

Superfund/CERCLA Chemical Taxes: Internal Revenue Service Notice of Proposed Rulemaking



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The Internal Revenue Service (“IRS”) published in the March 29th Federal Register a Notice of Proposed Rulemaking (“Proposed Rule”) addressing the excise taxes imposed on certain chemicals and imported substances effective July 1, 2022. See 88 Fed. Reg. 18446.

The proposed rule affects manufacturers, producers, and importers that sell or use taxable chemicals and importers that sell or use substances.

Superfund is a name often applied to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) that, when originally enacted in 1980, created a hazardous substance cleanup program. Section 221 of Superfund established a “Hazardous Substance Trust Fund” (“Trust Fund”).

The Trust Fund was originally funded in part by excise tax revenue generated primarily from excise taxes on:

- Domestic crude oil and imported petroleum
- 42 listed hazardous chemicals and metal compounds
- Imported substances utilizing one or more of the hazardous chemicals in their manufacturing production

This Superfund taxing authority expired in 1995.

The enactment of the Infrastructure Investment and Jobs Act (“IIJA”) reinstated the excise tax on the production or import of certain chemicals through December 31, 2031. The domestic crude oil and imported petroleum excise taxes were not reinstated.

The IRS previously provided in Notice 2021-66 an initial list of taxable substances. It also addressed:

- Registration requirements
- Exemptions for sales and uses of taxable chemicals from the taxes
- Procedural rules applying to taxpayers subject to the taxes

The March 29th Proposed Rule addresses a number of issues associated with the excise taxes:

- Statutory Exceptions and Special Rules
- Credits and Refunds
- Export Exemptions
- Procedural Rules
- List of Taxable Substances

- Recently Published Guidance
- Notice 2021-66 (Preliminary Guidance and Request for Comments)
- Notice 2022-15 (Deposit Penalty Relief)
- Revenue Procedure 2022-26 (Exclusive Process for Requesting Modifications to the Taxable Substances List)
- Attachment of Tax
- Foreign Manufactures
- Dilution of Chemical Mixtures
- Chemical Mixtures and Chemical Compounds
- Ores and Metals
- Procedural Rules (Definition of Person)
- Calculation of Amount of Tax
- Definitions
- Taxable Chemical
- Importer
- Manufacturer
- Sale
- Special Rules and Exceptions Relating to Section 4661 Tax
- Methane or Butane Used as Fuel
- Qualified Fertilizer, Fuel, and Animal Feed Substances
- Sulfuric Acid Produced as a Byproduct of Air Pollution Control Equipment
- Taxable Chemicals Produced from Coal
- Intermediate Hydrocarbon Streams
- Credits and Refunds of Section 4661 Tax
- Exports
- General Rules Regarding the Section 4671 Tax
- Definitions Relating to Sections 4671
- Predominant Method of Production
- Tax-Free Sales Under Section 4671(d)(1)
- Credits and Refunds Under Section 4671(d)(2)
- Types of Substances Eligible for Addition to the Taxable Substances List
- Sales Between Certain Registrants
- Modifications to the Taxable Substances List
- Delayed Implementation of Superfund Chemical Taxes
- Harmonized Tariff Schedule and Chemical Abstract Service Numbers

A copy of the Federal Register Notice can be downloaded [here](#).