

May 30, 2023

**Submitted electronically with the Federal eRulemaking Portal at:
www.regulations.gov**

CC:PA:LPD:PR (REG-105954-22)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C., 20044

**Re: Comments and Request for a Public Hearing - Notice of Proposed
Rulemaking (REG-105954-22) regarding Superfund Chemical Taxes under
Sections 4661, 4662, 4671, and 4672**

The Agricultural Retailers Association (ARA) appreciates the opportunity to comment on the proposed regulations relating to the excise taxes imposed on certain chemicals and certain imported substances.

Statement of Interest

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

Comments

In response to REG-105954-22 regarding Superfund Chemical Excise Tax (SCET) regulations, ARA offers the following comments on behalf of our member companies.

The proposed SCET regulations specifically require that to make tax-free sales of a qualified fertilizer or animal feed substance (i.e., ammonia, nitric acid, sulfuric acid, or methane used to produce ammonia, and taxable substances made therefrom; hereafter, “qualified substances”) for a qualified animal feed (includes animal feed, animal feed supplements, or ingredients used in animal feed or animal feed supplements) or fertilizer use (i.e., used as or in the production of fertilizer/animal feed; hereafter, “qualified use”), the manufacturer, producer, importer, and any resellers of the qualified substance must obtain an unexpired exemption certificate from their customer prior to or at the time of the respective sale. If any entity in the qualified substance distribution chain does not obtain an unexpired exemption certificate from its customer by the time of the respective sale, that entity is deemed the manufacturer of the qualified substance and would be liable for the SCET on the sale or use of the otherwise qualified substance being used in a qualified use (or with respect to all entities not using the qualified substance as fertilizer/animal feed). Like other areas of federal excise tax, the recipient of the certificate is allowed to accept the certificate provided that the recipient has no reason to believe that information in the certificate is false.

The proposed SCET regulations also provide that any entity/person using a previously tax-paid qualified substance in a qualified use may file an SCET refund claim with the IRS. The claimant would be required to obtain a certificate (as prescribed in the proposed SCET regulations) from the original SCET taxpayer of the qualified substance to support the SCET refund claim (among other data points), even if the original SCET taxpayer is multiple levels upstream in the distribution chain.

Congress enacted the SCET regime with fertilizer and animal feed exceptions that had the presumable intent of protecting the U.S. agricultural industry and consumers from potential crop/food price increases related to the SCET. Although the proposed SCET regulations clarify the rules for making tax-free sales of qualified substances (and provide model exemption certificates), the proposed tax-free sale documentation requirements would make it burdensome and challenging (if not impossible) for SCET taxpayers and their customers to adequately comply. All entities in the qualified substance distribution chain, from manufacturers/importers to local retailers (selling to farmers, ranchers, and other end-users), would be required to obtain exemption certificates from their customers prior to making any tax-free sales of qualified substances for qualified uses, and any entity failing to do so would be liable for the SCET. This process would require significant coordination and sophistication among all entities in the fertilizer/animal feed distribution chain, especially for

downstream entities (e.g., local retailers and their customers) who would likely be unfamiliar and unprepared to comply with these SCET rules (and which are presumably not otherwise SCET taxpayers). Retailers and/or entities selling to individual consumers would be inordinately impacted as they would be required to obtain exemption certificates from an exponentially larger customer population (of individual consumers/farmers) or otherwise be subject to the SCET.

Consider the following example: if a manufacturer sells an otherwise qualified substance to a distributor, that distributor sells the same product to a local retailer, and finally that local retailer sells the product to a farmer; under this framework, the manufacturer, distributor and retailer would all be required to obtain annual certificates from each of their customers, generating potentially hundreds of thousands of certificates related to any one manufacturer's distribution chain. Most notably, the local retailers may be at the most risk of effectively becoming a taxpayer due to noncompliance.

If an entity is charged SCET from a vendor with respect to an otherwise qualified substance and then uses it in an exempt capacity, the entity would likely face challenges in securing a proper certificate to support an SCET refund claim since the entity may not be able to identify or otherwise contact the original SCET taxpayer of the qualified substance, as the original SCET taxpayer could be multiple levels up the distribution chain and/or have no prior business relationship with the entity. The entity would likely need to coordinate with its immediate vendor to receive documentation from the original seller to support/file a refund claim, adding to the SCET compliance burden. That effort only becomes more burdensome when parties would prefer not to disclose key suppliers or business relationships.

Conclusion

The IRS should consider revising and/or clarifying the proposed SCET tax-free sale and claim documentation requirements to alleviate the undue SCET compliance burden placed on ARA members and related industries. Four potential improvements include:

- Clarify in the SCET regulations that tax-free exemption certificates are not required to be furnished once a qualified substance is -labeled as a fertilizer or animal feed product (since the qualified use of “manufacturing or producing” a fertilizer or animal feed product would have already occurred). If the purchaser (or subsequent purchaser) of the labeled fertilizer/animal feed product uses the product in a nonqualified use, that purchaser would become SCET liable,

which is consistent with the SCET statute and current proposed regulations. This regulation revision would likely limit the significant exemption documentation requirements for downstream entities selling fertilizer/animal feed products to a voluminous customer population (e.g., downstream retailers).

- Limiting the tax-free certificate requirement to be between manufacturers and resellers, but not extend it to sales made to farmers and other agricultural businesses. This would maintain the certificate process broadly where there is more risk of a product being diverted for taxable use while removing it where the risk is more limited and the compliance impact the greatest (i.e., sales to farmers).
- With regard to claims, purchasers could avoid needing to request a certificate from the original manufacturer/taxpayer if the manufacturer could broadly waive its rights to claim refunds of taxes attributable to sales to specific distribution and retailer customers. The respective distributor or retailer could then waive its collective rights to any related tax overpayment to the end-user.
- Allow relevant parties to electronically sign SCET certifications (e.g., exemption/claim certificates) given overall volume and to facilitate the exemption/claim documentation gathering process throughout the fertilizer/animal feed value chains.

Thank you for your review and consideration of ARA's comments. We look forward to working with you on this and other important issues impacting the nation's agricultural retailers and their farmer customers.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daren Coppock". The signature is fluid and cursive, with a large loop at the end.

W. Daren Coppock
President & CEO
Agricultural Retailers Association