



Explanation of the Federal Superfund Excise Tax

The Infrastructure Investment and Jobs Act, Public Law No: 117-58, became law on 11/15/21. The primary aim of the law is to fund projects which include roads, bridges, water and power infrastructure as well as address “legacy pollution by cleaning up Brownfield and Superfund sites.”¹ The original tax was enacted in 1980 as a Superfund Tax but expired at the end of 1995.

Included in the 1,039-page law is the reinstatement on July 1, 2022, of “excise taxes imposed on certain chemicals by section 4661 and 4662 of the Internal Revenue Code.”² There is also a tax on imported substances detailed in section 4671 and 4672. A key piece of information is what the IRS considers a chemical versus a substance. According to the Internal Revenue Service Excise Tax Branch for Special Industries (who amazingly took my call at 4:15 PM on a Friday) chemicals are used to make substances and are the earliest stage of the production process. The key chemicals for our customers covered under IRS Code 26, Title 26, Subtitle D, Chapter 38, Subchapter B, Section 4661 are ethylene, propylene, benzene, and butadiene. These chemicals will be taxed if “manufactured or produced in the United States”³ or are imported into the US for consumption purposes. The tax is \$9.74/US ton which is \$.0049/lb. I have seen some information being published that puts the tax at \$.0044/lb, but those people need to read the fine print in section 4662 which calls out a ton as being 2,000.0 lb not a metric ton which is 2,204.6 lb.

Imported substances are covered under sections 4671 and 4672. Among the materials listed are polyethylene and polypropylene resins as well as polystyrene homopolymer resins.⁴ The import tax also covers the same chemicals that are prescribed for taxation in the US under section 4661 and 4662 at the same taxation level of \$9.74/US ton.

So, who must pay the excise tax effective July 1, 2022? Producers buying ethylene and propylene and making it into polyethylene and polypropylene for one. The costs of the producers will rise by half a cent per pound so they will do their best to pass on the increased cost to their customers. The sticking point is where a customer of the producer is buying resin based on an index or, worse from the producer’s standpoint, monomer plus. I would assume that the indexes will show the tax as a pass-through increase on freely negotiated business and therefore start to move the needle across the board. For those buying polypropylene based on monomer plus there should be a period where the producers will have to suck it up.

Some producers are attempting to put a line item in their invoices showing the tax as a pass-through expense to their customers. It should be shown as an additional cost to their customers and not as a tax since the tax is only on the raw materials being used by the producers. Index and monomer-based customers have a strong argument to not take it. It would make as much sense to have a property tax line-item expense on the bill. It’s a tax, it is paid by the producer, it’s an ongoing expense that effects the total cost, but it is a cost of doing business.

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All this being said, we are not lawyers or accountants. We want to start a conversation around industry changes. This is in no way legal or tax advice. Please connect with the appropriate parties for that.

1. <https://www.congress.gov/bill/117th-congress/house-bill/3684>
 - a. paragraph 1
2. <https://www.irs.gov/pub/irs-drop/n-21-66.pdf>
 - a. Section 1, paragraph 1
3. <https://www.law.cornell.edu/uscode/text/26/4662>
 - a. (a) (1) (B)
4. <https://www.law.cornell.edu/uscode/text/26/4672>
 - a. (a) (3)

Best regards,

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