COMPARISON OF CERTAIN PROVISIONS OF H.R. 4520 AS PASSED BY THE HOUSE OF REPRESENTATIVES AND AS AMENDED BY THE SENATE:

ALCOHOL FUELS AND FUEL FRAUD PROVISIONS

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JOINT COMMITTEE ON TAXATION

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Contents

INTRODUCTION

On June 16, 2004, the House of Representatives passed H.R. 4520, the "American Jobs Creation Act of 2004." On July 15, 2004, the Senate amended H.R. 4520 by substituting the text and title of S. 1637, the "Jumpstart Our Business Strength (JOBS) Act,"[1] and an additional non-tax amendment.

The House bill and the Senate amendment each repeal the extraterritorial income exclusion provisions of present law, provide provisions to reduce the effective income tax imposed on income earned from certain domestic production activities, and make numerous other changes to the Internal Revenue Code. This document,[2] prepared by the staff of the Joint Committee on Taxation, compares those provisions that restructure incentives for alcohol fuels and that prevent fuels' tax fraud.

In previous publications,[3] staff of the Joint Committee on Taxation compared provisions of H.R. 4520 as passed by the House of Representatives and as amended by the Senate relating to the repeal of the extraterritorial income exclusion, domestic production provisions, provisions relating to the corporate income tax rates applicable to small corporations, provisions relating to tax incentives for manufacturers, small businesses, and agriculture, certain revenue raising provisions, and expiring provisions. In subsequent

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[1] The Senate originally passed S. 1637 on May 11, 2004.

[2] This document may be cited as follows: Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Alcohol Fuels and Fuel Fraud Provisions* (JCX-XX-04), September XX, 2004.

[3] Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Provisions Relating to the Repeal of the Exclusion for Extraterritorial Income, Domestic Production Provisions, and the Corporate Income Tax Rates Applicable to Small Corporations* (JCX-XX-04), September XX, 2004, Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Job Creation Tax Incentive for Manufacturing, Small Business, and Farming* (JCX-XX-04), September XX, 2004, Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Certain Revenue Provisions* (JCX-XX-04), September XX, 2004, and Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Expiring Provisions* (JCX-XX-04), September XX, 2004.

publications, the staff of the Joint Committee on Taxation will compare other provisions of H.R. 4520 as passed by the House of Representatives and as amended by the Senate.

Provision	Present Law	House Bill	Senate Amendment
I. RESTRUCTURING OF INCENTIVES FOR ALCOHOL FUELS AND TRUST FUND RECEIPTS			
A. Restructuring of Alcohol Fuel Excise Tax Incentives, Elimination of the General Fund's Partial Retention of Alcohol Fuel Taxes, and Extension of Section 40 Alcohol Fuels Income Tax Credit (sec. 251 and 252 of the House bill and sec. 861 of the Senate amendment)	The excise tax on gasoline is 18.4 cents per gallon (including .01 cent of the Leaking Underground Storage Tank Trust Fund ("LUST Trust Fund" tax). The tax on diesel fuel and kerosene is 24.4 cents per gallon (including .01 cent of the LUST Trust Fund tax). Blends of gasoline and alcohol are taxed at lower rates and gasoline used in producing gasohol are taxed at lower rates depending on the type of alcohol and its volume in the mixture. A reduced rate also applies to diesel fuel and kerosene that is combined with alcohol. If gasoline, diesel fuel, kerosene or aviation fuel on which the regular rate of tax was imposed is used in producing a qualified alcohol fuel mixture sold in that person's trade or business, that person is entitled to payment equal to the difference between the regular rate and the applicable reduced rate. In the case of gasohol with respect to which a reduced excise tax is paid, 2.5 cents per gallon of the reduced tax	Repeals reduced-rate sales of fuel for blending with alcohol. Allows the alcohol fuel mixture credit under section 40(a)(1) (with certain modifications) to be used as a credit against section 4081 tax liability by providing a per-gallon excise tax credit for each gallon of alcohol used to produce a qualified alcohol fuel mixture. The credit is generally 52 cents per gallon of alcohol used by the taxpayer to produce a qualified mixture. The credit is paid out of the General Fund with no Highway Trust Fund reimbursement. The Highway Trust Fund is credited the full amount of tax without regard to any excise tax credits taken. The term alcohol includes an alcohol gallon equivalent of ethyl	Similar to the House bill, with the following substantive differences noted below: Same as the House bill. Similar to the House bill, in that it provides a per-gallon excise tax credit for each gallon of alcohol used to produce a qualified alcohol fuel mixture to be used against section 4081 liability. Same as the House bill. Same as the House bill.

Provision	Present Law	House Bill	Senate Amendment
	is retained in the General Fund; 2.8 cents in the case of fuel to be blended with alcohol. Section 40 provides a per-gallon income tax credit for alcohol used as a motor fuel (the "alcohol credit") or used to produce a qualified alcohol fuel mixture (the "alcohol fuel mixture credit"). The credit is 52 cents per gallon in 2004 and declines to 51 cents per gallon for 2005-2007. In the case of ethanol, section 40 provides a separate 10-cents-per-gallon credit for small producers for up to 15 million gallons for any taxable year. These section 40 credits generally terminate after December 31, 2007.	tertiary butyl ether or other ethers produced from alcohol. Provides that refiners can treat qualified mixtures as sold upon removal from the refinery. Provides outlay payments to producers of alcohol fuel mixtures. Credit and payment provisions related to alcohol fuel mixtures terminate after 2010. Repeals the requirement that the 2.5/2.8 cents per gallon regarding alcohol fuels be retained in the General fund. <u>Effective date</u>.–Generally for fuel sold or used after September 30, 2004. The repeal of the General Fund retention requirement is effective for taxes imposed after September 30, 2003.	Provides that a qualified mixture includes a mixture of alcohol and a taxable fuel which is removed from the refinery by a person producing such mixture. Provides outlay payments to producers of alcohol fuel mixtures and neat alcohol used as fuel. Same as the House bill. Same as the House bill. Extends the section 40 income tax credit through 2010. Importers and producers of alcohol to be registered with the Secretary. <u>Effective date</u>.–Same as the House bill.

Provision	Present Law	House Bill	Senate Amendment
B. Elimination of General Fund Retention of Motorboat and Small Engine Fuel Taxes (sec. 251 of the House bill)	The Aquatic Resources Trust Fund is funded by a portion of the receipts from the excise tax imposed on motorboat gasoline and special motor fuels, as well as a portion of the tax imposed on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment ("small engines"), that are initially deposited into the Highway Trust Fund. 4.8 cents per gallon of the total 18.4 cents per gallon imposed on fuel used in motorboats and small engines is retained in the General Fund. 0.1 cent per gallon is transferred to the LUST Trust Fund. The balance of 13.5 cents per gallon is initially transferred to the Highway Trust Fund, and then retransferred to the Aquatic Resources Trust Fund. The General Fund retention of a portion of the motorboat and small engine fuel taxes is scheduled to expire after September 30, 2005.	No taxes on fuel used in motorboats and gasoline used in small engines are retained in the General Fund. Except for the funding of LUST Trust Fund, all these taxes are initially transferred to Highway Trust Fund. Effective date.–Effective for taxes imposed after September 30, 2006.	No provision.

Provision	Present Law	House Bill	Senate Amendment
C. Incentives for Biodiesel and Biodiesel Fuel Mixtures (secs. 861 and 862 of the Senate amendment)	No income or excise tax incentives are provided for biodiesel fuels under present law.	No provision.	Provides a 50 cents-per-gallon income tax credit similar to the present-law ethanol benefits for each gallon of biodiesel used or sold as fuel or used in the production of a qualified biodiesel mixture that is used or sold as fuel. Biodiesel derived from virgin sources (agri-biodiesel) receives an increased credit of $1.00 per gallon. A qualified biodiesel mixture is a mixture of biodiesel and diesel fuel sold by the producer of the mixture to any person for use as a fuel or used by the producer as a fuel. The fuels do not have to be sold or used by the producer in a diesel-powered engine to qualify for the credit. Effective date.–Fuel produced and sold or used after September 30, 2004 in taxable years ending after such date and before January 1, 2007. Provides per-gallon excise tax credits for qualified biodiesel fuel mixtures.

Provision	Present Law	House Bill	Senate Amendment
			The credit is generally 50 cents and $1.00 per gallon of biodiesel and agri-biodiesel, respectively. Provides outlay payments to producers of biodiesel fuel mixtures and users of neat biodiesel. Credit and payment provisions related to biodiesel terminate after 2006. Importers and producers of biodiesel must be registered with the Secretary. Effective date.–Fuel produced and sold, used or removed after September 30, 2004. Registration requirements are effective April 1, 2005.
D. Extension of Additional Duty on Ethyl Alcohol (sec. 861 of the Senate amendment)	Customs duties on ethyl alcohol or any mixture containing ethyl alcohol are set at 14.27 cents per liter if such ethyl alcohol or mixture is to be used as a fuel or in producing a mixture to be used as a fuel, or is suitable for such uses. The provision sunsets October 1, 2007. Customs duties on ethyl tertiary butyl ether and any mixture containing ethyl tertiary-butyl ether	No provision.	The provisions are extended such that the current customs duties relating to ethyl alcohol sunset January 1, 2011, and the current customs duties relating to ethyl tertiary butyl ether sunset upon the earlier of January 1, 2011, and the date on which Treas. Reg. sec. 1.40-1 is declared invalid or withdrawn.

Provision	Present Law	House Bill	Senate Amendment
	are set at 5.99 cents per liter. The provision sunsets upon the earlier of October 1, 2007, and the date on which Treas. Reg. sec. 1.40-1 is declared invalid or withdrawn.		Effective date.–Date of enactment.

Provision	Present Law	House Bill	Senate Amendment
II. REDUCTION OF FUEL TAX EVASION **A. Exemption from Certain Excise Taxes for Mobile Machinery (sec. 651 of the House bill and sec. 896 of the Senate amendment)**	Under present law, the definition of a "highway vehicle" affects the application of the retail tax on heavy vehicles, the heavy vehicle use tax, the tax on tires, and fuel taxes. The Code does not define a "highway vehicle." For purposes of these taxes, among the vehicles excluded under Treasury regulations are certain specially designed mobile machinery vehicles for nontransportation functions (the "mobile machinery exception"). The mobile machinery exception applies if three tests are met: (1) the vehicle consists of a chassis to which jobsite machinery (unrelated to transportation) has been permanently mounted; (2) the chassis has been specially designed to serve only as a mobile carriage and mount for the particular machinery; and (3) by reason of such special design, the chassis could not, without substantial structural modification, be used to transport a load other than the particular machinery.	Codifies the present-law mobile machinery exemption for purposes of three taxes: the retail tax on heavy vehicles, the heavy vehicle use tax, and the tax on tires. Thus, if a vehicle can satisfy the three-part test, it will not be treated as a highway vehicle and will be exempt from these taxes. Fuel taxes for mobile machinery vehicles must be paid and then a refund sought if a mileage requirement is met. Specifically, in addition to the three-part design test, the vehicle must not have traveled more than 7,500 miles on public highways during the owner's taxable year. Refunds of fuel taxes are permitted on an annual basis only. For purposes of this rule, a person's taxable year is their taxable year for income tax purposes. Effective date.–Generally effective after the date of enactment. As to the fuel taxes, the provision is	Provides that mobile machinery vehicles are subject to tax as highway vehicles. Provides for the recovery of taxes paid (other than fuel taxes) over a two-year period if such vehicle travels less than 5,000 miles per year. Fuel taxes for mobile machinery vehicles must be paid and then a refund sought if the mileage requirement is met. Refunds of fuel taxes are permitted on an annual basis only. For purposes of this rule, a person's taxable year is his taxable year for income tax purposes. Vehicles owned by an organization described in section 501(c), exempt from tax under section 501(a), need only satisfy the three-part design test to recover taxes paid with respect to such vehicles. Effective date.–Same as the House bill.

Provision	Present Law	House Bill	Senate Amendment
	On June 6, 2002, the Treasury Department put forth proposed regulations that would eliminate the mobile machinery exception.	effective for taxable years beginning after the date of enactment.	
B. Aviation Jet Fuel **1. Taxation of aviation-grade kerosene (sec. 652 of the House bill and sec. 871 of the Senate amendment)**	Aviation fuel is kerosene and any liquid (other than any product taxable under section 4081) that is suitable for use as a fuel in an aircraft. Unlike other fuels that generally are taxed upon removal from a terminal rack, aviation fuel is taxed upon sale of the fuel by a producer or importer. The rate of tax on aviation fuel is 21.9 cents per gallon. In general, aviation fuel sold for use or used in commercial aviation is taxed at a reduced rate of 4.4 cents per gallon. In order to qualify for the 4.4 cents per gallon rate, the person engaged in commercial aviation must be registered with the Secretary and provide the seller with a written exemption certificate. Aviation fuel sold by a producer or importer for use by the buyer in a nontaxable use is exempt from the excise tax on sales of aviation fuel. A producer that is registered with	The bill changes the incidence of taxation of aviation fuel from the sale of aviation fuel to the removal of aviation fuel from a refinery or terminal, or the entry into the United States of aviation fuel. The full rate of tax, 21.9 cents per gallon, is imposed upon removal of aviation fuel from a refinery or terminal (or entry into the United States). Aviation fuel may be removed at a reduced rate, either 4.4 or zero cents per gallon, only if the aviation fuel is: (1) removed directly into the wing of an aircraft (i) that is registered with the Secretary as a buyer of aviation fuel for use in commercial aviation, (ii) that is a foreign airline entitled to the present law exemption for aviation fuel used in foreign trade, or (iii) for a tax-exempt use; or (2) removed or entered as part of an exempt bulk transfer. Under a special rule, the provision treats certain refueler trucks,	Similar to House bill, except that refueler trucks, tankers, and tank wagons are not subject to special rules, and there is no provision for liability for, and self-assessment of, tax by the person receiving fuel removed from a refinery or terminal directly into the wing of an aircraft (whether by refueling vehicle or otherwise).

Provision	Present Law	House Bill	Senate Amendment
	the Secretary may sell aviation fuel tax-free to another registered producer. Producers include refiners, blenders, wholesale distributors of aviation fuel, dealers selling aviation fuel exclusively to producers of aviation fuel, the actual producer of the aviation fuel, and with respect to fuel purchased at a reduced rate, the purchaser of such fuel. A claim for refund of taxed aviation fuel held by a registered aviation fuel producer is allowed (without interest) if: (1) the aviation fuel tax was paid by an importer or producer (the "first producer") and the tax has not otherwise been credited or refunded; (2) the aviation fuel was acquired by a registered aviation fuel producer (the "second producer") after the tax was paid; (3) the second producer files a timely refund claim with the proper information; and (4) the first producer and any other person that owns the fuel after its sale by the first producer and before its purchase by the second producer have met certain reporting requirements. A payment is allowable to the ultimate purchaser	tankers, and tank wagons as a terminal if certain requirements are met. For the special rule to apply, a qualifying truck, tanker, or tank wagon must be loaded with aviation fuel from a terminal: (1) that is located within an airport, and (2) from which no vehicle licensed for highway use is loaded with aviation fuel, except in exigent circumstances identified by the Secretary in regulations. In order to qualify for the special rule, a refueler truck, tanker, or tank wagon must: (1) deliver the aviation fuel directly into the wing of the aircraft at the airport where the terminal is located; (2) have storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft; (3) not be licensed for highway use; and (4) be operated by the terminal operator (who operates the terminal rack from which the fuel is unloaded) or by a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or tank wagon. Also imposes liability for the tax on aviation fuel removed from a refinery or terminal directly into	

Provision	Present Law	House Bill	Senate Amendment
	of taxed aviation fuel if the aviation fuel is used in a nontaxable use. A claim made on Form 720, Schedule C, may be netted against the claimant's excise tax liability. Claims for payment not so taken may be allowable as income tax credits.	the wing of an aircraft for use in commercial aviation on the person receiving the fuel, in which case, such person self-assesses the tax on a return. A refund (without interest) is allowable to the ultimate vendor of aviation fuel if such ultimate vendor purchases fuel tax paid and subsequently sells the fuel to a person qualified to purchase at a reduced rate and who waives the right to a refund. In such a case, the provision permits an ultimate vendor to net refund claims against any excise tax liability of the ultimate vendor, in a manner similar to the present law treatment of ultimate purchaser payment claims. Also, a floor stocks tax applies to aviation fuel held by a person on October 1, 2004. The tax is equal to the amount of tax that would have been imposed before October 1, 2004, if the provision was in effect at all times before such date, reduced by the tax imposed by section 4091, as in effect on the day before the date of enactment. The Secretary shall determine the time and manner for payment of	

Provision	Present Law	House Bill	Senate Amendment
		the tax, including the nonapplication of the tax on de minimis amounts of aviation fuel. Also, a 0.1 cents per gallon of such tax is transferred to the LUST Trust Fund. The remainder is transferred to the Airport and Airway Trust Fund. Effective date.–Effective for aviation fuel removed, entered, or sold after September 30, 2004.	Effective date.–Effective for aviation fuel removed, entered, or sold after September 30, 2004.
2. Provide for transfer from Airport and Airway Trust Fund to Highway Trust Fund to adjust for continued highway use of aviation fuel (sec. 872 of the Senate amendment)	Aviation fuel is kerosene and any liquid (other than any product taxable under section 4081) that is suitable for use as a fuel in an aircraft. In general, the rate of tax on aviation fuel is 21.9 cents per gallon. Aviation fuel sold for use or used in commercial aviation is taxed at a reduced rate of 4.4 cents per gallon. Certain sales of aviation fuel are exempt from tax. Taxes received for aviation fuel, except for the LUST Trust Fund financing rate, are appropriated to the Airport and Airway Trust Fund. Such appropriation occurs even if aviation fuel is used for non aviation purposes.	No provision.	Directs the Secretary to pay from the Airport and Airway Trust Fund to the Highway Trust Fund annually an amount as determined by the Secretary equivalent to amounts received in the Airport and Airway Trust Fund that are attributable to fuel that is used primarily for highway transportation purposes. Eleven percent of such amount shall be paid to the Mass Transit Account of the Highway Trust Fund. Effective date.–Effective on October 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
	Taxes received on taxable fuel for transportation purposes generally are appropriated to the Highway Trust Fund.		
C. Dyed Fuel **1. Mechanical dye injection equipment and penalties related to dyed fuel (sec. 653 of the House bill and secs. 873, 874 and 875 of the Senate amendment)**	Diesel fuel may be dyed at a terminal rack by manual dyeing or by mechanical injection. A person who sells dyed fuel (or holds dyed fuel for sale) for any use that such person knows (or has reason to know) is a taxable use, or who willfully alters or attempts to alter the dye in any dyed fuel, is subject to a penalty. The penalty also applies to any person who uses dyed fuel for a taxable use (or holds dyed fuel for such a use) and who knows (or has reason to know) that the fuel is dyed. The penalty is the greater of $1,000 per act or $10 per gallon of dyed fuel involved. In determining the amount of the penalty, the $1,000 is increased by the product of $1,000 and the number of prior penalties imposed upon such person (or a related person or predecessor of such person or related person). The penalty may be imposed jointly and severally on any business entity,	Requires mechanical dyeing with respect to terminals that offer dyed fuel. The Secretary of the Treasury is to prescribe regulations establishing standards within 180 days after enactment. Additional assessable penalties are imposed: • for tampering with the mechanical system, equal to the greater of $25,000 or $10 per gallon per act. The person tampering is responsible for any additional tax. • upon the system operator for failure to maintain security standards, a penalty of $1,000. An additional penalty is imposed of $1,000 per day for each day a violation remains uncorrected. • Joint and several liability for willful participants and affiliated business entities.	Similar to the House bill, except that the Secretary of the Treasury is to prescribe regulations establishing standards by June 30, 2004, and contains the following additional provisions: Denies administrative appeal or review for repeat offenders (more than two violations) of present law after a chemical analysis of the fuel, except in the case of a claim regarding fraud or mistake in the chemical analysis or error in the mathematical calculation of the amount of penalty. Extends present-law penalties to any person who knows that the strength or composition of any dye or marking in any dyed fuel has been altered, chemically or otherwise, and who sells (or holds for sale) such fuel for any use that the person knows or has reason to know is a taxable use of such fuel.

Provision	Present Law	House Bill	Senate Amendment
	and each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty.	Effective date.–180 days after the regulations are issued.	Effective date.–Penalties relating to mechanical dyeing systems are effective 180 days after the regulations are issued. The prohibition of certain administrative review is effective for penalties assessed after date of enactment. The extension of present law penalties is effective on date of enactment.
2. Terminate dyed diesel use by intercity buses (sec. 876 of the Senate amendment)	A manufacturer's tax of 24.4 cents per gallon applies to diesel fuel. Diesel fuel that is to be used for a nontaxable purpose will not be taxed upon removal from the terminal if it is dyed to indicate its nontaxable purpose. Use in an intercity bus is a nontaxable use for purposes of the manufacturers tax on diesel fuel. However, diesel fuel is subject to a retail backup tax. Thus, dyed diesel removed from the terminal is exempt from the manufacturers tax but a tax of 7.4 cents per gallon is imposed on the delivery of the dyed fuel into the fuel supply tank of the intercity bus. The operator of the bus is liable for the tax. Under present law, intercity bus operators also may buy fully taxed undyed diesel and seek a refund of the difference between the 24.4	No provision.	Eliminates the ability of intercity buses to buy dyed diesel and self-assess the 7.4 cents per gallon. Operators of such buses must buy clear fuel and seek a refund of the difference between 24.4 and 7.4 cents per gallon of tax on diesel fuel. The provision also permits ultimate vendors to make refund claims if the bus operator assigns its right to claim a refund to the ultimate vendor. Permits refund claimants to obtain interest if they file their refund claims electronically and the Secretary does not pay such claims within 20 days (45 days for paper claims). If the purchase of the fuel was made by credit card, the person extending the credit is treated as the ultimate vendor.

Provision	Present Law	House Bill	Senate Amendment
	cents per gallon rate and the 7.4 cents per gallon rate.		Effective date.–Fuel sold after September 30, 2004.
D. Modification of Inspection of Records Provisions **1. Authority to inspect on-site records (sec. 654 of the House bill and sec. 877 of the Senate amendment)**	The IRS is authorized to inspect any place where taxable fuel is produced or stored (or may be stored). The inspection is authorized to: (1) examine the equipment used to determine the amount or composition of the taxable fuel and the equipment used to store the fuel; and (2) take and remove samples of taxable fuel. The scope of the inspection includes the books and records kept to determine the excise tax liability under section 4081.	Expands the scope of the inspection to include any books, records or shipping papers pertaining to the sale and transportation of taxable fuel, located in any authorized inspection locations or possessed by any carrier. Effective date.–Date of enactment.	Same as House bill.
2. Assessable penalty for refusal of entry (sec. 878 of the Senate amendment)	The IRS is authorized to inspect any place where taxable fuel is produced or stored (or may be stored). Any person that refuses to allow an inspection is subject to a penalty in the amount of $1,000 for each refusal. The IRS is not able to assess this penalty in the same manner as it would a tax. It must first seek the assistance of the Department of Justice to obtain a judgment. Assessable penalties are payable upon notice and demand	No provision.	In addition to the $1,000 penalty under present law, an assessable penalty is imposed with respect to the refusal of entry of any person with the intent to transport and distribute untaxed, adulterated fuel mixtures or to transport and distribute dyed diesel fuel for taxable use. The assessable penalty is $1,000 for such refusal. The penalty will not apply if it is shown that such failure is due to reasonable cause. If the penalty is

Provision	Present Law	House Bill	Senate Amendment
	by the Secretary and are assessed and collected in the same manner as taxes.		imposed on a business entity, the proposal provides for joint and several liability with respect to each officer, employee, or agent of such entity or other contracting party who willfully participated in the act giving rise to the penalty. If the business entity is part of an affiliated group, the parent corporation also will be jointly and severally liable for the penalty. Effective date.–October 1, 2004.
E. Registration and Reporting Requirements **1. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries (sec. 655 of the House bill and sec. 879 of the Senate amendment)**	In general, gasoline, diesel fuel, and kerosene ("taxable fuel") are taxed upon removal from a refinery or a terminal. Tax also is imposed on the entry into the United States of any taxable fuel for consumption, use, or warehousing. The tax does not apply to any removal or entry of a taxable fuel transferred in bulk (a "bulk transfer") to a terminal or refinery if both the person removing or entering the taxable fuel and the operator of such terminal or refinery are registered with the Secretary. Present law does not	Requires that for a bulk transfer of a taxable fuel to be exempt from tax, any pipeline or vessel operator that is a party to the bulk transfer be registered with the Secretary. Transfer to an unregistered party will subject the transfer to tax. The Secretary is required to publish periodically a list of all registered persons that are required to register.	Similar to the House bill, except that with respect to a bulk transfer on which no tax is paid, the Senate Amendment imposes a penalty on any person who knowingly transfers taxable fuel in bulk to an unregistered person. The penalty is the greater of $10,000 or $1 per gallon and is increased for multiple prior violations. No penalty is imposed upon a showing by the taxpayer of reasonable cause. The provision authorizes amounts equivalent to the penalties received to be appropriated to the Highway Trust Fund.

Provision	Present Law	House Bill	Senate Amendment
	require that the vessel or pipeline operator that transfers fuel as part of a bulk transfer be registered in order for the transfer to be exempt. For example, a registered refiner may transfer fuel to an unregistered vessel or pipeline operator who in turn transfers fuel to a registered terminal operator. The transfer is exempt despite the intermediate transfer to an unregistered person.	Effective date.–Effective on October 1, 2004, except that the Secretary is required to publish the list of registered persons beginning on July 1, 2004.	Effective date.–Effective on October 1, 2004, except that the Secretary is required to publish the list of persons required to register by June 30, 2004.
2. Display of registration and penalties for failure to display registration and to register (secs. 656 and 657 of the House bill and secs. 880, 881, 882 of the Senate amendment)	Blenders, enterers, pipeline operators, position holders, refiners, terminal operators, and vessel operators are required to register with the Secretary with respect to fuels taxes imposed by sections 4041(a)(1) and 4081. A non-assessable penalty for failure to register is $50. A criminal penalty of $5,000, or imprisonment of not more than five years, or both, together with the costs of prosecution also applies to a failure to register and to certain false statements made in connection with a registration application.	Requires that every operator of a vessel who is required to register with the Secretary display on each vessel used by the operator to transport fuel, proof of registration through an electronic identification device prescribed by the Secretary. A failure to display such proof of registration results in a penalty of $500 per month per vessel. The amount of the penalty is increased for multiple prior violations. No penalty is imposed upon a showing by the taxpayer of reasonable cause. The provision authorizes amounts equivalent to the penalties received to be appropriated to the Highway Trust Fund. The provision imposes a new assessable penalty for failure to	Similar to the House bill, except that: the increase in the penalty for multiple prior violations for failure to display proof of registration is determined differently, and the Secretary shall require that persons that operate a terminal or refinery or a customs bonded storage facility within a foreign trade zone register and report to the Secretary.

Provision	Present Law	House Bill	Senate Amendment
		register of $10,000 for each initial failure, plus $1,000 per day that the failure continues. No penalty is imposed upon a showing by the taxpayer of reasonable cause. In addition, the provision increases the present-law non-assessable penalty for failure to register from $50 to $10,000 and the present law criminal penalty for failure to register from $5,000 to $10,000. The provision authorizes amounts equivalent to any of such penalties received to be appropriated to the Highway Trust Fund. Effective date.–The provision requiring display of registration is effective on October 1, 2004. The provisions relating to penalties is effective for penalties imposed after September 30, 2004.	Effective date.–Effective on October 1, 2004, except that the penalties for failure to register are effective for failures pending or occurring after September 30, 2004.
3. Modification of information reporting and penalties for failure to report (sec. 657 of the House bill and secs. 882 and 895 of the Senate amendment)	A fuel information reporting program, the Excise Summary Terminal Activity Reporting System ("ExSTARS"), requires terminal operators and bulk transport carriers to report monthly on the movement of any liquid product into or out of an approved terminal. Terminal operators file	Imposes a new assessable penalty for failure to file a report or to furnish information required in a report required by the ExSTARS system. The penalty is $10,000 per failure with respect to each vessel or facility (e.g., a terminal or other facility) for which information is required to be furnished. No	Similar to House bill, except that electronic filing of ExSTARS reports is mandated for persons that have 25 or more reportable transactions in a month, and technical wording differences.

Provision	Present Law	House Bill	Senate Amendment
	Form 720-TO - Terminal Operator Report, which shows the monthly receipts and disbursements of all liquid products to and from an approved terminal. Bulk transport carriers (barges, vessels, and pipelines) that receive liquid product from an approved terminal or deliver liquid product to an approved terminal file Form 720-CS - Carrier Summary Report, which details such receipts and disbursements. In general, the penalty for failure to file a report or a failure to furnish all of the required information in a report is $50 per report.	penalty is imposed upon a showing by the taxpayer of reasonable cause. The provision authorizes amounts equivalent to the penalties received to be appropriated to the Highway Trust Fund. Effective date.–Effective for penalties imposed after September 30, 2004.	Effective date.–Effective for failures pending or occurring after September 30, 2004. The electronic reporting provision is effective on October 1, 2004.
4. Information reporting for persons claiming alcohol fuel or biodiesel tax benefits (sec. 883 of the Senate amendment)	The Code provides an income tax credit for each gallon of ethanol and methanol derived from renewable sources (e.g., biomass) used or sold as a fuel, or used to produce a qualified alcohol fuel mixture, such as gasohol. The amount of the credit is currently equal to 52 cents per gallon (ethanol) and 60 cents per gallon (methanol). This tax credit is provided to blenders of the alcohols with other taxable fuels, or to the retail sellers of unblended alcohol fuels. Part or all of the benefits of the income tax credit	No provision.	Requires persons claiming the Code benefits related to alcohol fuels and biodiesel to provide information related to, and for the coordination of, such benefits as the Secretary may require to ensure the proper administration and use of such benefits. The Secretary may deny, revoke or suspend the registration of any person to enforce this requirement. Effective date.–October 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
	may be claimed through reduced excise taxes paid, either in reduced-tax sales or by expedited blender refunds on fully taxed sales of gasoline to obtain the benefit of the reduced rates. The amount of the income tax credit determined with respect to any alcohol is reduced to take into account any benefit provided by the reduced excise tax rates. There is no information reporting requirement for persons taking advantage of these benefits.		
F. Imports **1. Liability for tax on fuel imported by unregistered persons. (sec. 658 of the House bill and sec. 884 of the Senate amendment)**	Tax is imposed on the entry into the United States of any taxable fuel for consumption, use, or warehousing. The "enterer" is liable for the tax. An enterer generally means the importer of record (under customs law) with respect to the taxable fuel. However, if the importer of record is acting as an agent (a broker for example), the person for whom the agent is acting is the enterer. If there is no importer of record for taxable fuel entered into the United States, the owner of the taxable fuel at the time it is brought into the United States is the enterer. An	The importer of record is jointly and severally liable for the tax imposed upon entry of fuel into the United States if, under regulations, any other person that is not registered with the Secretary as a taxable fuel registrant is liable for such tax. If the importer of record is liable for the tax and such tax is not paid on or before the last date prescribed for payment, the Secretary may collect such tax from the Customs bond posted with respect to the importation of the taxable fuel to which the tax relates.	For fuel entering the United States (other than transfers in bulk) for consumption, use, or warehousing, the proposal provides that the tax is immediately due and payable at the time of entry, if the enterer is not registered with the IRS. Upon the failure to pay tax or post bond, the Customs Service is authorized under the proposal to deny entry of the shipment into the United States. The Secretary also may seize the fuel on which the tax is due or detain the vehicle transporting such fuel until such tax is paid. If no tax has been paid or bond filed within

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	importer's liability for Customs duties includes a liability for any internal revenue taxes that attach upon the importation of merchandise unless otherwise provided by law or regulation (19 CFR 141.3).	Effective date.–Fuel entered after September 30, 2004.	five days of the seizure, the Secretary may sell the fuel. Effective date.–Date of enactment.
2. Reconciliation of on-loaded cargo to entered cargo (sec. 885 of the Senate amendment)	Final Custom regulations were issued on October 31, 2002, pertaining to cargo destined for importation into the United States or exportation from the United States. The regulations require the advance and accurate presentation of certain manifest information prior to lading at the foreign port and encourage the presentation of this information electronically. Customs must receive from the carrier the vessel's Cargo Declaration (Customs Form 1302) or the electronic equivalent within 24 hours before such cargo is laden aboard the vessel at the foreign port. Certain carriers of bulk cargo, however, are exempt from these filing requirements. Such bulk cargo includes that composed of free flowing articles such as oil, grain, coal, ore and the like, which can be pumped or run through a chute or handled by dumping. Thus, taxable fuels are not covered	No provision.	Not later than one year after the date of enactment, the Secretary of Homeland Security, together with the Secretary, is to promulgate regulations providing for the transmission to the IRS of information pertaining to cargo of taxable fuels destined for importation into the United States, prior to such importations. Effective date.–Date of enactment.

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	by the Cargo Declaration requirement.		
G. Heavy Highway Vehicle Use Tax Modifications (sec. 659 of the House bill and sec. 890 of the Senate amendment)	For vehicles over 55,000 pounds, an annual use tax is imposed at specified rates according to weight. The annual use tax is imposed for a taxable period of July 1 through June 30. Generally, the tax is paid by the person in whose name the vehicle is registered. In certain cases, taxpayers are allowed to pay the tax in installments. Present law permits proration of the tax if the vehicle is stolen, destroyed, or when the first use of the vehicle occurs after the first month of the taxable period. Any highway motor vehicle that is issued a base plate by Canada or Mexico and is operated on U.S. highways is subject to the use tax whether or not the vehicles are required to be registered in the United States. The tax rate for Canadian and Mexican vehicles is 75 percent of the rate that would otherwise be imposed.	Eliminates the ability to pay the tax in installments. Eliminates the reduced rates for Canadian and Mexican vehicles. Requires taxpayers with 25 or more vehicles for any taxable period to file their returns electronically. Permits proration of tax for vehicles sold during the taxable period. Effective date.–Taxable periods beginning after the date of enactment.	Includes all of the provisions of the House bill. In addition, under regulations to be prescribed by the Secretary, every taxpayer that pays the heavy highway vehicle use tax to receive and display on the vehicle an electronic identification device as prescribed by the Secretary. The device is to be received and displayed not later than one month after the due date of the return of tax with respect to each taxable period. Eliminates the present-law ability to prorate tax when the first use of the vehicle occurs after the first month of the taxable period. Effective date.–Generally effective for taxable periods beginning after the date of enactment. Requires the Secretary to issue regulations regarding electronic identification devices no later than October 1, 2005.

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H. Modification of Ultimate Vendor Refund Claims With Respect to Farming (sec. 660 of the House bill and sec. 887 of the Senate amendment)	If diesel fuel, kerosene, or aviation fuel on which tax has been imposed is used by any person in a nontaxable use, the Secretary is to refund (without interest) the amount of tax imposed. The refund is made to the ultimate purchaser of the taxed fuel. However, in the case of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, refund payments are paid to the ultimate, registered vendors ("ultimate vendors") of such fuels.	In the case of diesel fuel or kerosene used on a farm for farming purposes, the provision limits ultimate vendor claims for refund to sales of such fuel in amounts less than 250 gallons per farmer per claim period. Effective date.–Fuels sold for nontaxable use after the date of enactment.	Same as the House bill except that limit on ultimate vendor claims for refund applies to amounts less than 500 gallons per farmer per claim period. Effective date.– Same as the House bill.
I. Dedication of Revenues from Certain Penalties to the Highway Trust Fund (sec. 661 of the House bill and sec. 891 of the Senate amendment)	Present law does not dedicate to the Highway Trust Fund any revenues from penalties assessed and collected by the Secretary.	Dedicates to the Highway Trust Fund amounts equivalent to the penalties assessed under the penalty provisions created by the bill as well as the existing penalties (as increased by the provision) for failing to register under section 4101 (dedicates penalties from secs. 6715, 6715A, 6717, 6718, 6725, 7232 and 7272). Effective date.–Penalties assessed after October 1, 2004.	Similar to the House bill. Because the Senate amendment creates penalties that are not included in the House bill, the text of the provision is slightly different (dedicates penalties from secs. 6715, 6715A, 6717, 6718, 6719, 6720, 6725, 7232 and 7272). Effective date.–Penalties assessed after October 1, 2004.

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J. Taxable Fuel Refunds for Certain Ultimate Vendors (sec. 662 of the House bill and sec. 888 of the Senate amendment)	In the case of gasoline on which tax has been paid and sold to a State or local government, to a nonprofit educational organization, for supplies for vessels or aircraft, for export, or for the production of special fuels, a wholesale distributor that sells the gasoline for such exempt purposes is treated as the person who paid the tax and thereby is the proper claimant for a credit or refund of the tax paid. In the case of undyed diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, a credit or payment is allowable only to the ultimate, registered vendors ("ultimate vendors") of such fuels. In general, refunds are paid without interest. In the case of overpayments of tax on gasoline, diesel fuel, or kerosene that is used to produce a qualified alcohol mixture and for refunds due ultimate vendors of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, the Secretary is required to pay interest on refunds of $200 or more ($100 or more in the case of kerosene) due to the	For sales of gasoline to a State or local government or to a nonprofit educational organization for its exclusive use on which tax has been imposed, the provision conforms the payment of refunds to that procedure established under present law in the case of diesel fuel or kerosene. That is, the ultimate vendor claims the refund. Also modifies the payment of interest on refunds. For overpayments of tax on gasoline, diesel fuel, or kerosene that is used to produce a qualified alcohol mixture and for refunds due ultimate vendors of diesel fuel or kerosene used for farming purposes or by a State or local government, all refunds unpaid after 45 days must be paid with interest. If the taxpayer has filed for refund by electronic means, refunds unpaid after 20 days must be paid with interest. For claims for refund of tax paid on diesel fuel or kerosene sold to State and local governments and for claims for refund of tax paid on gasoline sold to State and local governments or to a nonprofit	Same as the House bill.

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	taxpayer arising from sales over any period of a week or more, if the Secretary does not make payment of the refund within 20 days.	educational organization and for which the ultimate purchaser utilized a credit card, the provision deems the person extending the credit to the ultimate purchaser to be the ultimate vendor. That is, the credit card company administers claims for refund and is responsible for supplying documentation required from ultimate vendors. Effective date.–October 1, 2004.	Effective date.–Same as the House bill.
K. Two-Party Exchanges (sec. 663 of the House bill and sec. 889 of the Senate amendment)	Most fuel is taxed when it is removed from a registered terminal. The party liable for payment of this tax is the "position holder." The position holder is the person reflected on the records of the terminal operator as holding the inventory position in the fuel and has a contractual agreement with the terminal operator to store and provide services with respect to the fuel. It is common industry practice for oil companies to serve customers of other oil companies under exchange agreements, e.g., where Company A's terminal is more conveniently located for wholesale or retail customers of Company B.	Permits two registered parties to switch position holder status in fuel within a registered terminal if all of the following occur: (1) The transaction includes a transfer from the first position holder, i.e., the person who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator prior to the transaction; (2) The exchange transaction occurs at the same time as completion of removal across the rack from the terminal by the receiving person or its customer;	Same as the House bill.

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	In such cases, the exchange agreement party (Company B in the example) owns the fuel when the motor fuel is removed from the terminal and sold to B's customer.	(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across a terminal rack for purposes of reporting the transaction to the IRS; and (4) The transaction is the subject of a written contract. Effective date.–Date of enactment.	
L. Simplification of Tax on Tires (sec. 664 of the House bill)	A graduated excise tax is imposed on the sale by a manufacturer (or importer) of tires designed for use on highway vehicles. There is no tax on tires weighing 40 pounds or less. For tires weighing greater than 40 pounds the tax rate increases from 15 to 50 cents per pound depending upon the weight of the tire. The tax expires after September 30, 2005.	Replaces the present-law tax rates with a tax rate based on the load capacity of the tire. In general, the tax is 9.4 cents for each 10 pounds of tire load capacity in excess of 3,500 pounds. In the case of a biasply tire, the tax rate is 4.7 cents for each 10 pounds of tire load capacity in excess of 3,500 pounds. A biasply tire is any tire manufactured primarily for use on piggyback trailers. Modifies the definition of a tire to conform to certain regulations of the Department of Transportation. The provision also exempts from tax any tire sold for the exclusive use of the Department of Defense or the Coast Guard.	No provision.

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		Effective date.–Sales in calendar years beginning more than 30 days after the date of enactment.	
M. Miscellaneous Fuel Provisions **1. Tax on sale of diesel fuel whether suitable for use or not in a diesel-powered vehicle or train (sec. 886 of the Senate amendment)**	Upon the occurrence of certain events, the Code imposes an excise tax on taxable fuel. Under section 4083(a), "taxable fuel" includes diesel fuel. Diesel fuel is defined as any liquid, other than gasoline, that without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or train. A liquid is suitable for this use if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train.	No provision.	Modifies the definition of diesel fuel to include any liquid sold or offered for sale as fuel for use as a fuel in a diesel-powered highway vehicle or train. The liquid does not have to be suitable for use in a diesel-powered engine or train. Effective date.–Date of enactment.
2. Nonapplication of export exemption to the delivery of fuel into the fuel tank of motor vehicles removed from United States (sec. 892 of the Senate amendment).	Special provisions under the Code provide for a refund of tax to any person who sells gasoline to another for exportation. It is the long-standing administrative position of the IRS that the exemption from excise tax by reason of exportation does not apply to the sale of motor fuel pumped into a fuel tank of a vehicle that is to be driven, or	No provision.	Reaffirms the long-standing IRS position taken in Rev. Rul. 69-150 and restates present law by amending the Code definition of export to exclude the delivery of a taxable fuel into a fuel tank of a motor vehicle that is shipped or driven out of the United States. Imposes a tax on the sale of taxable fuel at a duty-free sales enterprise

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	shipped, directly out of the United States. See Rev. Rul. 69-150.		unless there was a prior taxable removal, or entry of such fuel. Effective date.–Sales or deliveries made after the date of enactment.
N. Total Accountability (secs. 893, 894, and 895 of the Senate amendment)	An excise tax is imposed upon: (1) the removal of any taxable fuel from a refinery or terminal; (2) the entry of any taxable fuel into the United States; or (3) the sale of any taxable fuel to any person who is not registered with the IRS to receive untaxed fuel, unless there was a prior taxable removal or entry. A "taxable fuel" is gasoline, diesel fuel (any liquid suitable for use other than gasoline suitable for use in a diesel-powered engine or train), and kerosene. Gasoline includes, to the extent provided in regulations, gasoline blendstocks and products commonly used as additives in gasoline. The term "gasoline blendstocks" does not include any product that cannot be blended into gasoline without further processing or fractionation ("off-spec gasoline"). The term taxable fuel also does not include any liquid that contains less than four percent normal parafins, or any liquid that has a distillation	No provision.	Creates a new category of taxable liquids, "reportable liquids". A reportable liquid is any petroleum-based liquid other than a taxable fuel. For purposes of the imposition of tax, the provision treats "reportable liquids" in a manner similar to taxable fuels. Tax is imposed upon the removal, entry, or sale of such liquids, unless the removal, entry, or sale is: (1) to a registered person who certifies that such liquid will not be used as a fuel or in the production of a fuel; or (2) the sale is to the ultimate purchaser of such liquid. Authorizes the Secretary to pay (without interest) an amount equal to the tax imposed, if a person establishes that the ultimate use of a gasoline blendstock, or additive, was not to produce gasoline. Similarly, if tax is imposed on a reportable liquid and the person establishes that the liquid was not used to produce a taxable fuel, the

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	range of 125 degrees Fahrenheit or less, sulfur content of 10 ppm or less and minimum color of +27 Saybolt (these are known as "excluded liquids"). If certain conditions are met, the removal, entry, or sale of gasoline blendstocks is not taxable. Diesel fuel and kerosene that is to be used for a nontaxable purpose will not be taxed upon removal from the terminal if it is dyed to indicate its nontaxable purpose. Undyed aviation-grade kerosene also is exempt from tax at the rack if it destined for use as a fuel in an aircraft. Feedstock kerosene that a registered industrial user receives by pipeline or vessel also is exempt from the dyeing requirement. The IRS collects data under the ExSTARS reporting system that tracks all removals across the terminal rack regardless of whether or not the product is technically excluded from the definition of gasoline, diesel or blendstocks. ExSTARS reporting identifies the position holder at the time of removal. Below the rack, no information is gathered for exempt or excluded products or uses.		Secretary is authorized to pay (without interest) an amount equal to the tax imposed on such person with respect to the reportable liquid. Provides that dyed diesel (a taxable fuel) also is taxable unless removed by a person registered with the Secretary under section 4101. The Secretary is to require that all persons removing refined product, whether a taxable product or an untaxed product, over the terminal rack to report such products on a monthly excise tax return. Effective date.–Fuel sold or used after September 30, 2004. Requires information reporting with respect to taxable fuels removed, entered or transferred from any refinery, pipeline or vessel which is registered with the Secretary. Effective date.–October 1, 2004.

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	Taxpayers file quarterly excise tax returns showing only net taxable gallons. Taxpayers do not account for gallons they claim to be exempt on such returns. Although the return is a quarterly return, the excise taxes are paid in semimonthly deposits. If deposits are not made as required, a taxpayer may be required to file returns on a monthly or semimonthly basis instead of quarterly.		