

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

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.

EXCISE TAX

Notice 2021-66, page 901.

Notice 2021-66 provides the initial list of taxable substances under section 4672(a) required by section 80201(c)(3) of the Infrastructure Investment and Jobs Act (Public Law 117-58, 135 Stat. 429) to be published by the Secretary of the Treasury no later than January 1, 2022. The notice also addresses 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, and provides the procedural rules that apply to taxpayers subject to the reinstated Superfund chemical taxes. In addition, pending further guidance, the notice suspends Notice 89-61, 1989-1 C.B. 717, as modified by Notice 95-39, 1995-1 C.B. 312, 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) as previously in effect. Finally, the notice requests comments on whether any issues related to the reinstated Superfund chemical taxes require clarification or additional guidance.

EXEMPT ORGANIZATIONS

Announcement 2021-18, page 910.

This announcement revokes Announcement 2001-33, 2001-17 IRB 1137. Announcement 2001-33 provided tax-exempt organizations with reasonable cause for purposes of relief from the penalty imposed under § 6652(c)(1)(A)(ii) of the Internal Revenue Code if they reported compensation on their annual information returns in the manner described in Announcement 2001-33 instead of in accordance with cer-

Bulletin No. 2021-52
December 27, 2021

tain form instructions. The Announcement instructs affected tax-exempt organizations to follow the specific instructions to the Form 990, Form 990-EZ, and Form 990-PF, effective for annual information returns required for taxable years beginning on or after January 1, 2022 (the earliest of which will be filed in May 2023).

TAX CONVENTIONS

Announcement 2021-19, page 912.

The Competent Authorities of the United States and the Republic of Malta entered into a Competent Authority Arrangement under paragraph 3 of Article 25 (Mutual Agreement Procedure) of the U.S.-Malta Treaty (Treaty) confirming that certain pension or other retirement arrangements, including Maltese personal retirement schemes, are not treated as "pension funds" for purposes of the Treaty and that distributions from these schemes are not "pensions or other similar remuneration" for purposes of the Treaty. Consequently, treaty benefits cannot be obtained with respect to these schemes.

INCOME TAX

Rev. Proc. 2021-54, page 903.

The revenue procedure sets forth the unpaid loss discount factors for the 2021 accident year for purposes of section 846 of the Internal Revenue Code. The revenue procedure also prescribes the salvage discount factors for the 2021 accident year, which must be used to compute discounted estimated salvage recoverable under section 832 of the Internal Revenue Code.

Part III

Superfund; Initial List of Taxable Substances; Registration; Procedural Rules; Request for Comments; Suspension of Notice 89-61

Notice 2021-66

SECTION 1. PURPOSE

This notice relates to section 80201 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, 135 Stat. 429 (November 15, 2021), which reinstates, effective July 1, 2022, the excise taxes imposed on certain chemical substances by sections 4661 and 4671 of the Internal Revenue Code (Code) (collectively, Superfund chemical taxes) and modifies the applicable rates of tax and other provisions related to those taxes. (Unless otherwise stated, all section references in this notice are to the Code.)

Pursuant to section 80201(c)(3) of the IIJA, this notice provides the initial list of taxable substances under section 4672(a) required to be published by the Secretary of the Treasury or her delegate (Secretary) no later than January 1, 2022. This notice also addresses 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, and provides the procedural rules that apply to taxpayers subject to the reinstated Superfund chemical taxes. In addition, pending further guidance, this notice suspends Notice 89-61, 1989-1 C.B. 717, as modified by Notice 95-39, 1995-1 C.B. 312, 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) as previously in effect. Finally, this notice requests comments on whether any issues related to the reinstated Superfund chemical taxes require clarification or additional guidance.

SECTION 2. BACKGROUND

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 section 4661(a) tax on sales of taxable chemicals (enacted by section 211 of CERCLA) and the section 4671(a) tax on sales or uses of imported taxable substances that use one or more taxable chemicals in their manufacture or production (enacted by section 515 of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613 (1986)). The Superfund chemical taxes as previously in effect expired on December 31, 1995.

Effective July 1, 2022, section 80201 of the IIJA reinstates the Superfund chemical taxes with several modifications, including to the applicable rates of tax. In addition, section 80201(c)(1) of the IIJA modifies the method under section 4672(a)(2)(B) for determining whether a substance is a taxable substance by lowering the required percentage of taxable chemicals used to produce the substance from 50 percent to 20 percent of the weight (or the value) of the materials used to produce such substance.

SECTION 3. LAW

Section 4661(a) imposes a tax on any taxable chemical sold by the manufacturer, producer, or importer.

Section 4661(b) provides a list of taxable chemicals and the amount of tax imposed by section 4661(a) on those chemicals.

Section 4662 provides definitions and special rules applicable to the section 4661(a) tax.

Section 4662(b)(10)(C) and (c)(2)(B) requires parties to sales of certain intermediate hydrocarbon streams and inventory exchanges to be registered by the IRS in order to qualify for the exceptions in section 4662(b)(10)(A) and (c)(2)(A).

Section 4671(a) imposes a tax on any taxable substance sold or used by the importer.

Section 4671(b) provides that the amount of tax imposed by section 4671(a) with respect to any taxable substance

is equal to the amount of tax that would have been imposed by section 4661 on the taxable chemicals used as materials in the manufacture 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 provides definitions and special rules applicable to the section 4671(a) tax.

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. Section 4672(a)(3) provides a list of taxable substances.

Section 4672(a)(2), as modified by section 80201(c)(1) of the IIJA, generally provides that a substance shall be listed under section 4672(a)(1) if (A) the substance is contained in the list in section 4672(a)(3), or (B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of U.S. Customs and Border Protection, 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). Section 4672(a)(2) further provides that an importer or exporter of any substance may request a determination on whether that substance should be added to or removed from the list of taxable substances.

Notice 89-61 provides rules for filing a petition to request a modification of the list of taxable substances under section 4672(a).

SECTION 4. INITIAL LIST OF TAXABLE SUBSTANCES UNDER SECTION 4672(a)

Section 80201(c)(2) of the IIJA creates a presumption that any substance that was determined to be a taxable substance under section 4672(a)(2) prior to November 15, 2021 (the date of enactment of the IIJA), continues to be treated as a taxable substance for purposes of section 4672(a)(2). As noted above, section 80201(c)(3) of the IIJA requires the Secretary to pub-

lish an initial list of taxable substances under section 4672(a) by January 1, 2022.

Based on the presumption in section 80201(c)(2) of the IIJA and other considerations, such as the reduction of the weight and value thresholds in section 4672(a)(2)(B) from 50 percent to 20 percent made by section 80201(c)(1) of the IIJA and determinations regarding taxable substances previously made pursuant to the process described in Notice 89-61, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have determined that the initial list of taxable substances required to be published by section 80201(c)(3) of the IIJA includes only the taxable substances listed in section 4672(a)(3) and the following substances:

1,4 butanediol
1,3-butylene glycol
1,5,9-cyclododecatriene
2-ethyl hexanol
2-ethylhexyl acrylate
2,2,4-trimethyl-1,3-pentanediol
diisobutyrate
2,2,4-trimethyl-1,3-pentanediol
monoisobutyrate
acetic acid
acetylene black
adipic acid
adiponitrile
allyl chloride
alpha-methylstyrene
aniline
benzaldehyde
benzoic acid
bisphenol-A
butanol
butyl acrylate
butyl benzyl phthalate
chlorinated polyethylene
cyclododecanol
decabromodiphenyl oxide
di-2 ethyl hexyl phthalate
di-n-hexyl adipate
diethanolamine
diglycidyl ether of bisphenol-A
diisopropanolamine
dimethyl terephthalate
dimethyl-2, 6-naphthalene dicarboxylate
diphenyl oxide
diphenylamine
epichlorohydrin
ethyl acetate
ethyl acrylate

ethyl chloride
ethylene dibromide
ethylenebistetraabromophthalimide
formic acid
glycerine
hexabromocyclododecane
hexamethylenediamine
isobutyl acetate
isopropyl acetate
linear alpha olefins
methyl acrylate
methyl chloroform
methyl isobutyl ketone
methyl methacrylate
monochlorobenzene
monoethanolamine
monoisopropanolamine
normal butyl acetate
normal propyl acetate
nylon 6/6
ortho-dichlorobenzene
ortho-nitrochlorobenzene
paraformaldehyde
para-dichlorobenzene
para-nitrochlorobenzene
para-nitrophenol
pentaerythritol
perchloroethylene
phenol
phosphorous pentasulfide
phosphorous trichloride
poly 1,4 butyleneterephthalate
poly (69/31 ethylene/cyclohexylenedimethylene terephthalate)
poly (96.5/3.5 ethylene/cyclohexylenedimethylene terephthalate)
poly (98.5/1.5 ethylene/cyclohexylenedimethylene terephthalate)
poly(ethyleneoxy)glycerol
poly(propylene)glycol
poly(propylene/ethylene)glycol
poly(propyleneoxy)glycerol
poly(propyleneoxy)sucrose
poly(propyleneoxy/ethyleneoxy)benzenediamine
poly(propyleneoxy/ethyleneoxy)diamine
poly(propyleneoxy/ethyleneoxy)glycerol
poly(propyleneoxy/ethyleneoxy)sucrose
polyalphaolefins
polybutene
polybutylene
polybutylene/ethylene
polycarbonate
polyethylene terephthalate pellets

propanol
sodium nitriolotriacetate monohydrate
synthetic linear fatty alcohols
synthetic linear fatty alcohol ethoxylates
terephthalic acid
tetrabromobisphenol-A
tetrachlorophthalic anhydride
tetrahydrofuran
texanol benzyl phthalate
toluene diisocyanate
toluenediamine
trichloroethylene
triethanolamine
triisopropanolamine
trimethylolpropane
vinyl acetate

SECTION 5. PETITIONS TO MODIFY THE LIST OF TAXABLE SUBSTANCES

Notice 89-61, issued when the Superfund chemical taxes were previously in effect, prescribes the process under section 4672(a)(2) by which importers or exporters may request a determination that the list of taxable substances be modified by either adding or removing a substance. The Treasury Department and the IRS intend to update Notice 89-61 to reflect the changes made to section 4672(a)(2) by the IIJA, and to make other changes that may be necessary. Accordingly, Notice 89-61 is suspended pending the issuance of additional guidance. *See* IRM 32.2.2.8.1, para. 9 (Aug. 11, 2004) (providing that previously published guidance can be suspended in rare situations “to show that previously published guidance will not be applied pending some future action, such as the issuance of new or amended regulations”).

SECTION 6. REGISTRATION FOR CERTAIN EXCEPTIONS

Section 4662(b)(10)(A) provides that no tax is imposed on any organic taxable chemical while the chemical is part of an intermediate hydrocarbon stream containing one or more organic taxable chemicals. Section 4662(b)(10)(C) provides that the exception in section 4662(b)(10)(A) does not apply to the sale of any intermediate hydrocarbon stream unless the registration requirements of section 4662(c)(2)(B) are satisfied.

Section 4662(c)(2)(A) provides that no tax is imposed on inventory exchanges of taxable chemicals. Section 4662(c)(2)(B) provides that the exception in section 4662(c)(2)(A) does not apply to any inventory exchange unless the registration requirements of section 4662(c)(2)(B) are satisfied.

The registration requirements of section 4662(c)(2)(B) are not satisfied unless (i) both parties are registered by the IRS as manufacturers, producers, or importers of taxable chemicals; and (ii) the person receiving the taxable chemical has notified the manufacturer, producer, or importer of such person's registration number.

The registration requirements of section 4662(b)(10)(C) intermediate hydrocarbon stream registration and section 4662(c)(2)(B) inventory exchange registration must be made on Form 637, *Application for Registration (For Certain Excise Tax Activities)*, under Activity Letter "G" (persons making inventory exchanges of taxable chemicals under section 4662(c)(2) or persons selling or buying intermediate hydrocarbon streams under section 4662(b)(10)) in accordance with the instructions for that form. The IRS is revising Form 637 to add Activity Letter G. Until the revised Form 637 is released, applicants may use the current Form 637 by writing in Activity Letter G and providing the following information: (i) a list of the taxable chemicals the applicant exchanges and/or the intermediate hydrocarbon streams the applicant sells or buys; and (ii) a description of the applicant's processing plants, the products produced, the handling and storage facilities, and the processes involving hydrocarbon streams, as applicable.

SECTION 7. APPLICABLE PROCEDURAL RULES

The Superfund chemical taxes are part of Subtitle D, chapter 38 of the Code. Accordingly, the procedural rules in 26 C.F.R. part 40 regarding filing, deposits, etc., apply to persons subject to the reinstated Superfund chemical taxes. Such persons must report the reinstated Superfund chemical taxes on Form 6627, *Environmental Taxes*, which is attached to Form 720, *Quarterly Federal Excise Tax Return*.

SECTION 8. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on whether any issues related to the reinstated Superfund chemical taxes require clarification or additional guidance. Comments should be submitted in writing by January 28, 2022, and should include a reference to Notice 2021-66. Comments may be submitted electronically via the Federal Rulemaking Portal at www.regulations.gov (type IRS-2021-0018 or Notice 2021-66 in the search field on the [regulations.gov](http://www.regulations.gov) homepage to find this notice and submit comments). Alternatively, comments may be mailed to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice 2021-66), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington D.C. 20044. All commenters are strongly encouraged to submit public comments electronically. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, and, to the extent practicable, on paper, to its public docket.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Notice 89-61 is suspended.

SECTION 10. PAPERWORK REDUCTION ACT

Section 6 of this notice sets forth a collection of information to be provided to the IRS with Form 637. This collection of information will be reflected in the submission to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) that is associated with Form 637 (OMB control number 1545-1835). This submission will be updated in the ordinary course. 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.

SECTION 11. DRAFTING INFORMATION

The principal authors of this notice are Stephanie Bland, Amanda Dunlap, and Natalie Payne of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For questions regarding the registration process, contact Diane M. Williams at (856) 792-9362. For all other questions regarding this notice, contact Ms. Payne at (202) 317-6855.

26 CFR 601.201: Rulings and determination letters. (Also: Part 1, Sections 832, 846; 1.832-4, 1.846-1.)

Rev. Proc. 2021-54

SECTION 1. PURPOSE

This revenue procedure prescribes discount factors for the 2021 accident year for use by insurance companies in computing discounted unpaid losses under § 846 of the Internal Revenue Code and discounted estimated salvage recoverable under § 832. This revenue procedure also provides, for convenience, discount factors for losses incurred in the 2020 accident year and earlier accident years for use in taxable years beginning in 2021. The discount factors for accident years before 2021 were prescribed in Rev. Proc. 2020-48, 2020-49 I.R.B. 1459. See Rev. Proc. 2019-31, 2019-33 I.R.B. 643, and Rev. Proc. 2019-06, 2019-02 I.R.B. 284, for background concerning the loss payment patterns and application of the discount factors.

SECTION 2. SCOPE

This revenue procedure applies to any insurance company that is required to discount unpaid losses under § 846 for a line of business using the discount factors published by the Secretary, and also applies to any insurance company that is required to discount estimated salvage recoverable under § 832.

SECTION 3. DISCOUNT FACTORS FOR THE 2021 ACCIDENT YEAR

.01 The tables in this section 3 present separately for each line of business

the discount factors for losses incurred in the 2021 accident year for use by insurance companies in computing discounted unpaid losses under § 846 and estimated salvage recoverable under § 832. The discount factors presented in this section are generally determined by using the applicable interest rate for 2021 under § 846(c), which is 2.84 percent, compounded semi-annually. The exceptions are the discount factors for long-tail lines of business provided for taxable years beginning in 2031, which are computed using discount factors applicable to multiple accident years. All

discount factors are determined by assuming all loss payments occur in the middle of the calendar year.

.02 Section V of Notice 88-100, 1988-2 C.B. 439, sets forth a composite method for computing discounted unpaid losses for accident years that are not separately reported on the annual statement. Tables 1 and 2 separately provide discount factors for insurance companies that have elected to use the composite method of Notice 88-100. See Rev. Proc. 2002-74, 2002-2 C.B. 980. The discount factors computed using the composite method are unrelated

to the composite discount factors referred to in § 1.846-1(b)(1)(ii) and (4) of the Income Tax Regulations, which apply to lines of business for which the Secretary has not published discount factors. The composite discount factors for use with respect to such lines of business are labelled “Short-Tail Composite” (in Table 1, part B) and “Long-Tail Composite” (in Table 2, part B). The “Miscellaneous Casualty” discount factors referenced in § 1.846-1(b)(2) are not set forth in tables, but are equivalent to the “Short-Tail Composite” discount factors.

Table 1 (part A)					
Discount Factors Under Section 846 (percent)					
For Losses Incurred in Accident Year 2021 in Short-Tail Lines of Business					
Taxable Year Beginning in	Auto Physical Damage	Fidelity/Surety	Financial Guaranty/Mortgage Guaranty	International	Other*
2021	98.4430	96.1212	95.8926	96.4227	97.1971
2022	97.2290	97.2290	97.2290	97.2290	97.2290
<i>Taxpayer Not Using Composite Method</i>					
Years after 2022	98.5999	98.5999	98.5999	98.5999	98.5999
<i>Taxpayer Using the Composite Method</i>					
2023	98.5999	98.5999	98.5999	98.5999	98.5999
Years after 2023	Use composite method discount factors published in Table 1 for the relevant accident year.**				

* For Accident and Health lines of business (other than disability income or credit disability insurance), the discount factor for taxable year 2021 is 98.5999 percent. This is also the discount factor used in later taxable years for taxpayers not using the composite method. For taxpayers using the composite method, the discount factor for losses incurred in 2021 is the discount factor published for Accident and Health lines of business for losses incurred in the accident year coinciding with the taxable year.

**The relevant accident year is the accident year that is two years prior to the specified taxable year.

Table 1 (part B)						
Discount Factors Under Section 846 (percent)						
For Losses Incurred in Accident Year 2021 in Short-Tail Lines of Business						
Taxable Year Beginning in	Reinsurance - Nonproportional Assumed Financial Lines	Reinsurance - Nonproportional Assumed Liability	Reinsurance - Nonproportional Assumed Property	Special Property (Fire, Allied Lines, Inland Marine, Earthquake, Burglary & Theft)	Warranty	Short-Tail Composite
2021	95.7494	95.0072	96.4056	97.5958	98.2549	97.0943
2022	97.2290	97.2290	97.2290	97.2290	97.2290	97.2290
<i>Taxpayer Not Using Composite Method</i>						
Years after 2022	98.5999	98.5999	98.5999	98.5999	98.5999	98.5999
<i>Taxpayer Using the Composite Method</i>						
2023	98.5999	98.5999	98.5999	98.5999	98.5999	98.5999
Years after 2023	Use composite discount factors published in Table 1 for the relevant accident year.*					

*The relevant accident year is the accident year that is two years prior to the specified taxable year.

Internal Revenue Service

Washington, DC 20224

Official Business
Penalty for Private Use, \$300

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at www.irs.gov/irb/.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.