

Superfund Tax on Chemicals: What You Need to Know to Comply

Article By:

B&C® Biobased and Sustainable Chemicals Practice Group Bergeson & Campbell, P.C.

As reported in our May 19, 2022, [memorandum](#), the Superfund excise tax on certain chemical substances was reinstated beginning on July 1, 2022, under the Infrastructure Investment and Jobs Act. The newly reinstated tax has caught many off guard, and most subject to the tax are struggling with computing and reporting the tax. We offer some guidance below and stand ready to assist.

Overview

There are two separate Superfund chemical excise taxes: a tax on the sale or use of “taxable chemicals” and a tax on the sale or use of imported “taxable substances.” The reinstated taxes impose an excise tax on the sale or use of a *taxable chemical* by the manufacturer, producer, or importer of the taxable chemical, as well as an excise tax on the sale or use of a *taxable substance* by the importer of the taxable substance. As an example, a paint product manufactured outside the United States and imported into the United States is not subject to the excise tax if the specific component substances are not identified as taxable substances, regardless of the elemental content of the components. Assuming none of the paint components is listed as a taxable substance, the importer can import the product without being subject to tax, even if the paint components contain taxable chemicals. If, on the other hand, a company manufactures a paint component in the United States using a taxable chemical, the company would be taxed on the use or sale of the taxable chemical regardless of the quantity of the chemical in the product. The tax would apply to the import of the taxable chemical only if the import of the chemical were contemporaneous with the sale of the chemical.

The Superfund chemical taxes will be reported on [Form 720, Quarterly Federal Excise Tax Return](#), and [Form 6627, Environmental Taxes](#). The Internal Revenue Service (IRS) has posted [Instructions for Form 6627](#), as well as [frequently asked questions \(FAQ\)](#) on the tax. The IRS also recently released [Revenue Procedure 2022-26](#), which provides the exclusive procedures for requesting a determination under Section 4672(a)(2) of the Internal Revenue Code (Code) that a substance be added to or removed from the list of taxable substances under Section 4672(a) of the Code (List).

Taxable Chemicals

A taxable chemical is a chemical that is: (1) listed in Section 4661(b) of the Code; and (2)

manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing. There are 42 chemicals listed in Section 4661(b). Manufacturers, producers, or importers that sell or use any of these chemicals must pay a tax of \$0.44 to \$9.87 per ton, depending on the chemical, a rate per ton of each taxable chemical. Part II of Form 6627 has been updated to reflect the current tax rate per ton of each taxable chemical.

Taxable Substances

A taxable substance is any substance that, at the time of sale or use by the importer of the substance, is listed as a taxable substance -- substances that are not listed are not taxable, regardless of their content. A substance is listed as a taxable substance if it is listed under Section 4672(a)(3), or if the Secretary of the Treasury or her delegate (Secretary) has added it to the List.

The FAQs state that at the time of publication, June 24, 2022, 151 substances are listed as taxable substances. The FAQs note that number will likely change as substances are added to or removed from the List.

On June 24, 2022, the IRS [announced](#) that it prescribed tax rates for 121 of the 151 taxable substances. The rates range from \$1.49 to \$23.65 per ton. According to the FAQs, importers are not required to use the IRS-prescribed tax rates for the Section 4671 tax and may calculate their own rates. The FAQs state that “[t]he amount of the section 4671 tax with respect to any taxable substance is generally the amount of section 4661 tax that would have been imposed on the taxable chemicals used in the manufacture or production of the taxable substance if the taxable chemicals had been sold in the United States for use in the manufacture or production of the taxable substance.”

The Instructions for Form 6627 state that to calculate the tax, taxpayers will generally need to know the ratio of the weight of each taxable chemical used to make the substance to the total weight of the substance (the conversion factor). If there is not enough information to determine the conversion factor and the IRS has provided a tax rate for the substance, either online or in the Table of Taxable Imported Chemical Substances in the Instructions for Form 6627, then that tax rate applies. If there is not enough information to determine the conversion factor and the IRS has not provided a tax rate for the substance, then the tax is ten percent of the appraised entry value of the substance. The instructions state that the IRS will provide additional tax rates [online](#) or in the Table of Taxable Imported Chemical Substances when they become available.

Reporting Taxes

The Superfund chemical excise taxes are reported on Form 6627, Environmental Taxes, which is attached to Form 720, Quarterly Federal Excise Tax Return. The first return, for the calendar quarter ending on **September 30, 2022**, is due by **October 31, 2022**.

Taxpayers must make semimonthly deposits of the Superfund chemical excise taxes. A semimonthly period is the first fifteen (15) days of a calendar month or the portion of a calendar month following the 15th day of the month. In [Notice 2022-15](#), the IRS provides relief for the **third and fourth calendar quarters of 2022** and the **first calendar quarter of 2023**, regarding the failure to deposit penalties imposed by Section 6656 for failures to deposit Superfund chemical excise taxes through **March 31, 2023**.

Procedures to Modify the List of Substances Subject to the Superfund Tax

Revenue Procedure 2022-26 provides the exclusive procedures for requesting a determination under Section 4672(a)(2) that a substance be added to or removed from the List. Section 4 of the revenue procedure states that an importer or exporter of any substance, or a person other than an importer or exporter of such substance (interested person), may request to add such substance to the List or remove such substance from the List by submitting a petition to the IRS. According to the revenue procedure, any requests to modify the List that were submitted prior to publication of the revenue procedure or in response to the request for comments in Notice 2021-66 do not meet the requirements of this revenue procedure. The IRS will not process such requests.

A petition may be submitted to add a substance to the List if taxable chemicals constitute more than 20 percent of the weight or value (as an aggregate of all taxable chemicals) of the materials used to produce such substance. A petition may be submitted to remove a substance from the List if taxable chemicals constitute 20 percent or less of the weight and 20 percent or less of the value of the materials used to produce such substance. Separate petitions must be submitted for each substance to be added to or removed from the List.

The IRS will publish a Notice of Filing in the *Federal Register*, beginning a 60-day comment period on the petition. In the case of a petition submitted by an importer or exporter of a substance, the IRS will make a determination within 180 days after the date the petition is filed. The 180-day determination period may be extended by agreement between the petitioner and the IRS. The 180-day determination period does not apply to petitions submitted by interested persons (a person other than an importer or exporter of such substance).

Commentary

There is nothing intuitive or easy about this tax -- neither knowing when it applies nor computing it. This step can be especially difficult for clients that are not familiar with the chemical components of certain chemical substances. Key points are:

- The tax is due upon sale or use of the taxable substance or taxable chemical. The tax would only be due upon import if import is contemporaneous with sale or use;
- A substance is not taxable if it is not identified on the List;
- The threshold of 20 percent content of taxable chemicals delineates what substances are eligible to be added to the List, but such content does not automatically trigger listing as a taxable substance;
- Taxable substances are added (and removed) by a petition process that includes notice and comment;
- The IRS does not identify taxable chemicals or taxable substances by Chemical Abstracts Service (CAS) Registry Number (RN), only by name; and
- Taxable chemicals that are sold or used in the United States are taxed regardless of the quantity sold or used.

©2025 Bergeson & Campbell, P.C.

National Law Review, Volume XII, Number 194

Source URL: <https://natlawreview.com/article/superfund-tax-chemicals-what-you-need-to-know-to-comply>