



The Inflation Reduction Act Reinstates Superfund Petroleum Excise Tax

On August 16th, President Joe Biden signed the Inflation Reduction Act of 2022 (the Act) into law. The Act, as part of a larger budget reconciliation package, provides roughly \$370 billion in investments in energy and climate reform geared towards lowering greenhouse gas emissions by 40 percent, based on 2005 levels, by 2030.

Among other things, the Act resurrects a long-expired Hazardous Substance Superfund Trust Fund (Superfund) excise tax on oil and petroleum products, effective as of January 1, 2023. In 1980, Congress had established the [Comprehensive Environmental Response, Compensation and Liability Act \(CERCLA\)](#). CERCLA is commonly referred to as “Superfund”. It allows EPA to clean up contaminated sites. It also requires the parties responsible for the contamination to either perform cleanups or reimburse the government for EPA-led cleanup work. When there is no viable responsible party, Superfund gives EPA the funds and authority to clean up contaminated sites.

The purpose of the petroleum excise tax is to replenish the Superfund, which provides the federal government with resources to respond to environmental threats related to hazardous substances not otherwise addressed by responsible parties. The petroleum excise tax applies to crude oil received at a U.S. refinery (which tax must be paid by the operator of the refinery) and to petroleum products entering the U.S. for consumption, use, or warehousing (which tax must be paid by the person importing the product into the U.S. for any of those purposes). In addition, if any domestic crude oil is used in or exported from the U.S., and before such use or exportation no tax was imposed on such crude oil at the refinery (as described above), then a separate tax is imposed. That tax would be paid by the person using or exporting the crude oil, as the case may be.

The tax rate is 16.4 cents per barrel on crude oil and petroleum-product imports, indexed to the inflation rate. This is an increase from the rate of 9.7 cents that applied the last time this petroleum excise tax was effective over 25 years ago. It is estimated that the tax will raise \$11.7 billion in revenue over 10 years, until the tax is set to expire on December 31, 2032.

The reinstatement of the Superfund excise tax on oil and petroleum products marks the resumption of two of the three original Superfund taxes that were allowed to expire in 1995 (the third was an environmental income tax). As previously [reported by Babst Calland](#), a separate Superfund excise tax on chemical feedstocks was reinstated with the adoption of the federal Infrastructure Bill last November. The reinstatement of these Superfund taxes, with attendant revisions and new provisions, has raised and will raise a multitude of tax implications, questions and uncertainties that are beyond the scope of this alert. The IRS has issued and will continue to issue guidance regarding the applicability of the tax to taxable substances.

Babst Calland’s [environmental attorneys](#) continue to track Superfund developments and their implications for industry as developments occur in the coming months. If you have questions or need additional information, please contact Jean Mosites at (412) 394-6468 or jmosites@babstcalland.com or Amanda Brosy at (202) 853-3465 or abrosy@babstcalland.com.

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