

# ENERGY EXCISE TAXES WE'RE BACK, BABY!

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16TH BIENNIAL PARKER C. FIELDER OIL AND GAS TAX CONFERENCE  
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# Reinstated Superfund Taxes

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## SUPERFUND EXCISE TAXES - HISTORICAL

- The Superfund excise tax on chemicals was originally enacted in 1980 as part of CERCLA.
- The Superfund excise tax on chemicals was imposed on the sale or use of 42 listed taxable chemicals.
  - Tax liability was on the manufacturer, importer, or the person using the chemical for non-exempt use (in the case of butane and methane).
  - Tax rate was per-ton, ranging from \$0.24 - \$4.87 per ton.
- The Superfund excise taxes were also imposed on the import of 50 listed taxable substances.
  - Taxable substances were comprised of at least 50% of the above 42 listed chemicals.
  - Tax rate based on the taxable chemicals, or 5% of total value of the substance upon import.
  - Companies could request new substances be added to the list if the substance includes more than 50% of a listed taxable chemical.
- Both taxes expired in 1995.

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## **SUPERFUND EXCISE TAXES – 2021 AND ON**

The Infrastructure Investment and Jobs Act of 2021 –

- Reinstated the Superfund excise taxes (effective July 1, 2022);
- Doubled the excise tax rate on taxable chemicals to a range of \$0.44 - \$9.74 per ton; and
- Doubled the excise tax rate on imported taxable substances to 10% of the total value of the substance upon export if taxpayer does not calculate the tax based on the chemical composition.
- Taxable substances now need to be comprised of only 20% of the listed 42 chemicals, resulting in additional imported substances which could be deemed taxable.
- The IRS has added an additional 101 taxable chemical substances to the list as of December 2021.

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## **EXEMPTIONS – TAXABLE CHEMICAL EXEMPT SCENARIOS**

- Export;
- Methane and butane used for fuel purposes, including production of motor fuel, diesel fuel, aviation fuel;
- Nitric acid, sulfuric acid, ammonia, methane used in production of ammonia used for sale or use in production of fertilizer;
- Sulfuric acid produced as a byproduct of air pollution control;
- Substances derived from coal;
- Acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene sold or used (or used in the production) as a motor fuel, diesel fuel, aviation fuel, or jet fuel;
- Barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, zinc sulfate, and any solution/mixture of these which have a transitory process during smelting, refining, or other extraction;
- Chromium, cobalt, or nickel recovered from solid waste as part of a recycling process; or
- Nitric acid, sulfuric acid, ammonia, and methane used in production of ammonia used in production of animal feed.

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