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In this article, Ault and Phillips say that with many states raising environmental taxes and fees, businesses should learn more about the distribution chain, what materials are used in their products, and how states tax those materials.

Many states are raising environmental taxes and fees on businesses. From electronic waste recycling fees and litter control fees to recycling taxes and air emissions fees, these expenses can vary widely by state, and tracking assessments, exemptions, and deadlines is becoming increasingly complex.

Companies operating in regulated industries — such as refining, chemical manufacturing, and waste disposal — typically have a high awareness of these fees. Yet the growing number of taxes and their complexity leave some unaware of what is due and what they are paying. Retailers, wholesalers, and manufacturers in particular face myriad state environmental fees embedded in their distribution chains.

While businesses recently have prepared for the return of the federal Superfund chemicals tax, many organizations should ask the same production and distribution questions to evaluate the implications of state environmental taxes and fees. These companies face penalties for noncompliance or late payments. However, coordinating these taxes and fees with the Superfund tax compliance effort can help identify opportunities to reduce costs or adjust the distribution chain.

Regardless of the industry in which they operate, organizations now must look closer at the raw materials they import, use, process, sell, or dispose of, and the state environmental taxes and fees to which they are subject.

State Environmental Taxes and Fees On the Rise

Many states are introducing new environmental fees and taxes or raising rates of existing ones. For instance, Connecticut imposed plastic bag fees in August 2021[1] following similar laws passed by Maine, New York, and Oregon in 2020. Oregon added a new privilege tax for harvesting merchantable forest products on forestlands.[2] And in July 2021 Colorado added the Greenhouse Gas Pollution Reduction Roadmap Act that imposes fees on various sectors to reduce greenhouse gases. Increased awareness about climate change and the public's growing interest in sustainability have made environmental taxes more politically acceptable in recent years. According to Pew Research Center, nearly seven in 10 Americans favor the United States taking steps to become carbon neutral by 2050.[3]

The Urban-Brookings Tax Policy Center notes that while direct taxes on income and payroll burden investment and labor, indirect taxes are a viable way to raise revenue as they align to fight climate change and increase excise taxes on fossil fuels. The fact that the United States remains a relatively low-tax country compared with others also makes it comparably easier to raise

[1] Connecticut Department of Revenue Services, "Single-Use Plastic Bag Fee to Sunset on June 30, 2021" (June 9, 2021).

[2] Oregon State Assembly, H.B. 2087.

[3] Alec Tyson, Cary Funk, and Brian Kennedy, "What the Data Says About Americans' Views of Climate Change," Pew Research Center (Aug. 9, 2023).

environmental taxes without too much pushback.[4]

The rise of these state taxes comes when companies are still struggling to understand the federal Superfund excise tax,[5] which went back into effect July 1, 2022, after expiring more than 25 years prior. The tax, which applies to a list of chemical substances, helps subsidize the Environmental Protection Agency's Hazardous Substances Trust Fund and assists in cleaning hazardous waste sites.

Many accounting, finance, and tax departments have closely examined the costs associated with their organizations' distribution chains in the past year, but they typically are not involved in decisions around the physical aspects of the materials, such as weight, and chemicals used during the manufacturing process. However, the reinstitution of the Superfund excise tax has led many to examine the tax-related implications of the materials and chemicals their organizations are procuring, producing, importing, or selling.[6]

Scope and Applicability Vary by State

Environmental taxes and fees vary widely by state in scope, applicability, and purpose. As a result, companies moving across state lines or changing their sourcing and distribution networks might not be fully aware of the implications of these taxes and fees. Many companies have also made changes to their supply chains in the past few years because of COVID-19, inflation, labor costs, and bottlenecks. As a result, some have quickly shifted supply chains to states where they might not fully understand the applicable environmental fees.

The types of state fees and the businesses to which they apply vary widely. The following discussion of what three large states are doing illustrates the types of fees imposed by many states.

California

With a strong focus on environmental protection and sustainability, California has some of the nation's highest environmental taxes and fees. The Department of Tax and Fee Administration administers 37 different taxes and fees, including fees on aircraft jet fuel and tires.

California's Hazardous Substances Tax Law has been in place since the 1980s and includes disposal, environmental, facility, and generator fees. Each of these fees applies to different organizations in the value chain. For example, the environmental fee was broadly used and applied to more than 50,000 businesses in fiscal 2020-2021. It applies to companies with at least 50 employees in industries that use, generate, store, or conduct activities relating to hazardous materials. These fees — which range from $357 to $16,911 — totaled nearly $60 million in fiscal 2020-2021 and go toward the state's toxic substances control account for cleanup of contaminated sites.

Implemented in 2005, California's electronic waste recycling fee applies to new or refurbished televisions, computer products, and other specified electronic devices. The fee was levied on more than 7,000 retailers in fiscal 2020-2021, ranging from $4 to $6 per unit. These fees generated more than $103 million for the electronic waste and recovery recycling account to reduce the amount of hazardous waste in landfills.

Also, since 1989 California has been levying a maintenance fee on owners of underground storage tanks with petroleum products. The tax rate is $0.02 per gallon, and it raised more than $294 million in fiscal 2021 to ensure the cleanup of leaking storage tanks.

New Jersey

New Jersey's unique and unassuming litter control fee is imposed on all gross receipts of litter-generating products sold by manufacturers, wholesalers, distributors, and retailers. The products covered include beer, cigarettes, toiletries, food, containers, tires, and newsprint.

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[4]Thorton Matheson, "Build Back a Better Revenue Base With Environmental Taxes," Urban-Brookings Tax Policy Center (Apr. 7, 2021).

[5]Internal Revenue Service, "IRS Issues Superfund Chemical Excise Taxes FAQs" (updated May 1, 2023).

[6]IRS, "Table of Taxable Imported Chemical Substances (Beginning July 1, 2022)" (updated Mar. 17, 2023).

Manufacturers, wholesalers, and distributors pay 0.03 percent, while retailers are charged a rate of 1 percent. Businesses subject to the fee must file Form LF-5, "State of New Jersey Litter Control Fee Return." Vendors with less than $500,000 in annual retail sales of litter-generating products and restaurants with less than 10 percent of annual retail sales of meals or food prepared for off-premises consumption are exempt.[7]

New Jersey also levies a recycling tax based on the waste transported and collected for disposal. The tax, calculated at a rate of $3 per ton, applies to solid waste facility owners — including transfer stations, incinerators, resource recovery facilities, and any solid waste facility designated by the New Jersey Department of Environmental Protection. This solid waste can include bulky waste, construction debris, vegetative waste, and dry industrial waste.[8]

Also, the spill compensation and control tax is imposed on owners or operators of facilities that store, produce, handle, transfer, process, or transport hazardous material products. The Spill Compensation Fund was created to compensate for cleanup costs and damages associated with discharging petroleum products and other hazardous substances.[9]

Texas

Despite its reputation as a low-tax state, Texas has environmental taxes and fees that can add up in some industries. The annual air emissions fee and air inspection fee are two of the most notable and apply to any site required to obtain a Title V permit. These fees can be quite complex and costly depending on the type of operation. As of 2023 the air emissions fees were $63 per ton, up from $55.84 in 2019.[10] The air inspection fee, which can vary dramatically, ranges from $1,416.24 for scrap metal reclamation by shredding to more than $42,000 for petroleum refining.[11]

Texas also levies a waste generation fee on each generator of hazardous waste or industrial class 1 waste. The fee fluctuates and is based on the amount of waste reported as generated in the previous calendar year. The Texas Commission on Environmental Quality assesses these fees to carry out its responsibility for regulating hazardous and industrial waste.[12]

Ensuring Compliance and Reducing Costs

As accounting departments review the distribution chains related to the federal Superfund tax, it's also worth considering which state environmental taxes and fees might apply.

Because accounting departments can have limited access to the distribution chain, they aren't always aware of the total costs, compliance issues, and deadlines. For example, a manufacturer's use of a hazardous substance or material rarely appears on the balance sheet. As a result, these fees are often hidden and not apparent, unlike revenue-based taxes, which are clearly visible and easily calculated.

As states continually introduce or increase environmental taxes and fees, accounting departments must remain aware of state policies, even if they currently do not affect their distribution chains. While this can help support compliance and avoid penalties, it also offers an opportunity to pass on fees to customers. Organizations also might find ways to reduce costs by using different materials or moving parts of the distribution chain elsewhere.

Although calculating the fees is straightforward, tax professionals must investigate materials and collaborate with procurement departments to determine the fees that could apply. As a result, these fees and taxes are also difficult to track with off-the-shelf solutions. Most organizations build their own processes and systems to identify materials and state regulations, typically with a monthly spreadsheet exercise. This can be quite complex and challenging for bigger companies with a large volume of transactions.

Tax professionals can take several steps to raise organizational awareness, support

[7] New Jersey Division of Taxation, "Litter Control Fee" (updated May 5, 2022).

[8] New Jersey Division of Taxation, "Recycling Tax" (updated Oct. 24, 2023).

[9] New Jersey Division of Taxation, "Spill Compensation and Control Tax" (updated May 13, 2022).

[10] Texas Commission on Environmental Quality (TCEQ), "Air Emissions Fees" (updated Oct. 2, 2023).

[11] TCEQ, "Emissions Inspection Fee Schedule for FY2024" (2023).

[12] TCEQ, "Waste Generation Fee" (updated Aug. 2023).

compliance, and find opportunities for cost reduction:

- **Identify and assess materials.** Determine what materials are used in the organization's products. This typically will require accounting to sit down with procurement personnel to create a list of products and materials used in the supply chain.
- **Identify where these materials are in the distribution chain.** Determine whether the materials identified are imported, bought, sold, or exported in each state to help determine if the products trigger environmental fees or taxes in the state.
- **Calculate the tax on each of the materials.** After the quantity and place in the distribution chain have been assessed, the next step is to identify deadlines and payment processes.
- **Document fees.** Tax professionals should identify why some fees or taxes might not apply. This documentation is essential for when a state tax department later levies a fee or if tax professionals in the organization retire or leave.

Knowing Is Preparing

Many states are likely to continue raising fees and introducing new taxes, so keeping track will become more complex. Accounting and tax departments must take a more proactive approach to learn about the distribution chain, what materials are used in their organizations' products, and how specific materials are taxed at the state level. Doing so not only will make compliance easier but will help leaders make better decisions that can reduce costs in the distribution chain. ■