Tulsa Tax attorney David Potts - Reinstated Excise Tax on Certain Chemical Substances

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REINSTATED EXCISE TAX ON CERTAIN CHEMICAL SUBSTANCES

As of the first of July 2022, any manufacturer, producer or importer of certain chemicals will have to start budgeting to pay for an additional excise tax on certain chemical substances they manufacture, produce or import. On July 1, 2022, the Superfund chemical excise tax (collectively, "Superfund Chemical Tax"), which in effect expired on December 31, 1995, was reinstated under Section 80201 of the Infrastructure Investment and Jobs Act ("IIJA") and be effective through December 31, 2031.

The Superfund Chemical Tax is an excise tax that was enacted under The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") to create a hazardous substance cleanup program. CERCLA funded the hazardous substance cleanup program through the Superfund Chemical Tax, a tax on the sale or use of certain imported taxable chemical substances under I.R.C. Section 4661; or the sale or use of imported taxable substances that use one or more taxable chemicals in their manufacture or production under I.R.C.[1] Section 4671.

The Superfund Chemical Tax under I.R.C. Section 4661 applies to the sale of any "taxable chemical" by a manufacturer, producer, or importer. "Taxable chemicals" are listed in I.R.C. Section 4661. I.R.C. Section 4661, further, lists the amount of excise tax imposed on a "taxable chemical." These rates range from $0.48 per ton to $9.74 per ton, depending on the chemical. However, I.R.C. Section 4662(b) provides ten (10) exemptions from the "taxable chemicals" listed in I.R.C. Section 4661. These exemptions include: substances used in the production of motor fuel; use of certain chemicals in the production of fertilizers; substances derived from coal; and substances having transitory presence during refining process.

While the Superfund Chemical Tax under I.R.C. Section 4671 applies to the sale or use of a "taxable substance" by an importer. A "taxable substance" is defined as: (i) one of the one hundred and fifty-one chemicals listed in I.R.C. Section 4671(b) and/or I.R.S. Notice 2021-66; and (ii) any chemical substance that is comprised of more than 20% of a taxable chemical by weight or volume. The burden will be on the importer to provide the IRS with sufficient substantiation to determine whether a substance contains more than 20% of a "taxable substance" and is subject to the excise tax imposed under I.R.C. Section 4661.

Taxes due under I.R.C. Section 4661 or I.R.C. Section 4671 must be reported on an I.R.S. Form 6627, which is attached with the I.R.S. Form 720, Quarterly Federal Excise Tax Form. The initial reporting date for the newly reinstated "Superfund Chemical Tax" is on the third-quarter I.R.S. Form 720 due date of October 21, 2022. While the taxes must be reported on an I.R.S. Form 6627 that is due by October 21, 2022, semi-monthly deposits of this "Superfund Chemical Tax" must be made beginning in July, 2022.

Due to the distant expiration date of the "Superfund Chemical Tax" in 1995, many companies may not realize the complex nature of the impeding "Superfund Chemical Tax" and may not be able to evaluate the chemicals they manufacture, produce or import, to establish if and how much excise tax they owe under the "Superfund Chemical Tax." If companies do not accurately report and pay the excise tax due and owing under the "Superfund Chemical Tax," the company will be subject to applicable penalties and interest for late tax deposits, ranging from 2% to 15%, and late filing penalties of 5% per month of the amount due, up to 25%. That is why it is imperative companies become familiar with the "Superfund Chemical Tax" and review I.R.S. guidance, as it develops, because July, 2022 will be here sooner than you think and the "Superfund Chemical Tax" will be due.

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1 Internal Revenue Code of 1986, as amended.

Attorneys

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