

DESCRIPTION OF TAX BILLS

RELATING TO

TAX FOR OIL SPILL LIABILITY TRUST FUND (S. 1066) AND
DEDUCTION FOR OIL SPILL CLEANUP COSTS (S. 771)

Scheduled for a Hearing

Before the

SENATE COMMITTEE ON FINANCE

on June 21, 1989

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

June 19, 1989

JCX-24-89

INTRODUCTION

The Senate Committee on Finance has scheduled a public hearing on June 21, 1989, on bills relating to (1) the petroleum tax for the Oil Spill Liability Trust Fund (S. 1066, introduced by Senator Chafee); and (2) the deductibility of oil spill cleanup costs (S. 771, introduced by Senator Reid).

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of present law and of the bills.

¹ This document may be cited as follows: Joint Committee on Taxation, Description of Tax Bills Relating to Tax for Oil Spill Liability Trust Fund (S. 1066) and Deduction for Oil Spill Cleanup Costs (S. 771) (JCX-24-89), June 19, 1989.

Tax for Oil Spill Liability Trust Fund (S. 1066);
Deduction for Oil Spill Cleanup Costs (S. 771)

Present Law

Oil Spill Liability Trust Fund petroleum tax

Present law (Code sec. 4611) establishes an excise tax of 1.3 cents per barrel on domestic crude oil and imported petroleum products (including imported crude oil) for the purpose of funding the Oil Spill Liability Trust Fund. However, the tax will not be imposed until qualified authorizing legislation² is enacted. Although the tax itself was enacted in 1986, qualified authorizing legislation has never been enacted. Consequently, this tax has never been collected. This tax expires on December 31, 1991.

The tax on domestic crude oil would be imposed on the operator of any United States refinery receiving such crude oil, while the tax on imported petroleum products would be imposed on the person entering the product into the United States for consumption, use, or warehousing. If domestic crude oil is used in, or exported from, the United States before imposition of the petroleum tax, the tax would be imposed on the user or exporter of the oil. The tax base would be the same as for the Superfund excise tax on crude oil and imported petroleum.

Trust fund expenditure purposes would include payment of removal costs of an oil spill and certain otherwise uncompensated claims. In addition, funds would be available to carry out specific provisions of other legislation relating to oil discharges and pollution. Trust fund amounts also would be available to pay all Federal Government administrative costs and contributions to the International Fund under the Comprehensive Oil Pollution Liability and Compensation Act.

The Oil Spill Liability Trust Fund excise tax is scheduled to expire on December 31, 1991. The tax will terminate earlier than that date if the Secretary of the Treasury estimates that \$300 million or more will be credited to the Oil Spill Liability Trust Fund before January 1, 1992.

² The Code requires that the authorizing legislation be substantially identical to subtitle E of title VI, or subtitle D of title VIII, of H.R. 5300 of the 99th Congress as passed the House of Representatives.

Treatment of costs incurred in connection with the cleanup of oil and hazardous substances

Present law permits taxpayers to deduct the ordinary and necessary expenses of carrying on a trade or business. Thus, taxpayers who must clean up oil or hazardous substances may generally deduct the expenses of the cleanup. Present law does not require that the cleanup be done in accordance with the requirements of Federal environmental laws for the expenses to be deductible.

Present law does restrict taxpayers' ability to deduct certain specific types of payments. These restrictions were enacted because the expenditures are considered to violate public policy. For example, no deduction is permitted with respect to illegal bribes, kickbacks, fines, penalties, or treble damage payments under the antitrust laws. Thus, a fine or penalty imposed by a governmental unit because of the discharge of oil or hazardous substances is not deductible under present law.

Description of the Bills

S. 1066 (Senator Chafee):³ Comprehensive Oil Pollution Liability and Compensation Act of 1989

The bill would establish a domestic liability and compensation system for oil pollution from vessels and facilities (Title I of the bill). The bill also provides for the implementation of certain international conventions relating to oil pollution (Title III of the bill).

Section 207 of the bill contains the tax-related provisions. The bill provides that collection of the Oil Spill Liability Trust Fund tax would commence with the first calendar month beginning more than 30 days after enactment of the bill. The bill would also amend the present-law Oil Spill Liability Trust Fund tax by extending the expiration date of the tax from December 31, 1991, to June 30, 1994. As under present law, the tax would terminate earlier than that date if the Secretary of the Treasury determines that the amount of taxes to be collected would exceed \$300 million.

The bill would modify the limitations on expenditures from the Oil Spill Liability Trust Fund to permit the President to waive the present-law expenditure limit of \$500 million per incident. The bill also would remove the present-law expenditure limit of \$250 million on payments for natural resource damages. Finally, the bill would provide that the Trust Fund may only be used as authorized under the bill.

Effective date.--Imposition of the tax would commence on the first day of the first month beginning more than 30 days after the date of enactment.

S. 771 (Senator Reid): Oilspill Bill

In general, the bill would deny a deduction for expenses incurred by a taxpayer which result from the cleanup of oil or hazardous substances discharged by that person. In addition to the direct costs of cleanup, non-deductible expenses would include legal fees resulting from the discharge of oil or a hazardous substance; payments or restitution related to discharge of oil or a hazardous substance; and any costs required by Federal law or regulation.

³ This bill was introduced at the request of the Administration.

The disallowance of these expenses would not apply in cases in which either the Administrator of the Environmental Protection Agency or the Commandant of the Coast Guard (whoever is appropriate) certifies that the taxpayer made a good faith effort to comply with applicable Federal laws and regulations relating to the clean up of the oil or hazardous substances. In addition, the disallowance of these expenses would not apply in specified circumstances that are beyond the control of the taxpayer.

The taxpayer would be required to itemize separately the cleanup expenses. The Secretary of the Treasury is to estimate the revenue gained by the disallowance of the expenses. The Secretary is required to transfer from the general fund to a separate account an amount equal to this revenue gain. These amounts may be expended only in relationship to the cleanup of oil or hazardous substances.

The bill would require the Secretary to submit to the House Committee on Ways and Means and to the Senate Committee on Finance an estimate of the loss in revenues to the Federal Treasury which occurred between January 1, 1970 and December 31, 1988 by reason of permitting cleanup costs to be deducted from gross income. This report would be required to be furnished not later than six months after the date of enactment. After submitting this report, the Secretary would be required to submit an annual report detailing the amount accruing to the Treasury as a result of the bill and the amount expended for environmental cleanup.

Effective date.--The bill would be effective for all discharges occurring after March 23, 1989, in taxable years ending after that date.