



# What's News in Tax

Analysis that matters from Washington National Tax

## “Superfund” Tax Refunds for Exported Chemicals and Listed Substances

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Exporters of chemicals and chemical derivatives may be entitled to significant refunds of the Superfund excise taxes, but only if the exported product is a “listed” taxable chemical or substance.

Affected stakeholders can ask the IRS to expand the list of taxable substances in certain cases, potentially increasing available export credits. On June 28, 2022, the IRS released Revenue Procedure 2022-26, describing the process to add or remove a substance from the list of taxable substances under section 4672(a) of the Code.<sup>1</sup> The revenue procedure allows certain “interested persons” to submit a petition to the IRS in accordance with detailed procedures. This article will address the information that is required when submitting a petition under Revenue Procedure 2022-26.

### Background

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 tax rates and other provisions related to those taxes.

Generally, section 4661 imposes tax on a list of 42 taxable chemicals; the rate of tax varies from \$0.44 to \$9.74 per ton. Section 4671 imposes a tax on specified chemical derivatives of the 42 taxable

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<sup>1</sup> Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended (the “Code”) or the applicable regulations promulgated pursuant to the Code (the “regulations”).

chemicals, called “taxable substances.” The tax code lists 50 taxable substances and authorizes the IRS to add to the list of taxable substances, in certain cases. Specifically, a substance will be added to the list by the IRS if taxable chemicals constitute over 20 percent of the weight or the value of the materials used to produce the substance (the “20 percent test”). Historically, the IRS has added over 100 additional substances to the list of taxable substances.

Since reinstatement of the Superfund excise taxes, the IRS has issued guidance relating to taxable substances, including:

- Notice 2021-66, which:
  - Provided the initial list of 151 taxable substances under section 4672(a) (which included the same hazardous substances that were previously taxable by statute or IRS determination)
  - Suspended Notice 89-61 (as modified by Notice 95-39), the predecessor to Revenue Procedure 2022-26
  - Provided penalty relief related to tax deposits, in certain cases
- IRS release IR-2022-131 (June 24, 2022) explained that the current list of 151 substances is expected to change as substances are added to or removed from the list of taxable substances
- IRS release IR-2022-132 (June 24, 2022) announced tax rates for 121 taxable substances

### Export Credits and Refunds Allowed for Exported Taxable Chemicals and Substances

Export credits and refunds are allowed in certain cases with respect to the Superfund excise taxes. Either the taxpayer or the exporter may file the claim for refund, provided certain conditions to allowance are met, and the proper paperwork is maintained, such as proof of exportation, waivers, and consents. In addition, an export credit is allowed for a taxable substance only if it is listed by the IRS as a taxable substance.

Revenue Procedure 2022-26 provides the mechanism to add or remove a substance from the list of taxable substances. The revenue procedure allows interested persons (that is, an importer or exporter of any substance, or a person other than an importer or exporter of those substance) to submit a petition to the IRS. The revenue procedure specifies information that is required when submitting a petition and provides an example for taxpayers to use as a guide.

### Information Required For Petitions Under Revenue Procedure 2022-26

Revenue Procedure 2022-26 allows interested persons to submit one petition per substance to request its addition to or removal from the list of taxable substances. Detailed information must be included for each petitioned substance. A high level summary of the detailed information includes:

- Name, description, and use

- Molecular formula, structural formula, and physical form
- Harmonized Tariff Schedule (HTSUS) number, certain tariff classification rulings or requests for rulings, and Chemical Abstract Service Registry (CAS) number, if applicable
- Name and explanation of the predominant method of production, with specified supporting data
- Specified information relating to all taxable chemicals used as materials in production
- Stoichiometric material consumption equation and conversion factor for each taxable chemical used in production to show the 20 percent test is met (or not, as the case may be), as well as additional information for substances that are mixtures
- A statement identifying the extent to which any information included in the petition, other than the information described in section 9.02 (relating to information that the IRS will publish as a “Notice of Filing”) and 10.04 (relating to information that the IRS will publish as a “Notice of Determination”) of Revenue Procedure 2022-26, 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 (relating to publication in the *Federal Register*), 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.

Sections 7 and 8 of Revenue Procedure 2022-26 provide an example of the stoichiometric material consumption equation and the conversion factor explanation using the substance dimethyl terephthalate. Both sections include an illustration of how the information should be presented in the petition. The illustrations are included at the end of this article.

### KPMG Observations

Petitions to add or remove substances will require a significant amount of time to gather and organize technical information due to the lengthy, detailed information requirements in Revenue Procedure 2022-26. Technical resources, such as chemists and engineers, may be required to prepare background information necessary to prepare a complete petition.

The process may be easier for petitioners that produce the substances at issue because they have access to information detailing the production process and chemical changes involved. In contrast, distributors and resellers may encounter greater challenges in gathering the required information for the substances they import or export and may need to work together with their suppliers to request the information.

Petitioners should also be aware that the petition process is public, and the information submitted in the petition will be shared publicly. As a result, petitioners will need to consider the type of information to be included and disclosed in the petition.

KPMG can assist in the preparation of petitions under the revenue procedure to confirm that the petitions include all necessary information, while taking into account considerations around confidentiality and proprietary information. We can also assist in navigating the procedural steps associated with filing the petition and conducting follow up discussions with the IRS as part of the determination process.

Finally, KPMG can assist with all aspects of Superfund excise tax compliance, including preparing and filing claims for export credits and refunds, obtaining and maintaining the necessary documents (such as proof of exportation, waivers, and consents) and identifying the appropriate tax rate on which to base the claim.

**Substance: Dimethyl terephthalate**

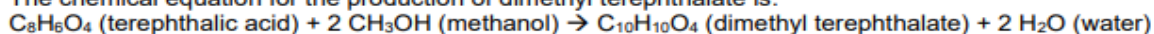
HTSUS item number of substance: 2917.37.00.00

CAS number of substance: 120-61-6

Schedule B number of substance: 2917.37.0000

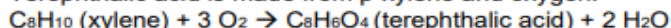
Predominant method of production: Dimethyl terephthalate is produced by the esterification of terephthalic acid with methanol. Terephthalic acid is made from p-xylene (an isomer of xylene) and oxygen. Methanol is made from syngas. Hydrogen for the syngas is made from methane via the steam methane reforming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

The chemical equation for the production of dimethyl terephthalate is:

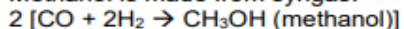


Derived taxable chemicals:

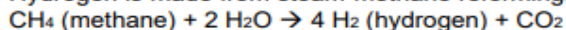
Terephthalic acid is made from p-xylene and oxygen:



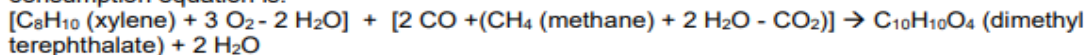
Methanol is made from syngas:



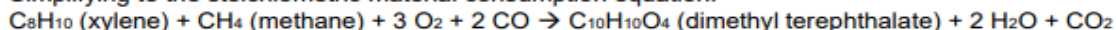
Hydrogen is made from steam-methane reforming:



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



Simplifying to the stoichiometric material consumption equation:



**Stoichiometric material consumption equation for dimethyl terephthalate:**  
 $C_8H_{10}$  (xylene) +  $CH_4$  (methane) + 3  $O_2$  + 2  $CO$  →  $C_{10}H_{10}O_4$  (dimethyl terephthalate) + 2  $H_2O$  +  $CO_2$

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 g Tax Weight) / (274.24 g Total Weight) x 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)

$C_8H_{10}$  (p-xylene) +  $CH_4$  (methane) + 3  $O_2$  + 2  $CO$  →  $C_{10}H_{10}O_4$  (dimethyl terephthalate) + 2  $H_2O$  +  $CO_2$

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

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