

## **SEO DETAILS:**

Page Title: IIJA Reinstates Superfund Excise Taxes on Chemicals and Substances | [INSERT RELATED SERVICE] | [INSERT FIRM NAME]

Meta Description: With the reinstatement of Superfund excise taxes on chemicals and substances, [NAME OF FIRM] defines the tax and how it will impact manufacturers and importers.

Headline: IIJA Reinstates Superfund Excise Taxes on Chemicals and Substances

## **BODY COPY:**

Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to establish a system for determining who is liable for cleaning up hazardous waste sites. When possible, owners and operators are responsible for cleanup. The statute created the Hazardous Substance Response Trust Fund, commonly known as the "Superfund," to pay for cleanup at sites where the liable parties cannot be identified or found, or where cleanup must occur sooner rather than later. CERCLA provided funding for the Superfund through excise taxes, but those provisions expired nearly 30 years ago. The [Infrastructure Investment and Jobs Act \(IIJA\)](#), which became law in November 2021, will reinstate the Superfund excise tax, effective July 1, 2022.

## **What Are Superfund Excise Taxes?**

CERCLA established a system of excise taxes on petroleum products and various chemicals and substances deemed to be hazardous and to pose a danger to the ecosystem if spilled. Taxes collected on petroleum products go into the Oil Spill Liability Trust Fund. [Section 4611](#) of the Internal Revenue Code (IRC) currently allows taxes for the fund until the end of 2025. The provisions allowing the excise tax for the Superfund were not in effect from January 1, 1996, until July 1, 2022.

## **Taxable Chemicals**

Section 4661 of the IRC identifies 42 taxable chemicals and establishes excise tax rates. [Section 4662](#) states that any chemical on the list may be deemed taxable if it was manufactured or produced in the U.S., or imported into the U.S. to be sold or used. The statute assesses excise taxes per ton of each chemical.

The IRC lists exceptions in which otherwise taxable chemicals would not be subject to the Superfund excise tax. These include:

- Methane or butane, when they are used for fuel;
- Materials used to produce fertilizer, motor fuel or animal feed;
- Substances derived from coal;
- Sulfuric acid, when it is a byproduct of equipment used to control air pollution; and
- Chromium, cobalt and nickel, when they are the result of solid waste recycling.

Prior to enactment of the IIJA, the lowest tax rate was \$0.22 per ton for potassium hydroxide. The highest rate, \$4.87 per ton, applied to 10 chemicals: acetylene, benzene, butadiene, butane, butylene, ethylene, naphthalene, propylene, toluene and xylene.

## Taxable Substances

[Section 4672](#) of the IRC lists 50 taxable substances. The excise tax applies to substances on the list that are imported into the U.S. The IRS may add to this list if, in consultation with the Environmental Protection Agency (EPA) and U.S. Customs and Border Protection (CBP), it determines that more than 50 percent of a substance, by either weight or value, consists of one or more taxable chemicals.

The IIJA changes the definition of “taxable substance” by modifying the “50 percent” provision. It also states that anything deemed to be a taxable substance prior to November 15, 2021 shall remain on the list. The list as of that date contains an additional 101 substances based on this metric. [IRS Notice 2021-66](#) identifies all of them.

The excise tax rate for taxable substances, according to [§ 4671](#), depends on whether the importer discloses which taxable chemicals the substances contain. If the importer makes this disclosure, the tax rate is the same as the rate for the taxable chemical. If they do not, the rate prior to July 1, 2022 was 5 percent of the substance’s appraised value at the time it entered the U.S.

## Who Is Responsible for Paying Superfund Excise Taxes?

Manufacturers and importers of taxable chemicals are responsible for paying the Superfund excise tax, typically at the first sale or use within the U.S. Importers are also responsible for paying excise tax on taxable substances upon their first sale or use. These taxes are payable on a quarterly basis using [IRS Forms 720](#) and [6627](#).

## What Changes Does the New Law Make?

Section 80201 of the IIJA makes several changes to §§ 4661, 4671 and 4672 of the IRC.

**Sets an Expiration Date in 2031:** The pre-IIJA language of §§ 4661(c) and 4671(e) simply stated that no Superfund excise tax would be imposed at any time when no Superfund tax rate was in effect. In practice, this meant that no excise tax has been payable since the end of 1995. The IIJA reinstates the tax on both chemicals and substances and gives it the specific expiration date of December 31, 2031.

**Changes the Definition of “Taxable Substances”:** Currently, a substance is taxable for Superfund purposes if the IRS, EPA and CBP determine that taxable chemicals make up at least 50 percent of its weight or value. The IIJA amends this provision of § 4672 by changing 50 percent to 20 percent. Taxpayers may petition the IRS to add substances to the list.

**Changes the Tax Rates on Chemicals and Substances:** The IIJA doubles the rates on taxable chemicals listed in § 4661. Once the new rates take effect, potassium hydroxide will still have the lowest rate at \$0.44 per ton. The 10 chemicals listed above will still have the highest rate at \$9.74 per ton. It also doubles the tax rate for taxable substances in § 4671(b)(2), when the importer does not disclose their composition to the IRS, from 5 to 10 percent.

**CLOSE:**

If you have any questions or would like additional information about Superfund excise taxes and how to prepare your company, please contact [NAME] in our [DEPARTMENT] at [NUMBER] or [EMAIL].

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