



MULTISTATE INDIRECT TAX

## U.S. Infrastructure Bill reinstates Superfund excise taxes

### Tax Alert

### Overview

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“Infrastructure Bill”). The Infrastructure Bill will lead to the investment of roughly \$550 billion in new spending over the next five years on so-called “hard” infrastructure projects and includes limited tax-related incentives and revenue offsets (see this [Tax Alert](#) for additional information).

One of the provisions in the Infrastructure Bill is the reinstatement and modification of certain expired Hazardous Substance Superfund Trust Fund (“Superfund”) excise taxes on the production or import of certain chemicals through December 31, 2031, effective for periods after June 30, 2022. This Tax Alert provides some background, summarizes the Superfund excise taxes, and provides some taxpayer considerations related to the Superfund excise taxes.

### Background

The [Comprehensive Environmental Response, Compensation, and Liability Act of 1980](#) (CERCLA) was enacted to hold businesses in the chemical and petroleum industries financially responsible for the contamination from their operations and clean-up of hazardous waste sites. Responsible parties typically conducted and funded the clean-up work, but in some circumstances, *e.g.*, where they could not be identified, the Environmental Protection Agency conducted and financed the clean-ups using funds from the Superfund, a trust whose original excise tax revenue came primarily from excise taxes on: (1) [domestic crude oil and imported petroleum](#); (2) [42 listed hazardous chemicals and metal compounds](#); and (3) [imported substances that use one or more of the hazardous chemicals in their manufacture or production](#). However, this taxing authority expired in 1995. The Infrastructure Bill generates funding for infrastructure projects through the reinstatement and modification of Superfund excise taxes on chemical manufacturing and chemical imports.

## Excise tax on certain chemicals

The Infrastructure Bill reinstates and modifies Internal Revenue Code (“IRC”) [section 4661](#), which imposes a tax on sales by taxpayers that manufacture or produce in the United States or import for consumption, use, or warehousing in the United States, [42 listed chemicals](#). Prior to 1996, the rates used to compute the tax ranged from \$0.22 per ton to \$4.87 per ton. The Infrastructure Bill effectively doubles the tax rate on the same 42 chemicals, imposing the tax at rates between \$0.44 per ton to \$9.74 per ton.

Several exemptions are available for this tax, which include, but are not limited to, specified substances used in the production of fertilizer, used in the production of motor fuel, used during the refining process, or chemicals derived from coal. Notably, although methane and butane are included in the list of taxable chemicals, these are only taxable upon the first use other than within motor fuel, diesel fuel, aviation fuel, or jet fuel.

## Excise tax on certain imported substances

The Infrastructure Bill reinstates and modifies IRC [section 4671](#), which imposes a tax on the sale or use of certain imported chemical substances. The tax historically applied to a [list of 50 taxable substances](#), including isopropyl alcohol, methanol, and hydrogen peroxide. The Infrastructure Bill directs the Secretary of the Treasury or delegate to publish by January 1, 2022 an updated list of substances to which the tax generally applies.

Additionally, IRC section 4671 previously applied to substances where the taxable chemicals identified for purposes of IRC section 4661 constituted more than 50 percent of the weight or value of the materials used to produce that substance. The Infrastructure Bill lowers this percentage to 20 percent (in lieu of 50 percent).

IRC section 4671 also provided taxpayers the option to calculate the tax at a rate of 5 percent of the appraised value of such substance as of the time the substance entered the United States for consumption, use, or warehousing if the importer failed to furnish sufficient information to the Secretary of the Treasury or delegate at the time and manner prescribed to determine the amount of tax. The Infrastructure Bill increases this rate from 5 to 10 percent.

IRC section 4671 additionally provides an exemption for taxable substances sold for use or used as fuel in the production of fertilizer or in the production of animal feed.

## Historical reporting requirements for Superfund excise taxes

Prior to the expiration of the Superfund excise taxes in 1995, the taxes were reported on Form 6627, *Environmental Taxes*, to be attached to Form 720, *Quarterly Federal Excise Tax Return*. Additionally, certain taxpayers were required to register under Form 637, *Application for Registration (For Certain Excise Tax Activities)*, activity letter G (Persons making inventory exchanges of taxable chemicals under section 4662(c)(2) or persons selling or buying intermediate hydrocarbon streams under section 4662(b)(10)). It is uncertain at this time whether the same or similar procedures will be incorporated.

### Observations

The Infrastructure Bill imposes additional federal excise taxes on companies manufacturing, producing, or importing various chemical substances. Companies that conduct these activities should familiarize themselves with the existing IRC statutes, Treasury Regulations, and excise tax forms and

returns to prepare for the reinstatement of these taxes and administrative responsibilities effective July 1, 2022.

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