

Publications

Superfund Excise Tax on Chemicals Has Been Revived

Related Attorneys

David M. Edelstein

Jeffrey Allen Miller

Related Services

Environmental

Federal Taxation

Taxation

Related Industries

Manufacturing

CLIENT ALERT | 7.7.2022

Effective July 1, 2022, Congress has revived the Superfund Excise tax on Taxable Chemicals and Taxable Substances that previously existed from 1980 through 1995. The new tax doubles the previous tax rate on Taxable Chemicals and Taxable Substances. Additionally the new legislation also decreased the threshold amount from 50% to 20% of Taxable Chemicals listed at Internal Revenue Code Section 4661(b) (by weight or value) that must appear in a compound before it becomes a Taxable Substance. The rate of tax varies with the chemical or substance at issue. The U.S. Internal Revenue Service (IRS) will administer the tax. The IRS provides information regarding the tax [here](#).

Taxable Chemicals and Taxable Substances List: As of today, there are 42 Taxable Chemicals listed at Section 4661(b). Those chemicals and the rate of tax by ton are set forth on the IRS Form 6627, which can be perused [here](#). Likewise, there are 50 Taxable Substances set forth at Section 4672(a)(3) (which can be reviewed [here](#)). The IRS currently has identified 101 more Taxable Substances covered by the tax. Those Taxable Substances determined by the IRS are listed at IRS Notice 2021-66 which can be found [here](#). Thus, there are 42 Taxable Chemicals and 151 Taxable Substances. The IRS has determined and published tax rates for 121 of those Taxable Substances. Those rates can be reviewed [here](#).

Action Triggering the Tax: The tax on Taxable Chemicals (as defined by Section 4662) provided by Section 4661 is imposed upon manufacturers or importers and is triggered by the first sale or use of the taxpayer's manufactured or imported chemical, except for butane and methane which are taxable upon the first use other than as a fuel.

The tax on Taxable Substances provided by Section 4671 (as defined by Section 4672 and the IRS) is imposed upon importers and is triggered by the first sale or use of the Taxable Substance.

Calculations, Tax Returns and Payments: The tax is reported on the Form 720, *Quarterly Federal Excise Tax* return, and will require a Form 6627, *Environmental Taxes* be attached. Form 720 tax returns are due quarterly to IRS with semi-monthly tax deposits due for taxpayers with

a quarterly liability over \$2,500. The first return, for the calendar quarter ending on September 30, 2022, is due by October 31, 2022.

Exemptions: There are limited exemptions to the tax:

1. Methane or butane used as a fuel;
2. Substances used to produce ammonia for use as a fertilizer;
3. Sulfuric acid produced as a byproduct of air pollution control;
4. Substances derived from coal;
5. Substances used in the production of motor fuel;
6. Substances that have a transitory presence during smelting, refining or otherwise extracting another substance;
7. Separated isomers of xylene (unless imported or exported);
8. Chromium, cobalt, and nickel when recycled;
9. Substances used in the production of animal feed; and
10. Intermediate hydrocarbon streams.

Imports/Exports: IRS will accept petitions to determine if an imported chemical is subject to tax. An imported chemical that contains 20% or more of a Taxable Chemical is subject to tax as a Taxable Substance. Exporters may be eligible for refunds in certain circumstances.

Action Items

- Each manufacturer or importer should review the lists of Taxable Chemicals and Taxable Substances and determine whether it sells or uses or any of them.
- If sales or use of such chemicals or substances are occurring or will occur, then further inquiry should be undertaken to determine potential tax liability and compliance requirements such as return filing and tax deposits.
- If tax liability is being incurred or will be incurred on an ongoing basis, then taxpayers will need to put into place the internal or external compliance infrastructure (e.g., accounting and tax software and personnel) to ensure that tax deposits and payments, and related filings are accurate and completed prior to relevant deadlines.