additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

''(ii) CONDITION TO ALLOWANCE.—Clause (i) shall not apply to a sale of xylene unless the person who (but for clause (i)) would be liable for the tax imposed by section 4661 on such sale meets requirements similar to the requirements of paragraph (1) of section 6416(a) of such Code. For purposes of the preceding sentence, subparagraph (A) of section 6416(a)(1) of such Code shall be applied without regard to the material preceding 'has not collected'.

''(B) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 17, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

''(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term 'xylene' shall include any isomer of xylene whether or not separated.

''(3) INVENTORY EXCHANGES.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (f) [amending section 4662 of this title] shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980 [Pub. L. 96–510, enacting this chapter].

''(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1986.

''(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

''(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (f)) shall apply to exchanges made after December 31, 1986.

''(4) EXPORTS OF TAXABLE SUBSTANCES.—Subclause (II) of section 4662(e)(2)(A)(ii) of such Code (as added by this section) shall not apply to the export of any taxable substance (as defined in section 4672(a) of such Code) before January 1, 1989.

''(5) SALES OF INTERMEDIATE HYDROCARBON STREAMS.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) [amending section 4662 of this title] shall apply as if included in the amendments made by section 211 of the Hazardous Substances Response Revenue Act of 1980.

''(B) PURCHASER MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall apply only if the purchaser agrees to be treated as the manufacturer, producer, or importer for purposes of subchapter B of chapter 38 of such Code.

''(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer of such stream paid the tax imposed by section 4661 with respect to such sale on all taxable chemicals contained in such stream.

''(D) REGISTRATION REQUIREMENTS.—Section 4662(b)(10)(C) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1986.''

EFFECTIVE DATE

Subchapter effective Apr. 1, 1981, see section 211(c) of Pub. L. 96–510, set out as a note under section 4611 of this title.

§ 4662. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Taxable chemical

Except as provided in subsection (b), the term ''taxable chemical'' means any substance—

(A) which is listed in the table under section 4661(b), and

(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

(2) United States

The term ''United States'' has the meaning given such term by section 4612(a)(4).

(3) Importer

The term ''importer'' means the person entering the taxable chemical for consumption, use, or warehousing.

(4) Ton

The term ''ton'' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term ''ton'' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

(5) Fractional part of ton

In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

(b) Exceptions; other special rules

For purposes of this subchapter—

(1) Methane or butane used as a fuel

Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

(2) Substances used in the production of fertilizer

(A) In general

In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

(B) Qualified fertilizer substance

For purposes of this section, the term ''qualified fertilizer substance'' means any substance—

(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fertilizer use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

(C) Qualified fertilizer use

The term ''qualified fertilizer use'' means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

(D) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(3) Sulfuric acid produced as a byproduct of air pollution control

In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

(4) Substances derived from coal

For purposes of this subchapter, the term ''taxable chemical'' shall not include any substance to the extent derived from coal.

(5) Substances used in the production of motor fuel, etc.

(A) In general

In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

(B) Qualified fuel substance

For purposes of this section, the term ''qualified fuel substance'' means any substance—

(i) used in a qualified fuel use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fuel use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

(C) Qualified fuel use

For purposes of this subsection, the term ''qualified fuel use'' means—

(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

(ii) any use as such a fuel.

(D) Chemicals to which paragraph applies

For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

(E) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(6) Substance having transitory presence during refining process, etc.

(A) In general

No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

(B) Chemicals to which subparagraph (A) applies

The chemicals described in this subparagraph are—

(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

(ii) any solution or mixture containing any chemical described in clause (i).

(C) Removal treated as use

Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

(7) Special rule for xylene

Except in the case of any substance imported into the United States or exported from the United States, the term ''xylene'' does not include any separated isomer of xylene.

(8) Recycled chromium, cobalt, and nickel

(A) In general

No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

(B) Exemption not to apply while corrective action uncompleted

Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer at the unit at which the recycling occurs is uncompleted.

(C) Required corrective action

For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

(D) Special rule for groundwater treatment

In the case of corrective action requiring groundwater treatment, such action shall be

treated as completed as of the close of the 10-year period beginning on the date such action is required if such treatment complies with the permit or order applicable under subparagraph (C)(i) throughout such period. The preceding sentence shall cease to apply beginning on the date such treatment ceases to comply with such permit or order.

(E) Solid waste

For purposes of this paragraph, the term ''solid waste'' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal.

(9) Substances used in the production of animal feed

(A) In general

In the case of—

(i) nitric acid,

(ii) sulfuric acid,

(iii) ammonia, or

(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

(B) Qualified animal feed substance

For purposes of this section, the term ''qualified animal feed substance'' means any substance—

(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified animal feed use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

(C) Qualified animal feed use

The term ''qualified animal feed use'' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

(D) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the 1st person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(10) Hydrocarbon streams containing mixtures of organic taxable chemicals

(A) In general

No tax shall be imposed under section 4661(a) on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing one or more organic taxable chemicals.

(B) Removal, etc., treated as use

For purposes of this part, if any organic taxable chemical on which no tax was imposed by reason of subparagraph (A) is isolated, extracted, or otherwise removed from, or ceases to be part of, an intermediate hydrocarbon stream—

(i) such isolation, extraction, removal, or cessation shall be treated as use by the person causing such event, and

(ii) such person shall be treated as the manufacturer of such chemical.

(C) Registration requirement

Subparagraph (A) shall not apply to any sale of any intermediate hydrocarbon stream unless the registration requirements of clauses (i) and (ii) of subsection (c)(2)(B) are satisfied.

(D) Organic taxable chemical

For purposes of this paragraph, the term ''organic taxable chemical'' means any taxable chemical which is an organic substance.

(c) Use and certain exchanges by manufacturer, etc.

(1) Use treated as sale

Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

(2) Special rules for inventory exchanges

(A) In general

Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

(i) such exchange shall not be treated as a sale, and

(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

(B) Registration requirement

Subparagraph (A) shall not apply to any inventory exchange unless—

(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

(C) Inventory exchange

For purposes of this paragraph, the term ''inventory exchange'' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(a)(1).

(d) Refund or credit for certain uses

(1) In general

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any taxable chemical, and

(B) such chemical was used by any person in the manufacture or production of any other substance which is a taxable chemical,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section).

(2) Use as fertilizer

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(3) Use as qualified fuel

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(4) Use in the production of animal feed

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(e) Exemption for exports of taxable chemicals

(1) Tax-free sales

(A) In general

No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

(B) Proof of export required

Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

(2) Credit or refund where tax paid

(A) In general

Except as provided in subparagraph (B), if—

(i) tax under section 4661 was paid with respect to any taxable chemical, and

(ii)(I) such chemical was exported by any person, or

(II) such chemical was used as a material in the manufacture or production of a substance which was exported by any person and which, at the time of export, was a taxable substance (as defined in section 4672(a)),

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

(B) Condition to allowance

No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical or taxable substance (as so defined), or

(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

(3) Refunds directly to exporter

The Secretary shall provide, in regulations, the circumstances under which a credit or refund (without interest) of the tax under section 4661 shall be allowed or made to the person who exported the taxable chemical or taxable substance, where—

(A) the person who paid the tax waives his claim to the amount of such credit or refund, and

(B) the person exporting the taxable chemical or taxable substance provides such information as the Secretary may require in such regulations.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(f) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.

(Added Pub. L. 96–510, title II, § 211(a), Dec. 11, 1980, 94 Stat. 2799; amended Pub. L. 98–369, div. A, title X, § 1019(a)–(c), July 18, 1984, 98 Stat. 1022–1024; Pub. L. 99–499, title V, § 513(b)–(g), Oct. 17, 1986, 100 Stat. 1762–1765; Pub. L. 100–647, title II, § 2001(a), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 106–170, title V, § 532(c)(2)(U), Dec. 17, 1999, 113 Stat. 1931.)

Editorial Notes

REFERENCES IN TEXT

Sections 3005, 3004, and 3008 of the Solid Waste Disposal Act, referred to in subsec. (b)(8)(C)(i)(I), and section 1004 of that Act, referred to in subsec. (b)(8)(E), are classified to sections 6925, 6924, 6928, and 6903, respectively, of Title 42, The Public Health and Welfare.

Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (b)(8)(C)(i)(II), is classified to section 9606 of Title 42.

AMENDMENTS

1999—Subsec. (c)(2)(C). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

1988—Subsec. (b)(10)(A). Pub. L. 100–647, §2001(a)(2), substituted ''one or more'' for ''a mixture of''.

Subsec. (e)(3), (4). Pub. L. 100–647, §2001(a)(1), added par. (3) and redesignated former par. (3) as (4).

1986—Subsec. (b)(7). Pub. L. 99–499, §513(c), added par. (7).

Subsec. (b)(8). Pub. L. 99–499, §513(d), added par. (8).

Subsec. (b)(9). Pub. L. 99–499, §513(e)(1), added par. (9).

Subsec. (b)(10). Pub. L. 99–499, §513(g), added par. (10).

Subsec. (c). Pub. L. 99–499, §513(f), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.''

Subsec. (d)(1). Pub. L. 99–499, §513(b)(2), substituted ''which is a taxable chemical'' for ''the sale of which by such person would be taxable under such section'', in subpar. (B), and substituted ''imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)'' for ''imposed by such section on the other substance manufactured or produced'' in last sentence.

Subsec. (d)(4). Pub. L. 99–499, §513(e)(2), added par. (4).

Subsecs. (e), (f). Pub. L. 99–499, §513(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1984—Subsec. (b)(1). Pub. L. 98–369, §1019(a)(3), inserted ''or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel''.

Subsec. (b)(2)(A). Pub. L. 98–369, §1019(b)(2)(A), substituted ''qualified fertilizer substance'' for ''qualified substance''.

Subsec. (b)(2)(B) to (D). Pub. L. 98–369, §1019(b)(1), inserted ''fertilizer'' after ''qualified'' wherever appearing in subpar. (B), inserted ''fertilizer'' after ''Qualified'' in subpar. (C) heading and in text substituted ''The term 'qualified fertilizer use' means any use in the manufacture or production of fertilizer or for direct application as a fertilizer'' for ''For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer'', and added subpar. (D).

Subsec. (b)(5), (6). Pub. L. 98–369, §1019(a)(1), added pars. (5) and (6).

Subsec. (c). Pub. L. 98–369, §1019(c), substituted ''Except as provided in subsection (b), if'' for ''If''.

Subsec. (d)(2)(B). Pub. L. 98–369, §1019(b)(2)(B), inserted ''fertilizer'' after ''qualified'' and struck out '', or sells such substance for use,'' after ''such substance''.

Subsec. (d)(3). Pub. L. 98–369, §1019(a)(2), added par. (3).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, except as otherwise provided, see section 513(h) of Pub. L. 99–499, set out as a note under section 4661 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, §1019(d), July 18, 1984, 98 Stat. 1024, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 211(a) of the Hazardous Substance Response Revenue Act of 1980 [Pub. L. 96–510, which enacted this section].

''(2) WAIVER OF LIMITATION.—If refund or credit of any overpayment of tax resulting from the application of the amendments made by this section is prevented at any time before the date which for one year after the date of the enactment of this Act [July 18, 1984] by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such amendments) may, nevertheless, be made or allowed if claim therefor is filed on or before the date which for one year after the date of the enactment of this Act.''

Subchapter C—Tax on Certain Imported Substances

Editorial Notes

PRIOR PROVISIONS

A prior subchapter C related to tax on hazardous wastes, consisted of sections 4681 and 4682, prior to repeal by Pub. L. 99–499, title V, §514(a)(1), Oct. 17, 1986, 100 Stat. 1767.

§ 4671. Imposition of tax

(a) General rule

There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

(b) Amount of tax

(1) In general

Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals used as materials in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such taxable substance.

(2) Rate where importer does not furnish information to Secretary

If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 10 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

(3) Authority to prescribe rate in lieu of paragraph (2) rate

The Secretary may prescribe for each taxable substance a tax which, if prescribed, shall apply in lieu of the tax specified in paragraph