

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and Regulations.
(Also Part I, §§ 4672; 52.0-1.)

Rev. Proc. 2023-20

SECTION 1. PURPOSE

This revenue procedure modifies the effective date of additions to the list of taxable substances under § 4672(a) of the Internal Revenue Code¹ (List). Specifically, this revenue procedure modifies paragraphs (1) and (3) of section 11.02 of Rev. Proc. 2022-26, 2022-29 I.R.B. 90, to change the date on which substances are added to the List for purposes of refund claims under § 4662(e). This revenue procedure also modifies section 11.03 of Rev. Proc. 2022-26 for petitions received by the Internal Revenue Service (IRS) between July 1, 2022, and December 31, 2022, but not accepted by the IRS until after December 31, 2022. In addition, this revenue procedure adds a new section 11.04 to Rev. Proc. 2022-26 for petitions received by the IRS after December 31, 2022.

SECTION 2. BACKGROUND

.01 Procedure for requesting a determination under § 4672(a)(2). Rev. Proc. 2022-26 provides the exclusive procedures for requesting a determination under

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Internal Revenue Code.

§ 4672(a)(2) that a substance be added to or removed from the List. An importer or exporter of any substance, or an interested person (any person other than an importer or exporter of such substance), 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 sections 5 and 6 of Rev. Proc. 2022-26.

.02 Time frame for making determinations under § 4672(a)(2); filing date of petitions. The last sentence of § 4672(a)(2) provides that if an importer or exporter of any substance requests that the Secretary of the Treasury or her delegate (Secretary) determine that such substance be added to or removed from the List, the Secretary must make that determination within 180 days after the date the request was filed. Section 5.02 of Rev. Proc. 2022-26 provides that a petition is considered “filed” for purposes of the 180-day determination period only when it is accepted by the IRS. Section 5.03 of Rev. Proc. 2022-26 provides that the filing date of the petition is the date of the acknowledgment letter from the IRS accepting the petition.

.03 Date a substance is added to the List for purposes of § 4662(e) claims for refund. Under section 11.02(1) of Rev. Proc. 2022-26, if the Secretary makes a determination to add a substance to the List and that substance is exported, for purposes of claims for refund under § 4662(e), 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. Section 4662(e)(2) provides that 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. Under certain circumstances, § 4662(e)(3) allows the exporter of the taxable substance to claim the refund if the person that paid the tax waives its claim to the amount of the refund.

.04 Retroactive effect of determinations on claims for refund under § 4662(e). For purposes of the retroactive effect of determinations on § 4662(e) refund claims, section 11.03 of Rev. Proc. 2022-26 deems any petition that was both submitted by an importer or exporter and accepted by the IRS between July 1, 2022, and December 31, 2022, as filed on July 1, 2022.

.05 Reasons for modifications to Rev. Proc. 2022-26. The Department of the Treasury and the IRS have determined that it is appropriate to modify certain aspects of Rev. Proc. 2022-26 related to refund claims under § 4662(e), in the interest of sound tax administration. Specifically, the modifications to paragraphs (1) and (3) of section 11.02 of Rev. Proc. 2022-26, and the addition of new section 11.04, make refund claims more administrable by tying the effective date of additions of substances to the List to the first day of a calendar quarter. The modification to section 11.03 of Rev. Proc. 2022-26 expands the scope of that section so that it applies to petitions received by the IRS by December 31, 2022, without regard to whether they are accepted by the IRS by that date.

SECTION 3. MODIFICATIONS TO SECTION 11 OF REV. PROC. 2022-26

.01 Section 11.02(1) of Rev. Proc. 2022-26 is modified to read as follows:

(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 (i) the first day of the calendar quarter during which the petition is filed (in the case of a petition submitted by an interested person), or (ii) the day on which the petition is deemed filed in accordance with section 11.03 or 11.04 of this revenue procedure (in the case of a petition submitted by an importer or exporter). 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 day the substance is deemed to have been added to the List 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).

.02 Section 11.02(3) of Rev. Proc. 2022-26 is modified to read as follows:

(3) Refunds of tax related to a substance for which a petition is pending are available only for exports made on or after (i) the first day of the calendar quarter during which the petition is filed (in the case of a petition submitted by an interested person), or (ii) the day on which the petition is deemed filed in accordance with section 11.03 or 11.04 of this revenue procedure (in the case of a petition submitted by an importer or exporter), 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 limitation.

.03 Section 11.03 of Rev. Proc. 2022-26 is modified to read as follows:

.03 Petitions received between July 1, 2022, and December 31, 2022. The Treasury Department and the IRS recognize the short time frame between the issuance of guidance regarding the procedure for requesting a determination under § 4672(a)(2) and the 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 taxable 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 petition submitted by an importer or exporter that is received by the IRS between July 1, 2022, and December 31, 2022, and subsequently accepted by the IRS, 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.

.04 Section 11 of Rev. Proc. 2022-26 is modified by adding new section 11.04 to read as follows:

.04 Petitions received after December 31, 2022. For purposes of section 11.02 of this revenue procedure, the Treasury Department and the IRS have determined that it is in the interest of sound tax administration to deem any petition submitted by an importer or exporter that is received by the IRS after December 31, 2022, and subsequently accepted by the IRS, as filed on the first day of the calendar quarter during which the

petition was received. 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 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2022-26 is modified.

SECTION 5. DRAFTING INFORMATION

The principal authors of this revenue procedure are Amanda F. Dunlap and Michael H. Beker of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For legal questions regarding this revenue procedure, contact Ms. Dunlap or Mr. Beker 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).