

Superfund Excise Taxes Proposed Regulations

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PRACTICES Tax

The Inflation Reduction Act of 2022 reinstated the Superfund excise taxes that had previously expired in 1995. Superfund taxes went back into effect in July of 2022 and are imposed upon (1) the sale or use of "taxable chemicals" by manufacturers, producers, or importers and (2) the consumption, use, or warehousing of hazardous "taxable substances" by importers. The Superfund taxes fund the Hazardous Substance Superfund dedicated to cleaning up hazardous waste sites.

The IRS recently released proposed regulations that clarify the mechanics of the Superfund taxes. The chemical excise tax is imposed upon the first sale or use of a specified taxable chemical by a domestic manufacturer, producer, or importer. When a foreign manufacturer sells a taxable chemical, the tax is imposed upon the domestic importer's first sale or use of the chemical rather than the foreign manufacturer's sale.

The proposed regulations also provide guidance on whether a tax is imposed upon a diluted taxable chemical mixture, details the process for obtaining a refund or credit of the Superfund excise taxes, and provides a formula for calculating the excise tax based on volume and weight. Additionally, the IRS issued Notice 2023-28 extending, through the end of 2023, the phase-in period during which taxpayers required to pay the Superfund excise taxes will not be subject to failure-to-deposit penalties.