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President & CEO



SUBMITTED VIA WWW.REGULATIONS.GOV

September 22, 2022

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on Notice 2021-66; Superfund

Dear Commissioner:

The American Chemistry Council (ACC), based in Washington, D.C., represents the leading companies engaged in the business of chemistry. ACC member companies apply the science of chemistry to create and manufacture innovative products that make people's lives better, healthier, and safer. A complete listing of our member companies can be found at our website www.americanchemistry.com.

As the first filing deadline nears and questions continue to arise around the reinstatement of the Superfund tax on chemicals, we are forwarding them for your urgent consideration and clarification.

Taxable Substances. Our most pressing request relates to the rates the Internal Revenue Service (IRS) has established for taxable substances. Specifically, in its draft instructions to the Form 6627, the IRS announced tax rates for over one hundred taxable substances. Among other purposes, these rates will be used by importers of taxable substances to calculate the tax due when the importer does not have sufficient information to otherwise determine the rate. These rates were announced without any transparency as to how the IRS calculated these rates. ACC respectfully requests that the IRS provide the details of how these rates were calculated - many of the rates look erroneous.

For example, consider the tax rate on polyalphaolefins. The IRS established that the tax rate on polyalphaolefins shall be \$11.37 a ton. The feedstock for polyalphaolefins is linear alpha olefins, which are derived wholly from ethylene. Congress has statutorily established the tax rate for ethylene at \$9.74 a ton. It is unclear how a taxable substance that is 100% made up of a taxable chemical could have a higher tax rate than that chemical.

As another example, consider the tax rate on acetone. The IRS established that the tax rate on acetone shall be \$20.03 a ton. Acetone is a co-product of propylene and benzene (both taxable chemicals). However, no benzene molecule is converted to acetone and therefore only the tax rate for taxable



chemical propylene (\$9.74 a ton) should be used in the calculation of the rate for acetone. Such a calculation would greatly reduce the rate on acetone to approximately \$7 a ton.

It is only through this transparency that ACC, and the stakeholders who will be paying this tax, can provide meaningful public comment on the tax rates that should apply. Moreover, the opportunity to review and ask the IRS to revise these tax rates must be complete before the IRS expects taxpayers to pay these taxes.

Formal Guidance. As urged in our letter at the beginning of this year, ACC recommends that the IRS undertake a formal regulatory process through which definitions of this tax are provided. Such definitions warranting guidance include “manufacturer or producer,” “importer,” as well as “sale” and “use.” Understanding these basic, fundamental terms is important to tax compliance and enforcement. It is reasonable to conclude, for example, that the definition of manufactured or produced would exclude those taxable chemicals that have already been taxed once. Double taxation of recycled or reused taxable chemicals already in commercial chain is contrary to statutory text and legislative history of the original Superfund tax, but without clarification, taxpayers are uncertain as to whether the IRS will agree with this interpretation. Only through a formal guidance process, will the IRS be provided with stakeholder input.

Another area under which formal guidance should be issued is around the exemptions found at 26 U.S.C. § 4662. For example, the IRS has never provided formal guidance around the term "intermediate hydrocarbon stream." To avoid the uncertainty that comes with undefined terms and subsequent costly and time consuming litigation, the IRS must provide guidance on the exemptions and the processes and documentation the IRS expects from taxpayers. Finally, as it relates to the petition process to add or remove a taxable substance, the IRS must define who is an "interested person" as described in Revenue Procedure 2022-26 - as currently defined it appears to include any person that is not an importer or exporter.

The demand to provide transparency and the request for formal guidance, under which stakeholders will have the opportunity to comment, must be considered in conjunction with ACC's prior letters on the Superfund tax on chemicals as many questions raised continue to go unanswered. ACC appreciates your consideration of these matters and stands ready to answer any questions you may have.

Very truly yours,



Chris Jahn
President & CEO
American Chemistry Council

cc:

Stephanie Bland, IRS Chief Counsel, Branch Chief, Office of Associate Chief Counsel (Passthroughs & Special Industries)

Lily Batchelder, Assistant Secretary, Office of Tax Policy, U.S. Department of the Treasury