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“Oil spill” excise tax has expired; possible issues for refiners, importers

The “oil spill” excise tax imposed on crude oil and imported petroleum products under section 4611 expired at the end of 2017.

The excise tax under section 4611 was imposed on: (1) crude oil received at a U.S. refinery; (2) imported petroleum products entered into the United States for consumption, use, or warehousing; and (3) any domestically produced crude oil that is used (other than on the premises where produced for extracting oil or natural gas) in or exported from the United States if, before such use or exportation, no taxes were imposed on the crude oil.

For purposes of the excise tax, crude oil included crude oil condensates, natural gasoline, and tight oil. Petroleum products included crude oil and refined petroleum products. The person liable for the tax was the U.S. refinery operator or the importer. The rate of the excise tax in 2017 was \$0.09 per barrel.

KPMG observation

Senate Finance Chairman Orrin Hatch (R-UT) proposed reinstating the section 4611 excise tax retroactively to January 1, 2018, as part of a bill to extend certain expiring tax provisions; however, it is unclear if or how Congress may proceed.

Absent reinstatement of section 4611, there may be potential exposure to the penalty imposed by section 7211 if the expired excise tax is invoiced and passed on by the refiners or importers to their customers. Accordingly, the credit and billing operations of entities previously subject to the section 4611 excise tax need to be evaluated.

For more information, contact a tax professional with KPMG’s Excise Tax Practice group:

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