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Congress Reinstates Hydrocarbon Taxes

As directed by congress, the Internal Revenue Service has reimposed excise taxes on certain hydrocarbons that have not been collected since the mid-1990s.

These Superfund Chemical Excise Taxes were reinstated on chemicals and substances by the Infrastructure Investment and Jobs Act signed into law November 15, 2021. The Superfund Tax is effective as of July 1, 2022 and will remain in effect until the end of 2031. The first payment is due October 31, 2022 for the calendar quarter ending September 30, 2022.

The IRS has published a detailed set of Frequently Asked Questions that provide information for companies and tax preparers on how to comply with the new taxes.

There are two separate Superfund chemical excise taxes: a tax on the sale or use of "taxable chemicals" under section 4661 of the Internal Revenue Code and a tax on the sale or use of imported "taxable substances" under section 4671 (all section references are to the Internal Revenue Code unless otherwise stated).

Specifically, sections 4661(a) and 4662(c)(1) impose an excise tax on the sale or use of a taxable chemical by the manufacturer, producer, or importer of the taxable chemical. Section 4671(a) imposes an excise tax on the sale or use of a taxable substance by the importer of the taxable substance.

A taxable chemical is a chemical that is (i) listed in section 4661(b), and (ii) manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing. There are 42 chemicals listed in section 4661(b). For purposes of GAWDA members, these include acetylene, butane, ethylene, methane, propylene, toluene, and xylene.

The tax is calculated at a rate per ton of a taxable chemical, and is paid quarterly on IRS form 6627, Environmental Taxes, which is appended to IRS Form 720, Quarterly Federal Excise Tax Return. The manufacturer, producer, or importer of the taxable chemical is responsible for reporting and paying the section 4661 tax to the IRS.

Taxpayers must make semimonthly deposits of the Superfund chemical excise taxes. A semimonthly period is the first fifteen (15) days of a calendar month or the portion of a calendar month following the 15th day of the month. However, Notice 2022-15, 2022-18 I.R.B. 1043, provides transitional relief for the third and fourth calendar quarters of 2022, and the first calendar quarter of 2023, regarding the failure to deposit penalties imposed by section 6656 for failures to deposit Superfund chemical excise taxes through March 31, 2023.

There are potential exemptions for butane and methane used as a fuel. Thus, taxpayers further down the supply chain need to be aware of the procedural issues affecting such chemicals. While the majority of the listed chemicals are taxable by the manufacturer or importer upon the first sale or use, butane and methane only become taxable upon the first use other than as a fuel. This could create a potential liability for downstream users so that the first company that uses the methane or butane in a manner other than as a fuel will have to report and remit the Superfund Tax.

Please review these requirements with your tax professionals to determine how the new excise taxes will affect your company.

Biden Signs Climate and Health Care Legislation

President Biden has signed into law the Inflation Reduction Act, which despite its name is not expected to reduce inflation in any meaningful way according to politically neutral analyses. But the new law does include a number of provisions addressing climate change and health care in addition to several tax changes. Some significant last-minute changes to the bill were obtained by Sen. Joe Manchin (D-WV) in order to secure his vote for passage. The new law:

- Includes a tax credit for qualified commercial clean vehicles from 2023 to 2032, calculated as the lesser of (A) 15% of the basis of such vehicle (30% in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or (B) the incremental cost of such vehicle, defined as "an amount equal to the excess of the purchase price for such vehicle over such price of a comparable vehicle." The credit is capped at $7,500 for any vehicle with a gross weight rating of less than 14,000 lbs. and $40,000 for other commercial vehicles. Only qualified commercial electric and fuel cell vehicles may receive the full credit; internal combustion engines are eligible for a reduced credit of 15%.
- Establishes a new 15% alternative minimum tax on certain corporations, including U.S.-headquartered corporations with at least $1 billion in annual global revenue.
- Imposes a one percent excise tax on the fair market value of stock repurchases by publicly traded companies.
- Beginning January 1, 2023, reinstates Superfund excise taxes on crude oil and imported petroleum products that expired in 1995, at a new rate of 16.4 cents-per-barrel (up from the previous rate of 9.7 cents-per-barrel), which will be indexed to inflation.
- Increases funding for the Internal Revenue Service by $79 billion through fiscal year 2031 for enforcement purposes.
- Authorizes spending $375 billion through fiscal year 2031 to address climate change, including $4.5 billion in subsidies, tax credits and rebates for residential electrification (e.g., purchases of electric appliances and heat pumps).
- Consolidates all tax incentives for renewable and alternative fuels into a single performance-based "clean fuel production credit" in tax years 2025-2027. The base value is $0.20 per gallon for fuels with a lifecycle emissions level below 50 kilograms of CO_2e per mmBTU, with further adjustments to credit value based on and "emissions factor." The rate will be indexed for inflation.

- Conditions issuing rights of way for utility-scale scale renewable energy projects on public land unless 62 million acres of federal lands and waters are offered for oil and gas leasing each year for ten years.
- Revives oil and gas lease sales in Alaska and the Gulf of Mexico previously canceled by the Biden Administration.
- Includes $500 million over ten years for downstream biofuel infrastructure grants.
- Extends without changes the renewable and alternative fuels tax incentives through 2024, including biodiesel and renewable diesel blenders' tax credit, the second generation (cellulosic) biofuel producer credit, and alternative fuel mixture (propane autogas) tax credit.
- Authorizes Medicare to negotiate certain prescription drug prices and imposes caps on certain drug process.

PHMSA Publishes Final Rule on International Harmonization of Hazmat Regulations

The Pipeline and Hazardous Materials Safety Administration has published a new final rule, HM-215P, that amends the federal Hazardous Materials Regulations (HMR) to harmonize U.S. laws with numerous international standards. The changes go into effect on August 25, 2022. According to PHMSA, the new rules will save U.S. hazmat shippers and carriers some $250 million over ten years in reduced compliance costs.

The changes include revisions to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. Additionally, PHMSA is amending the HMR to allow for better alignment with Transport Canada's Transportation of Dangerous Goods Regulations.

The final rule incorporates by reference the newest versions of various international hazardous materials (hazmat) standards, including:

- the 2021-2022 Edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions);
- Amendment 40-20 to the International Maritime Dangerous Goods Code (IMDG Code);
- the 21st Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods (UN Model Regulations); and
- the International Atomic Energy Agency (IAEA) "Specific Safety Requirements Number SSR-6: Regulations for the Safe Transport of Radioactive Material 2018 Edition" (SSR-6, Ref.1).

In addition, PHMSA will authorize rail or motor carrier hazmat transport in cross-border traffic under a temporary certificate issued under Transport Canada's Transport of Dangerous Goods Regulations (TDGR).

PHMSA has amended the Hazardous Materials Table (49 CFR § 172.101) to add, revise, or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, and passenger and cargo aircraft maximum quantity limits.

The agency also revised the minimum wall thickness requirements for metal Intermediate Bulk Containers with a volume of 1500 L or less to provide additional design and construction flexibility with regard to IBC designs. This amendment harmonizes with the 21st revised edition of the UN Model Regulations.

Other highlights of the rule include:

- Updated standards for the manufacture, use, and certification of pressure vessels, used to transport essential gases for medical, manufacturing, and other uses.
- Updated requirements for the transportation of damaged or defective lithium batteries.
- Improved process for recycling or disposing of small gas or fuel cell cartridges.
- Updated packaging construction provisions to help reduce delays and interruptions of hazardous materials during transportation.
- Provisions that encourage the use of animal-friendly alternative hazard testing to reduce the prevalence of animal testing.

Further, PHMSA is adding a new paragraph (q) to 49 CFR 173.302 that requires documentation of holding time for refrigerated liquified gases in portable tanks. See page 44960 at the link. "Holding time" is "the span of time, as determined by testing, that elapses from the time of loading until the pressure of the contents, under equilibrium conditions, reaches the set point for the lowest pressure control valve or pressure relief valve setting. PHMSA will require including the specific date when the holding time ends on the shipping paper for refrigerated liquefied gases transported in portable tanks."

The preamble to the final rule continues, "Knowing the holding time assists in preventing unexpected venting while in transportation, which could lead to exposure to a hazardous material release, and associated risks, as well as the loss of product. Including this information on the shipping paper aids in managing the transportation of refrigerated liquefied gases to ensure the material arrives safely at its destination without an unintended release of hazardous materials, including those that are known GHGs (e.g., nitrous oxide)."

Some GAWDA members have expressed concern that this might apply to shipments of all dewars, but the provision applies only to portable tanks. In 49 CFR 171.8, a "portable tank" is defined as a "a bulk packaging (except a cylinder having a water capacity of 1000 pounds or less) designed primarily to be loaded onto, or on, or temporarily attached to a transport vehicle or ship and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means. It does not include a cargo tank, tank car, multi-unit tank car tank, or trailer carrying 3AX, 3AAX, or 3T cylinders."

Since dewars are not designed primarily to be loaded onto, or on, or temporarily attached to a transport vehicle or ship and typically are not equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means, they do not meet the definition of a portable tank and therefore are not subject to the new requirement to document holding time for portable tanks.to require documentation of the holding time for refrigerated liquefied gases transported in portable tanks.

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