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May 30, 2023

Department of the Treasury  
Internal Revenue Service  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044.

**RE: AGA’s Comments on Superfund Chemical Taxes Proposed Rule, 88 Fed. Reg. 18446 (March 29, 2023)**

The American Gas Association (“AGA”) appreciates the opportunity to comment on the Superfund Chemical Taxes Notice of Proposed Rulemaking published by the Internal Revenue Service (“IRS”) on March 29, 2023, as captioned above (“Proposed Rule”).

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 77 million residential, commercial, and industrial natural gas customers in the U.S., of which 96 percent — more than 73 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets more than one third of the United States' energy needs.<sup>1</sup>

AGA and its members have a strong interest in this rulemaking because our members deliver natural gas and renewable natural gas (RNG) to energy customers across the United States. Both geologic natural gas and RNG are predominantly comprised of methane, which is on EPA’s list of chemicals potentially subject to the Superfund chemical excise tax when not “used as a fuel” or “in the production of energy.” AGA files this comment letter to request further clarity and examples in the regulatory text to describe the scope of this exemption.

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<sup>1</sup> For more information, please visit [www.aga.org](http://www.aga.org).

The IRS published the Proposed Rule to implement the Superfund chemical excise taxes that Congress reinstated with some modifications effective July 1, 2022 in section 80201 of the Infrastructure Investment and Jobs Act (IIJA) signed into law in November 2021. As mentioned, the list of potentially taxable chemicals includes methane, but as required by statutory language, there is an exemption for methane used as a fuel or in the production or manufacture of certain vehicle and aviation fuel. As reinstated, section 4662(b)(1) of the Internal Revenue Code directs the IRS to promulgate regulations to impose the application of the Superfund chemical excise tax on methane only in narrow circumstances, stating as follows:

*“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)[imposing the chemical excise tax], the person so using it shall be treated as the manufacturer thereof.)”*

26 U.S.C. §4662(b)(1).

As the IRS notes in its preamble to the Proposed Rule, under this statutory exception, *“the status of methane or butane as a taxable chemical cannot be determined until the time of use. As a result, it is possible that methane or butane will never become a taxable chemical and no section 4661 tax will attach. It is also possible that there will be intervening sales of methane or butane before the section 4661 tax is imposed.”* 60 Fed. Reg. at 18451. AGA supports that explanation, although we would also support adding a “plain English” description in the preamble to the effect that in other words, if a person uses methane or butane “otherwise than as a fuel, or otherwise than in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel,” that user would pay the section 4661 tax, not any seller or provider of the methane or butane in that person’s supply chain. For example, if a local natural gas utility delivers natural gas and/or RNG containing methane to a company that uses the methane to manufacture plastic or to produce another chemical product (i.e. a use otherwise than as a fuel or in the manufacture or production of motor fuel, diesel fuel, aviation fuel, or jet fuel), the company using the methane to manufacture plastic would pay the section 4661 tax at the time of such use, not the utility. Similarly, a local natural gas utility would not pay a section 4661 tax on the methane contained in the natural gas and/or RNG it delivers to any customer, since the use of the methane cannot be determined at the time of delivery. Any 4661 tax that may be imposed for non-exempt uses would be paid by the user, not the utility.

The proposed regulatory text for 26 C.F.R. section 52.4662-2 also provides some helpful examples, explaining that “methane is used ... as a fuel when it is used ... in the production of energy.” (Double negatives removed). “Conversely, methane ... is used as a fuel when it is consumed in the production of energy. For example, ...when it is consumed in an internal combustion engine to power a vehicle, ... or when it is consumed in a furnace,[or] cooking appliance...”

AGA strongly supports this proposed clarifying example, but we urge the IRS to provide further clarifying examples to explain that the Superfund chemical excise tax would not apply to methane in the form of renewable natural gas (RNG) or hydrogen extracted from methane when consumed in the production of energy. This clarification is important to help facilitate the nation’s transition to a net zero carbon economy.

[AGA’s GHG Net Zero Pathways for Gas Utilities Study](#) prepared by ICF International and released in 2021 demonstrates that “through the use of a variety of technologies and approaches, gas utilities can achieve net-zero targets and contribute to economy-wide net-zero emissions goals.”<sup>2</sup>

The Net Zero study evaluates four illustrative pathways using different GHG reduction strategies that gas utilities can deploy to achieve net-zero goals.<sup>3</sup> These strategies include energy efficiency, innovative technology (such as natural gas heat pumps and gas fuel cells), methane emissions reductions, and net zero gaseous fuels -- such as renewable natural gas (RNG) and clean hydrogen extracted from methane. They also include using hydrogen extracted from water or air using renewable electricity in an electrolyzer and combining the hydrogen with captured carbon to produce methane. This cutting-edge technology is known as “power-to-gas.” The approach each utility takes to reach net zero for the utility and its customers will likely vary depending on factors such as differing geography, structure, facilities, and customer base. While different company plans will vary as to the degree to which they deploy specific strategies, all will likely include some combination of strategies from all four categories – including transporting RNG, hydrogen, and renewable power-to-gas to industrial, commercial and residential customers as a fuel to serve energy needs.

To clarify the regulations and support this ongoing effort by utilities to help the nation achieve net zero goals, AGA requests that the IRS revise proposed section 52.4662-2 as follows (inserted text shown with underscoring):

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<sup>2</sup> Net-Zero Emissions Opportunities for Gas Utilities, <https://www.aga.org/wp-content/uploads/2022/02/aga-net-zero-emissions>, AGA Comments Appendix B, p, 5.

<sup>3</sup> Id., see p. 9, Exhibit E.s.3.

“... methane, whether from geologic natural gas or renewable natural gas or from combining sequestered carbon dioxide with clean hydrogen, is used ... as a fuel when it is consumed in the production of energy. For example, ...when it is consumed in an internal combustion engine to power a vehicle, ... or when it is consumed in a furnace, boiler, industrial or commercial thermal energy equipment, cooking appliance, water heater, or fuel cell...”

AGA appreciates the opportunity to comment. If you have any questions, please contact me or Tim Parr, AGA Deputy General at [tparr@aga.org](mailto:tparr@aga.org).

Respectfully submitted,



Pamela A. Lacey  
Chief Regulatory Counsel, Environment  
American Gas Association  
400 N. Capitol St., NW  
Washington, DC 20001  
202-824-7340