



MULTISTATE INDIRECT TAX

Inflation Reduction Act reinstates excise tax credits and Superfund excise tax Tax Alert

Overview

On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022 (“IRA”). The legislation includes a number of significant tax provisions. This Tax Alert summarizes some of the relevant provisions related to the following credits and excise taxes, as well as other fuel credits (general business credits):

- Alternative fuel credit
- Alternative fuel mixture credit
- Biodiesel credit
- Sustainable aviation fuel credit
- Pharmaceutical manufacturer excise tax
- Superfund excise tax on crude oil and certain petroleum products
- Excise tax on corporate stock repurchase
- Coal excise tax

For more detail related to the additional credits and incentives provisions under the IRA, see our report: [Advancing Energy Security: Sustainability-related tax provisions in the Inflation Reduction Act](#) released on August 18, 2022.

Fuel credits

The IRA extends multiple existing fuel credits now available to taxpayers through 2024 and establishes new credits to accelerate the production and use of low-emission fuels.

Alternative fuel credit

The IRA retroactively reinstates the \$0.50 per gallon alternative fuel excise tax credit under IRC section 6426(d) for alternative fuel sold or used as a fuel for aviation, or in a motor vehicle or motorboat, from December 31, 2021 through December 31, 2024.

The IRA also removes liquefied hydrogen from the definition of alternative fuel. The credit is available for liquefied hydrogen sold or used through December

31, 2022. However, after 2022 the new general business credit under IRC section 45V for clean hydrogen production is available.

Alternative fuel mixture credit

The IRA also retroactively reinstates the \$0.50 per gallon alternative fuel mixture tax credit under IRC section 6426(e) for alternative fuel used by a taxpayer in production of any alternative fuel mixture sold or used in a trade or business from December 31, 2021 through December 31, 2024.

Biodiesel mixture credit

The IRA extends the \$1.00 per gallon biodiesel mixture excise tax credit under IRC section 6426(c) for the production of biodiesel mixture sold or used in a trade or business from December 31, 2022 through December 31, 2024.

Sustainable aviation fuel credit (under IRC section 6426(k))

The IRA provides for an excise tax credit for sustainable aviation fuel (“SAF”) under newly added IRC section 6426(k). The credit is available for the SAF portion of a qualified aviation fuel mixture sold or used beginning on January 1, 2023 through December 31, 2024 and is equal to \$1.25 per gallon of SAF used or sold, up to \$1.75 per gallon (similar to the newly added general business credit under IRC section 40B – see below).

Other fuel credits (general business credits)

Second-generation biofuel producer credit

The IRA retroactively extends the second-generation biofuel producer credit under IRC section 40(b) from December 31, 2021 through December 31, 2024.

Biodiesel mixture credit, biodiesel credit, and small agri-biodiesel producer credit

The IRA extends the \$0.10 or \$1.00 per gallon biodiesel fuels tax credit under IRC section 40A for small agri-biodiesel, biodiesel, or renewable diesel from December 31, 2022 through December 31, 2024. The biodiesel or renewable diesel mixture portions of the credit may also be claimed as an excise tax credit.

Sustainable aviation fuel credit (under IRC section 40B)

The IRA creates a new SAF credit under IRC section 40B equal to \$1.25 per gallon, plus an applicable supplementary amount, of qualified mixture of SAF and kerosene used or sold after December 31, 2022 through December 31, 2024. The applicable supplementary amount is \$0.01 for each percentage point by which the greenhouse gas (“GHG”) emission reduction percentage of the SAF exceeds 50 percent (not to exceed \$0.50) for a maximum amount of \$1.75 per gallon. The 40B credit must be reduced to take into account any benefit provided with respect to SAF solely by reason of the application of IRC section 6426 or 6427(e).

Clean hydrogen production credit

The IRA creates a new 10-year clean hydrogen production credit under IRC section 45V of up to \$3 per kilogram (“kg”) multiplied by an applicable percentage for qualified facilities producing hydrogen with a GHG emissions rate of 4 kg or less of carbon dioxide equivalent (“CO₂-e”) per kg produced (“clean hydrogen”) after December 31, 2022 where construction begins before January 1, 2033. The applicable percentage is based on lifecycle GHG emissions rate (100% if the emissions rate is < 0.45 kg; 33.4% if the emissions rate is between 0.45 kg ≤ 1.5 kg; 25% if the emissions rate is between 1.5 ≤ 2.5 kg; 20% if the emissions rate is between 2.5 kg ≤ 4 kg).

Taxpayers may make an election to treat clean hydrogen production facilities as energy property, providing for an up to 30 percent investment tax credit

("ITC") multiplied by the applicable percentage under IRC section 48 in lieu of production credit.

If certain prevailing wage and apprenticeship requirements are not met, the amounts are reduced to base amounts equal to 1/5 of the stated amount (\$0.60 and 6 percent).

Clean fuel production credit

The IRA creates a new clean fuel production credit under IRC section 45Z of up to \$1.00 per gallon of clean transportation fuel with less than 50 kg of CO₂-e per million British thermal units ("mmBTU") produced and sold (\$1.75 per gallon for SAF) after December 31, 2024 through December 31, 2027, multiplied by the emission factor for such fuel. If certain prevailing wage and apprenticeship requirements are not met, the base credit amounts will apply equal to \$0.20 or \$0.35 per gallon, respectively.

Excise taxes

The IRA reinstates the Superfund excise tax on crude oil and petroleum products and imposes new excise taxes on drug manufacturers and corporate stock repurchases.

Superfund excise tax on crude oil/petroleum products

The IRA reinstates the Hazardous Substance Superfund ("Superfund") tax on domestic crude oil and imported petroleum products under IRC section 4611, which previously expired in 1995. The reinstatement is effective January 1, 2023 and will be imposed at a rate of 16.4 cents per barrel that year (an increase from 9.7 cents). The rate will be adjusted annually for inflation, beginning January 1, 2024, and the tax is set to expire December 31, 2032.

Pharmaceutical drug manufacturers

Effective August 16, 2022, an excise tax is imposed on sales by a manufacturer, producer, or importer of any designated drug (any negotiation-eligible drug listed under the Social Security Act) during noncompliance periods. The tax is imposed on an amount dependent on an "applicable percentage" which ranges from 65 percent to 95 percent.

Excise tax on repurchase of corporate stock

The IRA adds IRC section 4501, which imposes a 1 percent tax on the fair market value of certain share repurchases by a corporation. Generally, applicable to domestic corporations, the tax will apply to repurchases made after December 31, 2022.

Other provisions

Black Lung Trust Fund

The IRA permanently extends the excise tax on coal to fund the Black Lung Disability Trust Fund.

Observations

The Inflation Reduction Act makes various changes to federal tax provisions governing energy credits and excise taxes. Companies that conduct activities related to clean fuels, oil and petroleum products, and pharmaceutical manufacturing should familiarize themselves with the existing IRC statutes, Treasury Regulations, and excise tax forms and returns to comply with the IRA's newly enacted provisions.

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