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## Superfund Tax Legislation in the 117<sup>th</sup> Congress

Decades of industrial and commercial activities involving various chemicals resulted in environmental contamination at thousands of sites in the United States, including federal facilities that served national defense and other purposes. Some of this contamination occurred prior to environmental regulation. Allocation of financial responsibility for remediating environmental contamination has been a long-standing issue. At the federal level, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, P.L. 96-510) established the liability of certain categories of potentially responsible parties (PRPs) for the costs of remediating hazardous substances released into the environment, natural resource damages, and related federal public health studies. CERCLA authorized the Hazardous Substance Superfund Trust Fund to finance the remediation of sites without financially viable PRPs to fulfill their liability. The U.S. Environmental Protection Agency (EPA) administers and oversees the remediation of sites prioritized for federal involvement under the Superfund program, in coordination with the states in which the sites are located. Other federal laws apply to oil spills and petroleum contamination from underground tanks not covered under CERCLA. States also have established environmental remediation programs under their own laws.

Under CERCLA and subsequent law, Congress established a three-part tax system to finance the Superfund Trust Fund: (1) an excise tax on crude oil and imported petroleum products, (2) an excise tax on certain domestic chemical feedstocks and imported chemical derivatives, and (3) a special environmental tax on corporate income. These taxes accounted for most of the receipts for the Superfund Trust Fund until the taxing authority expired at the end of 1995. Since the taxes expired, the Superfund Trust Fund has primarily been financed with transfers from the General Fund of the U.S. Treasury.

Legislation to reauthorize Superfund taxes has been introduced in every Congress since 1995, including the 117<sup>th</sup> Congress. The President's FY2022 budget request also proposes to reauthorize the Superfund excise taxes. Enacted November 15, 2021, the Infrastructure Investment and Jobs Act (P.L. 117-58) reauthorizes the Superfund chemicals excise tax through December 31, 2031, at double the rates that were in effect in 1995. As passed by the House on November 19, 2021, the Build Back Better Act (H.R. 5376, also referred to as the reconciliation bill) would permanently reauthorize the Superfund petroleum excise tax, increase the rate in 2022, and annually adjust it for inflation. The effective date of these tax provisions in both P.L. 117-58 and H.R. 5376 is July 1, 2022.

A brief history of Superfund taxes, eligible uses of receipts, tax reauthorization issues, and Superfund tax legislation in

the 117<sup>th</sup> Congress are discussed further below. For more information on the history of Superfund taxes and CERCLA, see CRS Report R41039, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act*, by David M. Bearden; and CRS In Focus IF11790, *Liability Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)*, by Kate R. Bowers.

### Superfund Tax History

As enacted in 1980, CERCLA authorized Superfund excise taxes on crude oil, imported petroleum products, and domestic chemical feedstocks. Congress chose 42 feedstocks from which many other chemicals were made, as a matter of efficiency to tax chemical production. The Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499) expanded the Superfund chemicals excise tax to include imported chemical derivatives and added the special environmental tax on corporate income. Congress based the excise taxes on the premise that petrochemicals from crude oil, and other commercial chemicals, were common sources of contamination. The tax on corporate income applied to any corporation that met the income threshold regardless of whether its activities involved hazardous substances. Subsequent laws through the 101<sup>st</sup> Congress reauthorized Superfund taxes until the end of 1995. Prior to expiration, Superfund taxes were

- an excise tax on crude oil and imported petroleum products at a rate of 9.7 cents per barrel paid by U.S. refineries receiving crude oil and importers of petroleum products for consumption, use, or warehousing;
- an excise tax on 42 chemical feedstocks paid by the manufacturers, and imported chemical derivatives paid by the importers, at a rate that varied from \$0.22 per ton to \$4.87 per ton depending on the substance; and
- a special environmental tax on corporate income at the rate of 0.12% of alternative minimum taxable income in excess of \$2 million annually.

Superfund tax receipts were fully expended by the end of FY2003. General Fund transfers have since financed most of the annual appropriations from the Superfund Trust Fund. In addition to these transfers, the Superfund Trust Fund receives revenue from cost recoveries from PRPs, fines and penalties for violations of CERCLA, and interest on the balance of the trust fund. Appropriations from the trust fund have been roughly \$1.2 billion annually for the past several fiscal years. The Tax Increase Prevention Act of 2014 (P.L. 113-295) repealed the expired Superfund special environmental tax on corporate income. The

Superfund excise taxes have remained codified in the Internal Revenue Code, but have been inactive after 1995.

### Eligible Uses of Receipts

Taxes and other receipts in the Superfund Trust Fund have been subject to annual appropriations prior to expenditure. Section 111 of CERCLA authorizes eligible uses of appropriated receipts from the Superfund Trust Fund to remediate contaminated sites. Section 111 excludes federal facilities from eligible uses of receipts because Congress funds their remediation with separate appropriations. The Internal Revenue Code (26 U.S.C. §9507) excludes natural resource damages from eligible uses of receipts to focus appropriations on remediation, but these damages remain subject to liability under CERCLA. The expenditure of Superfund appropriations for CERCLA “remedial actions” is limited to National Priorities List (NPL) sites on nonfederal land, subject to cost-sharing with the state in which the site is located. Less extensive “removal” actions may be fully funded with Superfund appropriations at NPL or non-NPL sites. Monies that EPA collects from PRPs under CERCLA settlements are held in site-specific “special” accounts in the Superfund Trust Fund. Expenditures from these accounts are limited to uses covered under the settlements and are not subject to appropriations.

### Reauthorization Issues

Whether to reinstate Superfund taxes to increase resources for remediating contaminated sites has been an issue for the past quarter century. The reauthorization debate has centered upon funding needs at sites without viable PRPs and how to allocate financial responsibility for remediation in a fair manner. Some proponents of Superfund taxes have observed that the taxes reflect the “polluter pays principle” to help ensure that those who may become PRPs contribute to the costs of remediation if they may be bankrupt or otherwise less financially capable in the future. Others have observed that Superfund taxes were not based on whether a company released any hazardous substances, and that a PRP subject to both liability under CERCLA and Superfund taxes may be required to pay an amount exceeding the costs of remediating contamination that it caused or contributed at a site. Some also have raised various other issues associated with financial responsibility for remediation.

### Amendments Enacted in P.L. 117-58

Section 80201 of Title II of Division H of P.L. 117-58 reinstates the Superfund excise tax on domestically produced chemical feedstocks and imported chemical derivatives through December 31, 2031, and decouples the application of this tax from the Superfund petroleum excise tax. Under prior law, the chemicals tax was in effect any time that the petroleum tax was in effect. P.L. 117-58 doubles the tax rate for each chemical feedstock that applied in 1995. For example, the highest tax is increased from \$4.87 to \$9.74 per ton for acetylene and several other chemicals, and the lowest tax is increased from \$0.22 to \$0.44 per ton for potassium hydroxide. P.L. 117-58 increases the penalty tax on importers from 5% to 10% of the value of the substance if information on the constituency of taxable chemicals in an imported chemical

substance is not provided in a timely manner. Under prior law, the Treasury Secretary, in consultation with the EPA Administrator and the Commissioner of U.S. Customs and Border Protection, had authority to designate additional taxable substances for which taxable chemicals constituted more than 50% of the weight or value of the imported substance. P.L. 117-58 reduces this threshold to 20% of the weight or value, expanding the potential applicability of the tax to a greater number of substances that contain a lower proportion of taxable chemicals. If information on the composition of an imported substance is limited, identifying the proportion of taxable chemicals may present challenges to determine the tax owed. The Superfund tax amendments in P.L. 117-58 will take effect on July 1, 2022. The Joint Committee on Taxation (JCT) estimated that the Superfund tax amendments included in P.L. 117-58 would increase federal revenues by \$14.5 billion from FY2022 to FY2031. Division J, Title VI, Section 613 of P.L. 117-58 authorizes the expenditure of future tax receipts from the Superfund Trust Fund without further appropriation. Division J, Title VI also provides \$3.5 billion in emergency appropriations from the Superfund Trust Fund through a transfer from the General Fund to increase resources for Superfund remedial actions while the reinstated excise tax ramps up. The \$3.5 billion is exempt from state cost-share requirements.

### Amendments Proposed in H.R. 5376

As passed by the House, Section 136701 in Part 7 of Subtitle F of Title XIII of H.R. 5376 would permanently reinstate the Superfund excise tax on crude oil and imported petroleum products beginning on July 1, 2022, increase the tax rate to 16.4 cents per barrel in 2022, and annually adjust the rate for inflation. H.R. 5376 would authorize borrowing for the Superfund Trust Fund through repayable advances from the General Fund until the end of 2031. Repayable advances could initially supplement the tax receipts, but H.R. 5376 requires the full amount borrowed plus interest to be repaid to the General Fund. This borrowing power would alter the timing of the funds, but not increase the total amount. The \$3.5 billion in emergency appropriations provided in P.L. 117-58 may lessen the need for advances. The JCT estimated that the Superfund tax amendments in House-passed H.R. 5376 would increase federal revenues by \$12.8 billion from FY2022 to FY2031.

### Other Superfund Tax Legislation

As introduced, H.R. 2674 and H.R. 2703 would reauthorize the entire three-part Superfund tax system with increased tax rates and annual adjustments for inflation. H.R. 2674 would permanently reauthorize these taxes. H.R. 2703 would reauthorize Superfund excise taxes through December 31, 2025, and the Superfund corporate income tax through December 31, 2026. As introduced, S. 2183 would permanently reauthorize Superfund excise taxes with increased rates and annual adjustments for inflation, but would not reauthorize the Superfund corporate income tax.

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