted and accepted by the IRS between July 1, 2022, and December 31, 2022, as filed on July 1, 2022.
- The revenue procedure also provides for increased coordination among the IRS, CBP, and EPA.

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