



U.S. federal excise tax issues for Canadian companies

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U.S. Federal Excise Tax Issues for Canadian Companies

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She has extensive experience in excise tax matters, including resolving disputes with the IRS, navigating complex excise tax regulations and providing technical advice to clients.

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Bud Goff

Bud is a Partner at KPMG in Canada, advising energy, midstream, and industrial clients on cross-border indirect tax and SALT.

He brings a value-chain perspective to indirect tax, helping Canadian-based companies navigate U.S. indirect tax complexity and translate technical requirements into practical operating outcomes.

U.S. Federal Excise Tax Issues for Canadian Companies

Key federal excise taxes that affect Canadian Multinationals

- Environmental excise taxes
- Taxable fuel excise tax
- IRS registrations (Form 637)
- Heavy vehicle excise tax
- Procedural rules and requirements
- IRS audits
- What's going on at the IRS?
- Questions?

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How federal excise taxes differ from other indirect taxes

- Enacted to raise revenue, regulate activities, and promote or disincentivize certain activities
- Internal Revenue Service (IRS) and U.S. Customs and Border Protection agency have agreement to share import data
- Tax may be imposed on a specific or event or transactional value
- Taxable event is fixed by statute, but economic burden may be passed along in pricing
- Refunds and credits require affirmative claims with contemporaneous documentation
- Registration is mandatory to avoid penalty in some cases; may shift point of taxation
- Errors often surface years later during IRS excise tax audits, refund reviews, or transaction diligence

Environmental Excise Taxes



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Two Superfund Excise Taxes – Chemicals and Substances

- **Reinstated July 1, 2022 (expire December 31, 2031)**
- **Imposed on**
 - First sale or use by manufacturer or importer of 42 specified chemicals (IRC 4661)
 - First sale or use by importer of listed taxable substances (IRC 4671)
- **Stakeholders can petition IRS to add taxable substances**
 - Substance must be listed to obtain an export credit
- **Canadian exporters/importers can get caught unintentionally**
 - Reliance on supplier classifications or customs descriptions that do not align with excise definitions
 - Tax rate on taxable substances is up to 10 percent of appraised value
 - Legal liability rests with the statutory taxpayer, even where the economic cost is contractually passed through

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Superfund Excise Taxes – common exposure areas

- **Exposure risks arise if importer**
 - Is unaware of exemption requirements
 - Ex. Certain chemicals qualify for exemptions related to fertilizer, fuel, and animal feed uses; documentation required
 - Is not registered, if required
 - Unintentionally “misses” chemicals for reporting purposes due to classification information being incorrect
 - Ex. Mixtures containing taxable chemicals
 - Imports blended, transformed, or partially processed products, creating ambiguity
 - Ex. Pre-form plastics
 - Does not independently validate supplier-provided tax classifications and there is misalignment between product specifications (COAs/SDS), customs declarations, and excise tax classification
 - Ex. Intermediate hydrocarbon streams
 - Ex. Product trade name does not identify of taxable substance
- **Exposure frequently surfaces only after importation or production, when Form 720 reporting and refund positions are reviewed.**

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Superfund Excise Taxes – Statutory Architecture

Aspect	IRC Section 4661 Tax	IRC Section 4671 Tax
What is taxed	42 specifically listed taxable chemicals	Statutory and IRS-listed taxable substances
Taxable event	First sale or use by the manufacturer, producer, or importer	First sale or use by the importer in United States
Statutory taxpayer	Manufacturer, producer, or importer	Importer
Scope driver	Chemical appears on the statutory list in section 4661(b)	Substance is listed under section 4672(a) or in a Treasury determination (after petition, if >20% of its weight or value is from taxable chemicals)
Common exposure trigger	Chemical mixtures imported; lack of documentation for exemptions	Imported products where chemical derivation may not be apparent, but composition meets the “taxable substance” test
Reporting mechanism	Form 6627 (Environmental Taxes), attached to Form 720 (Quarterly Federal Excise Tax Return)	Form 6627 (Environmental Taxes), attached to Form 720 (Quarterly Federal Excise Tax Return)
Economic vs legal burden	Amount of tax may be contractually passed through, but legal liability remains with the manufacturer, producer, or importer	Same — economic burden may be shifted, but importer remains legally liable

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Oil Spill Tax and Hazardous Substances Tax – Crude Oil and Imported Petroleum Products

- **One code section, two tax rates**
- **Oil Spill Tax (OST) rate**
 - Expired December 31, 2025
 - \$0.09 per barrel at time of expiration
 - Historically allowed to lapse and subsequently reinstated as a funding mechanism for the Oil Spill Liability Trust Fund
 - Prior lapses (including 1994, 2017, and 2018) were followed by prospective reinstatement, not retroactive application
 - Reinstatement would require affirmative legislative action and an explicit effective date
- **Hazardous Substances Superfund Tax (HST) rate – a third Superfund tax**
 - Reinstated January 1, 2023
 - \$0.18 per barrel in 2026

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Superfund and Oil Spill Excise Taxes – Current issues and pitfalls

- Imported crude
- Imported intermediate hydrocarbon streams; NGLs and other hydrocarbon refinery products
- Imported substances (e.g., polystyrenes, polyethylene resins, ethylbenzene)
 - Is it taxable crude? Crude vs. synthetic crude, bitumen, etc.
 - Is it a taxable chemical, an imported petroleum product, or both?
 - Is it a taxable substance, an imported petroleum product, or both?
 - Who is the importer (i.e., taxpayer)?
 - Is there an applicable exemption? If so, what are the compliance requirements?
 - What is the taxable unit? What is the tax rate?

Illustrative fact pattern:

- Canadian producer sells an imported hydrocarbon blend or intermediate stream into the U.S. by rail car
- Title transfers at the border to a U.S. affiliate
- Product is sold for non-fuel industrial use

Considerations and risks:

- How is product classified under excise tax rules? Is product correctly described in import documents? Is exemption, if any, correctly identified and properly documented?
- Did parties assume a midstream commodity transported by rail is not taxable? Did an excise review occur?

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Superfund and Oil Spill Tax – Statutory Rate Framework

Tax	Statutory Provision	What is Taxed	Rate Structure	Notes
Superfund – taxable chemicals	IRC section 4661	Sale or use of taxable chemical by manufacturer or importer	Per ton rates vary by chemical (\$0.44 to \$9.74 per ton)	Effective July 1, 2022 - December 31, 2031
Superfund – imported taxable substances	IRC section 4671	Sale or use of imported taxable substances	Two methods to calculate rate: 1. rate equal to the section 4661 tax that would apply to the underlying chemicals, or 2. 10% of appraised value	Effective July 1, 2022 - December 31, 2031
Oil Spill Liability Trust Fund tax (expired)	IRC section 4611(c)(1)(B)	Crude oil received at U.S. refineries and imported petroleum products	\$0.09 per barrel.	Tax expired December 31, 2025; prior reinstatements were applied prospectively.
Hazardous Substances Superfund tax	IRC section 4611(c)(1)(A)	Crude oil received at U.S. refineries and imported petroleum products	\$0.18 per barrel.	Effective January 1, 2023; no statutory expiration date.

Taxable Fuel Excise Tax



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Taxable Fuel Excise Tax

- **Imposed on taxable fuel (IRC 4081)**
- **"Taxable fuel" means diesel fuel, gasoline (including gasoline blendstocks), and kerosene**
- **Taxable event includes–**
 - Removal at the terminal or refinery rack,
 - Entry for consumption, use or warehousing
 - Sale to unregistered person in bulk system
- **Commercial sale terms do not determine taxability.**
- **Rate depends on type of fuel, location of fuel, movement of fuel, parties involved, and registration status**
- **Tax revolves around the bulk system**

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Taxable fuel excise tax

- Default taxable event is removal at the terminal rack; however, there are other taxable events
- Tax may be imposed more than once on the same gallon of fuel
- Identity of taxpayer depends on the taxable event
- Registration status under Form 637 is required in certain cases
- Special rules apply to gasoline blendstocks

Tax rates*				
Gasoline	\$0.184			
Aviation gasoline	\$0.194			
Diesel fuel and kerosene**	\$0.244			
Kerosene for aviation	\$0.244	\$0.194 (noncommercial aviation)	\$0.044 (commercial aviation)	\$0.00 (use in foreign trade)

*Rates shown include \$0.001 LUST rate **Dyed diesel and kerosene rate is \$0.001 (LUST-only)

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LUST (Leaking underground storage tank) tax

Statutory architecture

- Companion tax to taxable fuel excise tax
- Rate is \$0.001 per gallon
- Non-refundable by statute, except for exports.

Practical considerations

- Frequent audit focus
- In general, not material but often exposes fuel excise control and reconciliation gaps

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Illustrative example:

- **Facts**
 - Butane moves by rail car into the United States
 - Title transfers at the Canada-U.S. border to a U.S. affiliate
- **Considerations for determining tax liability:**
 - Butane is a gasoline blendstock and special rules apply
 - Will it be exported?
 - Will it be used in the United States for something other than the production of finished gasoline?
 - Will it be transferred to an IRS-registered terminal?
 - What documentation and certificates do the counterparties have?
 - What about Superfund tax or Oil Spill tax?
- **Answer is different depending on the facts**
- **Variation: the imported product is propylene, toluene or xylene**

IRS Registrations (Form 637)



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Form 637 Registrations

- Primarily applies to taxable fuel excise tax
 - Required for certain parties, at risk of significant penalty (\$10,000 plus \$1,000 per day)
 - In general, allows tax-free transfers between registered parties (in bulk system above the rack)
- Also required for certain exemptions and refund claims
- For Canadian companies, Form 637 is required if the company
 - Is required to be registered (e.g., bulk enterer, position holder), or
 - Desires specific exemption for which a registration is required (e.g., throughputter, certain Superfund transactions)
- Taxpayer applies for specific “activity letters” on Form 637 (e.g., S, G, M, SA, UB, UV)
- Registrations are entity-specific and non-transferable
 - Mergers, restructurings, or changes in operating model frequently invalidate prior registrations, requiring re-application
- Failure to re-register after change in ownership results in tax and penalty exposure

U.S. Federal Excise Tax Issues for Canadian Companies

Form 637 Application Process

- Registration is a lengthy process (months, not weeks)
 - Application on Form 637
 - Process includes IRS review (initial intake phase and substantive review phase)
 - Exhaustive review of tax compliance of all related parties and officers
 - Detailed questionnaires required for each activity letter
 - May include site visit or sampling
- Taxpayer not registered until letter issued by IRS
- Timing often longer for foreign-owned or newly formed U.S. entities; bonds often required
- Applications require cross-functional coordination, including:
 - Tax and legal analysis and approval
 - Operational confirmation of facility specifics, commodities, trading partners, and volumes
 - Finance and treasury alignment
- Registration gaps or delays frequently drive unintentional non-compliance (e.g., activity occurs before registration is issued)

Heavy Vehicle Excise Tax



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Heavy Vehicle Excise Tax

General rule

- Tax imposed on first retail sale of certain heavy trucks, trailers, chassis, bodies and tractors (IRC sections 4051)
- Tax rate is 12% of the vehicle's price

For imported vehicles, tax imposed on first sale or use after importation:

- Tax base is value upon importation, if no sale

Many exemptions, exclusions and special rules apply

U.S. Federal Excise Tax Issues for Canadian Companies

Heavy Vehicle Excise Tax

Applies beyond transportation companies, including:

- Oilfield services
- Construction and industrial service providers
- Energy companies with captive fleets

Exposure often arises outside procurement, including:

- Cross-border movement of used equipment
- Fleet restructurings and leasing arrangements
- Remanufacture or modification of existing trucks

Low frequency, high impact: issues are infrequent but often material and discovered late

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Common Heavy Vehicle Excise Tax Traps

Assuming prior foreign use equals prior excise payment

- Used Canadian trucks entering United States are taxable, even if the vehicle is many years old (if not previously taxed in United States)
- Tax imposed upon use in United States

Equipment modifications: new taxable article or routine maintenance?

- Extensive refurbishments or configuration changes can create a new taxable article.

Leasing structures misunderstood

- Depending on lease terms, liability may rest with the lessor or lessee. Depends on lease terms and who is considered to have made the first retail sale or first use.

Cross-border imports overlooked

- Importation and first **U.S.** highway use is taxable, independent of purchase date.

Procurement and tax misalignment

- Equipment decisions made without excise review, with issues discovered only in audits or diligence.

U.S. Federal Excise Tax Issues for Canadian Companies

Examples

Oil Field Services Company

Client provides oil field services in Canada and the United States. Client imported certain vehicles into United States for use in its business but did not report any federal excise tax. IRS opened an audit.

Applicable existing authority would mitigate tax liability based on characteristics of vehicles.

Construction Company

Client provides construction services in Canada and the United States. U.S. subsidiary of Client entered into long-term leases with respect to certain construction vehicles imported into the United States. Client did not report any federal excise tax. IRS opened an audit. Client believes it has exposure for previous periods.

Applicable existing authority provides that there is no tax liability based on previous taxable event, the lease, under this client's particular facts and circumstances.

Procedural Rules and Requirements



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Form 720, Quarterly Federal Excise Tax Return

- Composite return used to report and pay multiple excise taxes (fuel, Superfund, aviation, heavy highway, etc.).
- Practical filing mechanics
 - Filed quarterly; liabilities are reported by IRS number (corresponds to tax type)
 - Semi-monthly deposits required in advance of return; made by EFTPS
 - Foreign owned groups often require advance banking and ACH set-up
- **Form 720-X, Amended Quarterly Federal Excise Tax Return**
- Used to correct prior Form 720 filings, including:
 - Underreported or overreported liabilities (i.e., mistakes), and
 - Some credits
- **Form 8849, Claim for Refund of Excise Taxes**
 - Standalone claim form
 - Claimant may not be original taxpayer

Federal Excise Tax at the IRS



Most FETs are reported to the IRS on Form 720 but a handful use other forms or are reported to the TTB.

Original returns processed in Ogden –

Process and administrative errors can cause major headaches, e.g., electronic signature on a paper-filed return, quarter-ending dates, etc.

Amended returns and refund claims processed in Cincinnati –

Centralized excise team and the Excise Tax Hotline is located in Cincinnati; account issues are resolved by Cincinnati team; may refer certain claims out to a local excise tax field agent for exam.

Excise tax exams conducted by local field agents –

Referrals can come from Cincinnati Excise Centralized Specialty Tax Classification Team (“CAT-A”), Customs and Border Protection, IRS Form 637 Registration matching, specific areas of IRS focus, and random selection.

Federal Excise Tax – Risk Mitigation and Best Practices



What are some strategies to mitigate risk?

- Follow the form instructions
- Use the “quarter ending” date of the relevant calendar quarter
- Deposit timely using EFTPS
- Download transcripts regularly and reconcile with reporting
- Communicate regularly with Trade Compliance, Treasury, HR, Risk and other functions whose duties may implicate FET and evaluate any new fact patterns
- Avoid rolling Form 720-X (amended return) refund onto a future Form 720
- Respond to IRS notices timely

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Trap for the unwary: Corporate restructuring – deal team considerations

- **New entity, old excise footprint**
 - Transactions often preserve legacy excise activities, but not the registrations or filings that supported them
 - Due diligence is a best practice
- **Systems fall out of alignment**
 - Form 637 registrations
 - EFTPS / payment accounts
 - IRS PINs and filer credentials
 - Address changes
- **Downstream consequences**
 - Rejected or misapplied filings
 - Refunds trapped in the system or lost
 - Increased audit and penalty exposure

IRS Audits

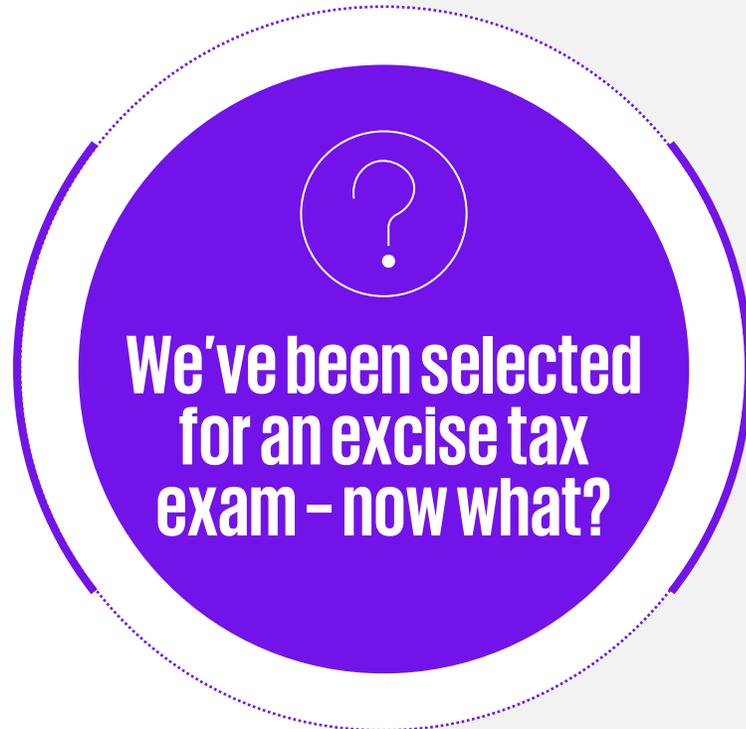


U.S. Federal Excise Taxes for Canadian Companies

What excise tax audits typically focus on

- **What the IRS is trying to understand**
 - Who is the correct taxpayer (i.e., importer)
 - Whether the taxable event was identified correctly
 - Whether the tax was calculated correctly
 - Whether claimant is entitled to refund
 - Whether registration and documentation support the position taken
- **How excise audits differ from income tax audits**
 - Highly transaction-driven, not account-driven
 - Heavy emphasis on process, documentation, and controls
 - Issues often span multiple tax types (fuel, Superfund, aviation, LUST)
 - Audits often span multiple tax periods (calendar quarters)

Federal Excise Tax Examination



Expect an information request to cover a variety of topics.



Financial statements, including income statements and balance sheets for the most recent calendar years



Income tax returns



Excise tax returns



Organizational chart/list of related entities



Workpapers and supporting information – push back on burdensome and over-inclusive requests, offer samples

Federal Excise Tax Dispute Resolution



Taxpayers have options to dispute an assessment or a disallowed refund.

Taxpayer Advocate Service (TAS) – when all administrative procedures have been followed, but process has broken down, TAS can be the taxpayer’s liaison with the IRS

Exam – taxpayers are entitled to request a meeting with the agent’s manager; depending on the topic, may need assistance from Excise Tax Analyst from Excise Policy

Appeals – taxpayers who do not agree with the results of an exam can request that the independent office of Appeals review

Court – when all else fails, taxpayers may pay a divisible amount of the federal excise tax, file a claim for refund, and use disallowance of the claim as the ticket to federal district court (excise taxes are not litigated in Tax Court)

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IRS Operations: Misallocations, Delays and Escalation

- **Misapplied payments**
 - Excise deposits and payments are frequently misapplied
- **Un-processed returns, refund claims, correspondence, requests for penalty abatement, etc.**
- **Refund review delays**
 - Manual review, extensive documentation requests
- **Improperly calculated penalty and interest**
- **Escalation reality**
 - Escalation can resolve process errors (misapplied payments, lost filings) but cannot override statutory requirements or missing documentation.
 - In practice, reaching the right excise function from Canada can be difficult; escalation channels are limited.
 - Practically, a U.S. located advisor may be necessary to contact IRS excise tax.

Something went wrong, what do I do now?

- Contact your tax advisor
- Contact the IRS – do not ignore IRS notices
 - Call phone number on IRS notice
 - Contact Cincinnati Service Center
 - Excise Tax Hotline (***shut down since May 2025, no ETA on reopening***)
 - Paper mail (extremely delayed processing times)
 - Taxpayer Advocate Service
 - Assigned IRS Agent
 - Excise tax examiner, if available
 - Income tax examiner

What's going on at the IRS?



What's going on at the IRS? Significant Change

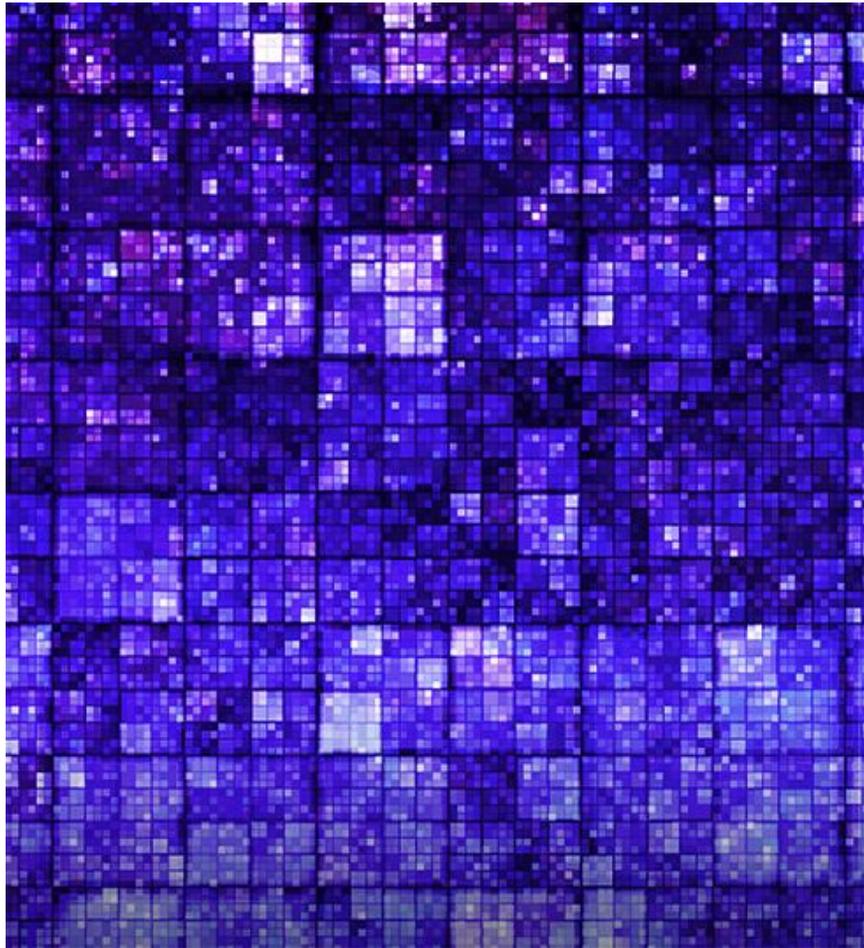
Many Changes since January 2025

1. Seven confirmed or acting IRS Commissioners in this calendar year as of August 2025: (Werfel; O'Donnell; Krause; Shapley; Faulkender; Long; Bessent)
2. No confirmed Chief Counsel
3. Significant employee losses through Deferred Resignation Program and Termination of Probationary employees. Impacted by Budget Lapse resulting in ~ 50% of employees being furloughed October 8 – November 12, 2025.
4. Government not fully funded; showdown in Congress.
5. OBBBA enacted on July 4, 2025 – IRS has many changes and new provisions to implement.

Inspector General and Press Reporting

Updates from multiple sources including Treasury Inspector General for Tax Administration and Treasury Department News Releases

Inspector general report “Employment” – July 2025



IRS Funding

Inflation Reduction Act: ~ \$80B (~\$45B for enforcement)
Today: enforcement funding clawed back; IRS annual budget decreased



IRS Workforce

February 2025: ~ 103,000 employees
Today: 25-30% reduction (RIF and DRPs)



Impacted IRS Groups

SB/SE – 35%	Appeals – 28%
TE/GE – 27%	Taxpayer Services – 22%
LB&I - 20%	Chief Counsel – 13%



Impacted IRS Positions

27% of Tax Examiners Separated
26% of Revenue Agents Separated
23% of Contact Representatives Separated

Subsequent reporting – Hiring and “Return Requests”

August 22 and 25 press reports suggest IRS seeks a rebuild of staff; September 29 IRS Plan reports operations continue during Budget Lapse; October 8 IRS updates operations plan



IRS announced 3,500 positions in multiple sites across the United States
Vacancies posted in locations where IRS Accounts Management (tax law assistance; adjust accounts) operates call sites (August 22)



Deferred Resignation Program participants asked to consider returning to IRS (August 25); number unknown at this time



IRS Funding

Inflation Reduction Act funding used to fund normal operations following October 1, 2025 Budget Lapse; nearly 50% of employees furloughed October 8; RIF notices issued on October 10 ~ 1,400 employees and retracted; CR November 12

Questions?





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