

**[JOINT COMMITTEE PRINT]**

**PRESENT LAW  
AND BACKGROUND INFORMATION  
ON FEDERAL EXCISE TAXES**

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PREPARED BY THE STAFF  
OF THE  
JOINT COMMITTEE ON TAXATION



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## INTRODUCTION

The Internal Revenue Code (the “Code”) imposes numerous excise taxes on goods and services.<sup>1</sup> In addition to excise taxes the primary purpose of which is revenue production, excise taxes also are imposed to promote adherence to other policies (e.g., penalty excise taxes). Many trust funds established by the Federal Government are financed with dedicated excise tax receipts. This document<sup>2</sup> provides a description of present-law Federal excise taxes, and when applicable, background information on trust funds financed with excise tax revenues.

Revenues from certain Federal excise taxes are dedicated to trust funds (e.g., the Highway Trust Fund) for designated expenditure programs, and revenues from other excise taxes (e.g., alcoholic beverages) go to the General Fund for general purpose expenditures. The largest excise taxes in terms of revenue (for fiscal year 2009) are those for gasoline motor fuels (\$25.1 billion), domestic cigarettes (\$11.0 billion), diesel motor fuel (\$8.5 billion), and domestic air ticket (\$7.3 billion).<sup>3</sup>

Part I of the document discusses excise taxes dedicated to trust funds. Part II discusses General Fund excise taxes. Part III provides background information, projected excise tax receipts, and information on the projected fiscal status of various trust funds. Appendix A includes a summary rate schedule for the principal excise taxes that are presently imposed, and Appendix B provides background information on the expired Hazardous Substance Superfund taxes and related trust fund.

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<sup>1</sup> Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

<sup>2</sup> This document may be cited as follows: Joint Committee on Taxation, *Present Law and Background Information on Federal Excise Taxes* (JCS-1-11), January 2011. This document is available at [www.jct.gov](http://www.jct.gov).

<sup>3</sup> Internal Revenue Service, Statistics of Income Bulletin, Historical Table 20, *Federal Excise Taxes Reported to or Collected By the Internal Revenue Service, Alcohol and Tobacco Tax and Trade Bureau, and Customs Service, By Type of Excise Tax, Fiscal Years 1997-2009*, <http://www.irs.gov/taxstats/bustaxstats/article/0,,id=97148,00.html> (2010).

## **I. EXCISE TAXES DEDICATED TO TRUST FUNDS**

### **A. Excise Taxes Dedicated to Transportation Trust Funds**

#### ***1. Highway Trust Fund excise taxes***

##### *In general*

Excise taxes are imposed on fuels, and heavy vehicles and tires used in highway transportation to fund the Highway Trust Fund. The Highway Trust Fund was established in 1956, with what were General Fund excise taxes being expanded and revenues transferred to the Highway Trust Fund. Since 1983, the Highway Trust Fund has financed certain mass transit programs as well as traditional highway construction and maintenance programs. Historically, the excise taxes have included statutory expiration dates that coordinate with the Highway Trust Fund expenditure authorization periods. Currently, the excise taxes (except for 4.3 cents per gallon of the motor fuels taxes which is permanent) are scheduled to expire after September 30, 2011.<sup>4</sup>

A majority of the revenue received from the highway transportation excise taxes is derived from taxes on highway motor fuels. Although the Code provides several refundable fuel excise tax credits, such as the alcohol, biodiesel, and alternative fuel mixture credits, the Highway Trust Fund is credited with the full amount of tax imposed, without reduction for the fuel excise tax credits.<sup>5</sup> The present highway transportation excise taxes consist of:

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<sup>4</sup>The 4.3-cents-per-gallon component of the taxes was enacted in 1993 as a General Fund deficit reduction measure. Provisions for transfer of these revenues to the Highway Trust Fund were enacted in 1997. Despite the statutory expiration dates, the full amount of the excise taxes is assumed to be permanent for Federal budget scorekeeping purposes. See, Part III.A., for a description of these Federal budget rules.

<sup>5</sup>Sec. 9503(b)(1).

Tax/credit (and Code section)	Tax rates <sup>6</sup> and nonrefundable income tax/refundable excise tax credits
-------------------------------	---

### ***Major highway motor fuels excise taxes and credits***

#### **Taxable fuels:**

- |  |                       |
|--|-----------------------|
| a. Gasoline and gasoline blendstocks (sec. 4081). <sup>7</sup> ..... | 18.3 cents per gallon |
| b. Diesel fuel and kerosene (secs. 4081 and 4041) .....              | 24.3 cents per gallon |
| c. Diesel-water fuel emulsion (sec. 4081). <sup>8</sup> .....        | 19.7 cents per gallon |
| d. Alcohol fuels (sec. 4041) .....                                   | 18.3 cents per gallon |

#### **Alcohol credits:**

- |  |  |
|--|--|
| a. Ethanol and ethanol fuel mixtures (secs. 40, 6426 and 6427(e)).                     | 45 cents per gallon of ethanol (E-100 eligible for nonrefundable section 40 income tax credit only)                          |
| b. Alcohol or alcohol fuel mixtures (other than ethanol) (secs. 40, 6426 and 6427(e)). | 60 cents per gallon of alcohol (100 percent alcohol fuel not in a mixture eligible for nonrefundable income tax credit only) |
| c. Small ethanol producer credit (sec. 40).  | 10 cents per gallon (nonrefundable income tax credit only)   |
| d. Cellulosic biofuel producer credit (for alcohol fuel) (sec. 40).                    | 41 cents per gallon; 46 cents per gallon for ethanol (nonrefundable income tax credit only)                                  |

<sup>6</sup>With the exception of liquefied petroleum gas (propane), compressed natural gas ("CNG"), and liquefied natural gas ("LNG"), highway motor fuels are subject to an additional 0.1 cent-per-gallon tax to fund the Leaking Underground Storage Tank ("LUST") Trust Fund (through September 30, 2011). See, Part I.B.1., for a description of this excise tax and Trust Fund.

<sup>7</sup>Gasoline blendstocks are defined in Treasury Department regulations as: alkylate, butane, catalytically cracked gasoline, coker gasoline, ethyl tertiary butyl ether ("ETBE"), hexane, hydrocrackate, isomerate, methyl tertiary butyl ether ("MTBE"), mixed xylene (including any separated isomer of xylene), natural gasoline, pentane, pentane mixture, polymer gasoline, raffinate, reformate, straight-run gasoline, straight-run naphtha, tertiary amyl methyl ether ("TAME"), tertiary butyl alcohol (gasoline grade), thermally cracked gasoline, and toluene. See, Treas. Reg. sec. 48.4081-1(c)(3).

<sup>8</sup>Diesel-water fuel emulsion consists of a mixture of diesel fuel and at least 14 percent water combined with an emulsion additive that is registered by a U.S. manufacturer with the EPA pursuant to section 211 of the Clean Air Act (as in effect on March 31, 2003) (sec. 4081(a)(2)(D)).

Tax/credit (and Code section)	Tax rates <sup>6</sup> and nonrefundable income tax/refundable excise tax credits
<b><i>Special motor fuel, alternative fuels, and biodiesel taxes and credits</i></b>	
<b>Tax on taxable fuels:</b>	
a. Liquid fuel produced from coal (sec. 4041) .....	24.3 cents per gallon
b. Partially exempt ethanol produced from natural gas (sec. 4041(m)). <sup>9</sup> .....	11.3 cents per gallon
c. Partially exempt methanol fuel produced from natural gas (sec. 4041(m)) .....	9.15 cents per gallon
d. B-100 (100% biodiesel) and renewable diesel (sec. 4081). <sup>10</sup> .....	24.3 cents per gallon
e. Biodiesel and renewable diesel fuel mixtures (sec. 4081) .....	24.3 cents per gallon
f. Compressed natural gas ("CNG") (sec. 4041) .....	18.3 cents per gasoline gallon equivalent (GGE = 126.67 c.f.)
g. Liquefied petroleum gas ("LPG") (sec. 4041) .....	18.3 cents per gallon
h. Liquefied natural gas ("LNG") (sec. 4041) .....	24.3 cents per gallon
i. Liquid fuel derived from biomass (sec. 4041) .....	24.3 cents per gallon
j. "P Series" fuels (sec. 4041) ..	18.3 cents per gallon
k. Liquefied hydrogen fuel (sec. 4041) .....	18.3 cents per gallon
l. Qualified ethanol and methanol fuels produced from coal (sec. 4041) .....	18.3 cents per gallon

<sup>9</sup>Partially exempt ethanol and methanol fuel means a liquid at least 85 percent of which consists of ethanol, methanol, or other alcohol produced from natural gas. After September 30, 2011, the tax rates on these fuels are scheduled to decline to 4.3 cents per gallon (ethanol) and 2.15 cents per gallon (methanol and other non-ethanol alcohol).

<sup>10</sup>Biodiesel contains monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet EPA requirements and ASTM D6751. Renewable diesel is defined as a liquid fuel meeting EPA requirements and ASTM D975 and D396 (or other equivalent standards approved by the Treasury Department). Renewable diesel fuel does not include any fuel derived by co-processing biomass with a feedstock that is not biomass.

Tax/credit (and Code section)	Tax rates <sup>6</sup> and nonrefundable income tax/refundable excise tax credits
<b>Tax credits:</b>	
a. Biodiesel and biodiesel fuel mixtures (secs. 40A, 6426, and 6427(e)) .....	\$1.00 per gallon of biodiesel (B-100 eligible for nonrefundable income tax credit only)
b. Renewable diesel and renewable fuel mixtures renewable diesel fuel eligible for (secs. 40A, 6426 and 6427(e)) .....	\$1.00 per gallon of renewable diesel (100% non-refundable income tax credit only)
c. Small agri-biodiesel producer credit (sec. 40A) .....	10 cents per gallon (non-refundable income tax credit only)
d. Cellulosic biofuel producer credit (sec. 40) .....	\$1.01 per gallon (non-refundable income tax credit only)
e. Alternative fuels and alternative fuel mixtures (LPG, "P Series" fuels, CNG, LNG, liquefied hydrogen, liquid fuel derived from coal, <sup>11</sup> and liquid fuel derived from biomass) (sec. 6426 and 6427(e)) .....	50 cents per gallon (refundable excise tax credit)

<sup>11</sup>To be an alternative fuel, liquid fuel from coal (including peat) must be derived through the "Fischer-Tropsch" process, and certain carbon capture requirements applicable to the gasification facility also must be met. Sec. 6426(d)(2)(E) and 6426(d)(4).



Tax/credit (and Code section)	Tax rates <sup>6</sup> and nonrefundable income tax/refundable excise tax credits
<b><i>Non-fuels taxes imposed on heavy highway vehicles:</i></b>	
a. Retail sales tax on highway tractors (over 19,500 lbs), heavy trucks (over 33,000 lbs.), and trailers (over 26,000 lbs.) (sec. 4051). <sup>12</sup> ...	12 percent of retail price
b. Manufacturers' excise tax on tires for heavy vehicles (sec. 4071) .....	9.45 cents for each 10 lbs. in excess of 3,500 lbs. of maximum rated load capacity (4.725 cents for biasply tires and super single tires) <sup>13</sup>
c. Annual heavy vehicle use tax (sec. 4481). <sup>14</sup> .....	Under 55,000 lbs.—No tax 55,000–75,000 lbs.—\$100 plus \$22 per 1,000 lbs. over 55,000 lbs. Over 75,000 lbs.—\$550

### *Administration of taxes*

**Fuels excise taxes.**—The highway motor fuels excise taxes on fuels other than “alternative fuels” are imposed on removal of the fuel from a refinery or on importation, unless the fuel is transferred in bulk by pipeline or barge to a registered terminal facility. In such a case, tax is imposed upon removal from the terminal facility. The bulk removal exception to refinery or importation taxation applies only if the person removing or entering the fuel and the operator of the pipeline or barge also are registered with the Treasury Department.<sup>15</sup>

<sup>12</sup> Weight is determined on “gross vehicle weight,” which is the fully-loaded, certificated weight for the vehicle.

<sup>13</sup> Biasply tire means a pneumatic tire on which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread (sec. 4072(d)). Super single tires are single tires greater than 13 inches in cross section width designed to replace two tires in a dual fitment (other than for steering) (sec. 4072(c)).

<sup>14</sup> Weight is defined as “taxable gross weight,” which is the customary fully loaded weight.

<sup>15</sup> Deep-draft vessels are not required to be registered for the bulk transfer exception to apply.

Present law imposes tax on all gasoline (including gasoline blendstocks), diesel fuel, and kerosene that is removed, except diesel fuel and kerosene that is destined for a nontaxable use (including a partially taxable use in an intercity bus) and that is indelibly dyed in accordance with Treasury Department regulations.<sup>16</sup> The refiner, importer, or person holding an inventory position in a terminal (the "position holder") generally is liable for payment of the tax.

The taxes on alternative fuels are imposed at the retail or user level.

*Other taxes.*—The sales tax on heavy highway vehicles is imposed at the retail level. To prevent sales of "stripped down" vehicles which subsequently are completed, special rules apply to sales of parts and accessories (in excess of \$1,000) installed on a taxable vehicle within six months after the date the vehicle is first placed in service. This tax is primarily imposed on the truck owner, with installers secondarily liable for its payment.<sup>17</sup> Similarly, special rules apply for determining whether repairs or other modifications to heavy highway vehicles constitute a taxable re-manufacture of a new vehicle.<sup>18</sup>

The excise tax on heavy vehicle tires is a manufacturers' excise tax.

The annual heavy vehicle use tax is imposed with respect to a taxable period of July 1–June 30. Tax liability is incurred as of the first month the vehicle is used during the taxable period (subject to proration rules). Tax also is prorated for vehicles sold, destroyed, or stolen (and not subsequently used) during the taxable period.

### *Exemptions and reduced rates*

*Fuels excise taxes.*—Present law includes numerous exemptions (including partial exemptions) for specified uses (or users) of taxable fuels. Because most highway motor fuels excise taxes are imposed before the end use (or user) of the fuel is known, most of these exemptions are administered through refunds to end users of tax paid by a party that processed the fuel earlier in the distribution chain. The present exempt uses (and users) include:

1. Use by State and local government;
2. Use by nonprofit educational organizations;
3. Use in private local mass transit buses having a seating capacity of at least 20 adults (not including the driver) when the buses operate under contract with (or are subsidized by) a State or local governmental unit to furnish transportation;
4. Use in private intercity buses serving the general public along scheduled routes;<sup>19</sup> and,
5. Use in an off-highway business use (gasoline), or an off-highway use (diesel fuel and kerosene). Examples of such uses

<sup>16</sup> The dyeing requirement does not apply in rural areas of Alaska. A further exception applies to kerosene received by pipeline or vessel for use in the manufacture or production of non-fuel feedstocks.

<sup>17</sup> Sec. 4051(b).

<sup>18</sup> Sec. 4052(f).

<sup>19</sup> This use is exempt from the full 18.3-cents-per-gallon gasoline excise tax (sec. 6421(b)) and is subject to 7.3 cents per gallon of the 24.3-cents-per-gallon diesel fuel and kerosene excise taxes (sec. 6427(b)).

include use for non-fuel feedstock purposes and the use of diesel fuel or kerosene as heating fuel.

*Other taxes.*—The non-fuels excise taxes imposed on heavy highway vehicles include numerous partial and full exemptions and special rules for coordinating the taxes on vehicles that otherwise could be subject (in part) to more than one of these taxes.

1. Tractors for use with a trailer or semi-trailer are not subject to the retail sales tax if the combination has a gross weight of 33,000 pounds or less.

2. The cost of idling reduction devices is not subject to the retail sales tax on tractors and trucks.

3. A credit is allowed against the retail sales tax for tax previously imposed on tires sold in connection with a taxable tractor, trailer, or truck.

4. Various vehicles and components are exempt from the retail sales tax: camper coaches for self-propelled mobile homes, certain agricultural vehicles, house trailers, ambulances and hearses, concrete mixers, rail/highway combination trailers and vans, trash containers that are not designed to be permanently mounted on a taxable vehicle, insulation having an "R value" of not less than R35 per inch, and certain mobile machinery.

5. State and local government vehicles, certain local transit buses, certain blood collector vehicles, and certain mobile machinery are exempt from the annual heavy vehicle use tax as are vehicles used fewer than 5,000 miles on public highways during a taxable period (7,500 miles in the case of farm vehicles).

6. The annual heavy vehicle use tax is reduced by 25 percent for vehicles used exclusively in transporting harvested forest products to and from the forested site if the vehicles are under for such purpose in the State where the vehicle is required to be registered.

#### *Special rules for alcohol fuels, biodiesel, and alternative fuels*

Before 2005, alcohol fuels mixtures generally were subject to reduced rates of tax.<sup>20</sup> Beginning on January 1, 2005, however, the full 18.3-cents-per-gallon and 24.3-cents-per-gallon highway fuels tax rates were *nominally* extended to these fuels. At that time, a new *refundable* excise tax credit also was enacted for alcohol fuel mixtures and new refundable excise tax credits were enacted for biodiesel mixtures as well.<sup>21</sup> Later, refundable excise tax credits were enacted for alternative fuels and alternative fuel mixtures. The amount of the excise tax credits exceeds the amount of the excise tax imposed, resulting in a net Federal outlay for each gallon of these fuels.

Through December 31, 2011, the refundable excise tax credit rates for these fuels are: 45 cents per gallon for ethanol mixtures; 60 cents per gallon for methanol (or other non-ethanol alcohol) mixtures, \$1.00 per gallon for biodiesel and renewable diesel mixtures; and 50 cents per gallon for alternative fuels (including compressed

<sup>20</sup> Alcohol is defined as methanol and ethanol that is not produced from petroleum, natural gas, or coal (including peat) and having a proof of at least 150. Alcohol having a proof of at least 150, but less than 190, receives a reduced credit.

The credit is allowed for qualifying alcohol consumed in the production of ETBE and MTBE.  
<sup>21</sup> Secs. 6426 and 6427(e).

gas derived from biomass).<sup>22</sup> The alternative fuels credit is allowed without regard to whether the fuels are mixed with other taxable motor fuels but only if the fuel is used or sold for use in a motor vehicle, motorboat or for use as a fuel in aviation.

The following illustrates the interaction of the taxes and credits. If one gallon of ethanol is blended with nine gallons of gasoline to make 10 gallons of gasoline, the tax is \$1.83 ( $10 \times .183$ ) on the 10 gallons of gasohol. However, the alcohol fuel mixture credit for the gallon of ethanol is 45 cents, so after the credit is taken into account, the tax on each gallon of gasohol is 13.8 cents per gallon ( $((\$1.83 - .45)/10 = .138)$ , rather than 18.3 cents per gallon. Nonetheless, the Highway Trust Fund is credited for the full amount of the tax, 18.3 cents per gallon, without regard to the credit. As another example, a gallon of liquified natural gas is taxed at 24.3 cents per gallon. The alternative fuel credit, when it was in effect, was 50 cents per gallon, thus after taking into account the credit, the taxpayer received a refundable credit of 24.7 cents per gallon or the full 50 cents if the fuel was to be used for a nontaxable purpose, such as for use by a State or local government.

Through December 31, 2011, *nonrefundable* income tax credits are allowed in the same amounts as described above for qualifying fuels mixtures, and for alcohol fuel, biodiesel, and renewable diesel.<sup>23</sup>

The income tax credits generally are available to the person selling the qualifying product for use as a fuel or using it as a fuel. In addition to the general excise tax and income tax credits, additional income tax credits of 10 cents per gallon are allowed to qualifying small producers of ethanol and agri-biodiesel producers (through December 31, 2011).<sup>24</sup> A \$1.01 per gallon income tax credit is allowed to producers of "cellulosic biofuel" through December 31, 2012. Cellulosic biofuel is defined as a liquid fuel produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis and meets the registration requirements for fuels and fuel additives established under the Clean Air Act.<sup>25</sup> Cellulosic biofuel does not include certain unprocessed fuels if more than four percent of such fuel (determined by weight) is any combination of water or sediment, or the ash content of such fuel is more than one percent (determined by weight).

### *Overview of Highway Trust Fund expenditure provisions*

*In general.*—Dedication of highway excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by provisions of the Code.<sup>26</sup> The Code authorizes expenditures (subject to appropriations) from the Highway

<sup>22</sup> The scheduled expiration date for the alternative fuel credit for liquefied hydrogen is September 30, 2014.

<sup>23</sup> Secs. 40 and 40A. Adding a denaturant not exceeding two percent of the volume of alcohol is not treated as the creation of an alcohol fuels mixture (sec. 40(b)(5)). Denaturants in such amounts are disregarded in determining the volume of qualifying alcohol in an alcohol mixture (sec. 40(d)(4)).

<sup>24</sup> Agri-biodiesel is defined as biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, or from animal fats (sec. 40A(d)(2)).

<sup>25</sup> 42 U.S.C. 7545.

<sup>26</sup> Sec. 9503.

Trust Fund through March 4, 2011, for the purposes provided in authorizing legislation in effect on the date of enactment of the Surface Transportation Extension Act of 2010, Part II.<sup>27</sup>

Revenues from the highway excise taxes, as imposed through September 30, 2011, generally are dedicated to the Highway Trust Fund. However, certain transfers are made from the Highway Trust Fund into the General Fund of the Treasury, relating to tax revenues on gasoline used on farms, gasoline used for certain non-highway purposes or by local transit systems, fuels not used for taxable purposes, and income tax credits for certain uses of fuels.<sup>28</sup>

In addition, revenues attributable to the excise taxes imposed on motorboat gasoline and special motor fuels and on gasoline used as a fuel in the non-business use of small-engine outdoor power equipment are transferred to the Sport Fish Restoration and Boating Trust Fund through September 30, 2011, with the first \$1,000,000 per fiscal year of such monies going to the Land and Water Conservation Fund instead.<sup>29</sup>

*Highway Trust Fund expenditures.*—The Highway Trust Fund has two accounts: Mass Transit Account and Highway Account.<sup>30</sup> Both accounts are funding sources for specific transit and highway-related programs. Neither account receives interest on unexpended balances. The Mass Transit Account receives revenues equivalent to 2.86 cents per gallon of highway motor fuels excise taxes generally, except 1.43 cents per gallon for any partially exempt methanol or ethanol, 1.86 cents per gallon for liquefied natural gas, 2.13 cents per gallon for liquefied petroleum gas, and 9.71 cents per MCF for compressed natural gas.

Highway Trust Fund expenditure purposes have been updated with each surface transportation Act enacted since establishment of the Highway Trust Fund in 1956. In general, expenditures authorized under those Acts (as the Acts were in effect on the date of enactment of the most recent such authorizing Act) are specifically approved by the Code as Highway Trust Fund expenditure purposes. No Highway Trust Fund monies may be spent for a purpose not approved by the Code. The Code provides that authority to make expenditures from the Highway Trust Fund expires after March 4, 2011.

*Anti-deficit provisions of the Highway Trust Fund.*—Because some highway/mass transit projects can take multiple years to complete, the Highway Trust Fund generally has carried a positive unexpended balance—a large portion of which is reserved to cover existing Highway Trust Fund obligations. Highway Trust Fund spending is limited by the fund's internal anti-deficit provisions—the so-called “Harry Byrd rule.” Generally, this rule is intended to prevent the further obligation of Federal highway/transit funds

<sup>27</sup> Pub. L. No. 111–322.

<sup>28</sup> Sec. 9503(c)(2).

<sup>29</sup> Sec. 9503(c)(4) and (5). See, Part I.B.3 relating to the Sport Fish Restoration and Boating Trust Fund.

<sup>30</sup> Highway Trust Fund expenditures are subject to appropriations Acts. However, certain of the programs are classified as “contract spending”, a category of Federal spending in which executive agencies are permitted to enter into contracts for spending with appropriations being enacted subsequently to liquidate the contracted expenditures. Highway Trust Fund spending further benefits from special Federal budget “firewalls” designed to ensure that the monies are spent as authorized rather than being subjected to obligations ceilings enacted as part of deficit reduction measures.

from the Highway Trust Fund if the current and expected balances of the fund are projected to fall below a certain level. The rule requires the Treasury Department to determine, on a quarterly basis, the amount (if any) by which unfunded highway authorizations exceed projected net fund tax receipts for the 48-month period beginning at the close of each fiscal year.<sup>31</sup> If unfunded highway authorizations exceed projected 48-month trust fund receipts, apportionments to the States for programs are to be reduced proportionately. The Mass Transit Account has a 12-month receipts rule.<sup>32</sup> For purposes of this rule, Highway Trust Fund excise taxes are assumed extended beyond their statutory expiration date.

*Limitations on transfers to the Highway Trust Fund.*—The Code also contains a specific enforcement provision to prevent expenditure of Highway Trust Fund monies for purposes not authorized in the Code.<sup>33</sup> Should such unapproved expenditures occur, no further excise tax receipts will be transferred to the Highway Trust Fund. Instead, the taxes will continue to be imposed with receipts being retained in the General Fund. This enforcement provision provides that it applies not only to unauthorized expenditures under the current Code provisions, but also to expenditures pursuant to future legislation that does not amend section 9503's expenditure authorization provisions or otherwise authorize the expenditure as part of a revenue Act.

## **2. Airport and Airway Trust Fund excise taxes<sup>34</sup>**

Excise taxes are imposed on amounts paid for commercial air passenger and freight transportation and on fuels used in commercial and noncommercial (i.e., transportation that is not "for hire") aviation to fund the Airport and Airway Trust Fund.<sup>35</sup> The present aviation excise taxes are as follows:

<sup>31</sup> Sec. 9503(d).

<sup>32</sup> Sec. 9503(e)(4).

<sup>33</sup> Sec. 9503(b)(5).

<sup>34</sup> All Airport and Airway Trust Fund excise taxes except for 4.3 cents per gallon of the taxes on aviation fuels are scheduled to expire after March 31, 2011. The 4.3-cents-per-gallon fuels tax rate is permanent. However, for Federal budget scorekeeping purposes, the statutory expiration date is disregarded and the full amount of the taxes is assumed to be permanent. See, Part III.A.

<sup>35</sup> Air transportation through U.S. airspace that neither lands in nor takes off from a point in the United States (or the 225-mile zone, described below) is exempt from the aviation excise taxes, but the transportation provider is subject to certain "overflight fees" imposed by the Federal Aviation Administration pursuant to Congressional authorization.

Tax (and Code section)	Tax rates
a. Domestic air passengers (sec. 4261)	7.5 percent of fare, plus \$3.70 (2011) per domestic flight segment generally <sup>36</sup>
a. International air passengers (sec. 4261) .....	\$16.30 (2011) per arrival or departure <sup>37</sup>
b. Amounts paid for right to award free or reduced rate passenger air transportation (sec. 4261) .....	7.5 percent of amount paid
c. Air cargo (freight) transportation (sec. 4271) .....	6.25 percent of amount charged for domestic transportation; no tax on international cargo transportation
d. Aviation fuels (sec. 4081): <sup>38</sup>	
i. Commercial aviation .....	4.3 cents per gallon
ii. Non-commercial (general) aviation:	
Aviation gasoline .....	19.3 cents per gallon
Jet fuel .....	21.8 cents per gallon

#### *Administration of taxes*

*Air passenger and cargo taxes.*—Persons purchasing air transportation are liable for the commercial air passenger excise taxes. Transportation providers are secondarily liable if they fail to collect tax from their passengers. The amount of tax must be separately disclosed on airline tickets. Like the air passenger excise taxes, the air cargo tax is imposed on the person paying for the service.

<sup>36</sup> The domestic flight segment portion of the tax is adjusted annually (effective each January 1) for inflation (adjustments based on the changes in the consumer price index (the "CPI")).

<sup>37</sup> The international arrival and departure tax rate is adjusted annually for inflation (measured by changes in the CPI).

<sup>38</sup> Like most other taxable motor fuels, aviation fuels are subject to an additional 0.1-cent-per-gallon excise tax to fund the LUST Trust Fund. See, Part I.B.1.

*Aviation fuels taxes.*—The aviation fuels excise taxes are administered under rules similar to those that apply to the Highway Trust Fund fuels taxes. That is, the taxes generally are collected on removal of taxable fuels from a refinery (subject to the bulk transfer exception also applicable to the highway fuels excise taxes). Most aviation fuels excise tax is collected upon removal of the fuel from a registered terminal facility. Many airports include registered terminals within the secured area of the airport. Under a special rule, certain refueler trucks, tankers, or tank wagons are treated as part of such terminals, thereby allowing imposition of tax on jet fuel to be deferred until the kerosene is loaded into the fuel tank of an aircraft.<sup>39</sup> Qualifying trucks and tankers may not be registered for highway use and must be operated by the owner of the registered terminal facility. Jet fuel that is not delivered directly into the fuel tank of an aircraft from a registered terminal is taxed at the higher general aviation rates. Commercial airlines and other commercial aircraft using jet fuel taxed at the general aviation tax rate may recover tax imposed at the higher rate through refund claims or credits against excise tax liability (including air passenger and cargo tax liability).

*Exemptions, reduced rates, and special rules*

*Air passenger taxes.*—The domestic air passenger taxes apply to transportation beginning and ending within the United States or to or from a point within the continental United States and a point within the “225-mile zone” of Canada or Mexico. The 225-mile zone includes the portions of those countries that are not more than 225 miles from the nearest point in the continental United States. If passenger transportation is purchased outside the United States, it is subject to the domestic taxes only if the transportation both begins and ends in this country.

Special rules apply to air transportation between the continental United States and Alaska or Hawaii and between Alaska and Hawaii.<sup>40</sup> The portion of such transportation that is not within the United States (e.g., the portion over the Pacific Ocean) is not subject to the 7.5-percent domestic air passenger excise tax. In addition to this pro-rated *ad valorem* tax, an \$8.20 (2011) international tax rate for the excluded portion of the travel is imposed.<sup>41</sup> The domestic flight segment component of tax applies under the same rules as for flights within the continental United States. Further, transportation within Alaska or Hawaii is taxed in the same manner as domestic transportation within the continental United States.

An additional special rule exempts domestic flight segments to or from qualified rural airports from the flight segment portion of the domestic air passenger excise tax. A qualified rural airport is an airport (1) from which there were fewer than 100,000 commercial passengers departing by air on flight segments of at least 100 miles during the second preceding calendar year, and (2) (a) which is not

<sup>39</sup> When fuel is delivered directly into the fuel tanks of a commercial aircraft, commercial airlines may “self-certify” and become the direct payors of the jet fuel excise tax.

<sup>40</sup> The term “continental United States” includes the 48 contiguous States and the District of Columbia.

<sup>41</sup> The \$8.20 amount is adjusted annually for inflation (measured by the CPI).



located within 75 miles of another airport that is not a qualified rural airport or (b) which is not connected by paved roads to another airport.

The domestic air passenger excise tax does not apply to domestic segments (i.e., wholly within the United States) that are part of uninterrupted international air transportation. Uninterrupted international air transportation means travel (entirely by air) that does not both begin and end in the United States (or the 225-mile zone) and during which there is no more than a 12-hour scheduled period between arrival at and departure from any point in the United States.<sup>42</sup>

Both the domestic and international passenger taxes are imposed on "amounts paid" for air transportation. Therefore, no tax is imposed on transportation under airline frequent flyer programs for which no charge is made. Similarly, no excise tax is imposed on no-charge transportation provided to airline employees as a fringe benefit. Excise tax is imposed (determined by reference to actual amounts paid) for reduced-cost travel available under both frequent-flyer and airline employee and fringe-benefit programs. Further, the IRS has ruled in at least one instance that separately-stated charges for "checked" passenger baggage are not subject to the excise tax.<sup>43</sup>

*Air cargo tax.*—Based on legislative history accompanying the original enacting legislation, the air cargo excise tax has been interpreted to exclude amounts paid for "accessorial ground services." This interpretation has allowed air cargo providers to reduce the effective rate of tax below the statutory 6.25 percent of price by allocating a portion of waybill charges to ground operations. Accessorial services charges are exempt from tax only if the service *could* be performed by a party other than the transportation provider and if the provider maintains in its records a separate accounting for the charge.

*Additional exemptions to air passenger and air cargo taxes.*—Special rules classify certain for-hire (i.e., commercial) transportation as general aviation (thereby making the transportation subject to the higher-rate fuels excise tax rather than the air passenger and cargo excise taxes). Under these rules, flights for skydiving and flights on seaplanes generally are subject to the general aviation fuels excise taxes rather than the air passenger and air cargo excise taxes.

An additional rule classifies all air transportation on aircraft having a maximum certificated takeoff weight of 6,000 pounds or less as general aviation when the aircraft are not operating on established lines. Aircraft operated for the sole purpose of sightseeing are not treated as operated on established lines, notwithstanding that such aircraft may operate on established schedules or routes.

Certain transportation on air ambulances providing emergency services and on helicopters and fixed-wing aircraft operating engaged in hard mineral, oil, or gas exploration activities or as part of logging activities are exempt from tax. The exemption is limited to aircraft not using Federal aviation services or taking off or land-

<sup>42</sup>A more liberal rule is provided for military personnel traveling in uniform while on leave in transportation that involves both international and domestic U.S. segments.

<sup>43</sup>PLR 20102004, 2010 WL 147820 (January 15, 2010).

ing at an airport eligible for Airport and Airway Trust Fund assistance in the case of the latter uses.

*Aviation fuels tax exemptions.*—Fuels used in aircraft owned and operated by certain aircraft museums are exempt from the aviation fuels excise taxes. Qualifying museums are section 501(c)(3) organizations that are operated exclusively for the procurement, care, and exhibition of World War II combat and transport aircraft.

Kerosene, gasoline, or diesel fuel blended with alcohol and sold for use as aviation fuel by the person producing the mixture qualify for the refundable excise tax credit and the non-refundable income tax credit described in Part I.A.1.

### *Overview of Airport and Airway Trust Fund expenditure provisions*

*In general.*—Operation of the Airport and Airway Trust Fund is governed by parallel provisions of the Code and authorizing statutes.<sup>44</sup> The Code provisions govern deposit of revenues into the trust fund and approve expenditure purposes in authorizing statutes as in effect on the date of enactment of the latest authorizing Act. The authorizing Acts provide for specific trust fund expenditure programs. The Airport and Airway Trust Fund was created in 1970 to finance a major portion of Federal expenditures on national aviation programs. Prior to that time, these expenditures had been financed with General Fund monies.

Authorized expenditures from the Airport and Airway Trust Fund include the following principal programs:

1. Airport Improvement Program ("AIP") (airport planning, construction, noise compatibility programs, and safety projects);
2. Facilities and Equipment ("F&E") program (costs of acquiring, establishing, and improving the air traffic control facilities);
3. Research, Engineering, and Development ("RED") program (FAA research and development activities);
4. Federal Aviation Administration ("FAA") Operations and Maintenance ("O&M") programs; and
5. Certain other aviation-related programs specified in authorizing Acts.

Part of the O&M programs also is financed from General Fund monies. Of the total FAA appropriations each year, the General Fund has contributed about 24 to 25 percent.

*Limits on Airport and Airway Trust Fund expenditures.*—No expenditures are currently permitted to be made from the Airport and Airway Trust Fund after March 31, 2011. Because the purposes for which Airport and Airway Trust Fund monies are permitted to be expended are fixed as of the date of enactment of the Airport and Airway Extension Act of 2010, Part IV, the Code must be amended in order to authorize new Airport and Airway Trust Fund expenditure purposes.<sup>45</sup> In addition, the Code contains a specific enforcement provision to prevent expenditure of Airport and Airway Trust Fund monies for purposes not authorized under sec-

<sup>44</sup> Sec. 9502 and 49 U.S.C. sec. 48101, et. seq.

<sup>45</sup> Sec. 9502(d).

tion 9502.<sup>46</sup> This provision provides that, should such unapproved expenditures occur, no further aviation excise tax receipts will be transferred to the Airport and Airway Trust Fund. Rather, the aviation taxes would continue to be imposed, but the receipts would be retained in the General Fund.

### **3. Inland Waterways Trust Fund excise tax**

#### *Tax and exemptions*

A 20-cents-per-gallon excise tax is imposed on fuel used in powering commercial cargo vessels on a designated system of inland or intra-coastal waterways.<sup>47</sup> This tax is permanent. The tax applies to fuel used on any specified inland or intracoastal waterway of the United States in the business of transporting property for compensation or hire, or in transporting property in the business of the owner, lessee, or operator of the vessel (other than fish or other aquatic animal life caught on the voyage).<sup>48</sup> The inland waterways excise tax is a use tax, imposed on the boat operator.

Exemptions are provided for vessels designed primarily for use on the high seas which have a draft of more than 12 feet ("deep-draft ocean-going vessels"), for vessels used primarily for transportation of persons, for State or local government vessels engaged in governmental business, and for use in tugboat movement of LASH ("lighter-aboard-ship") and SEABEE ocean-going barges used exclusively to ferry international cargoes to or from their carriers.

#### *Overview of Inland Waterways Trust Fund expenditure provisions*

Operation of the Inland Waterways Trust Fund is governed by parallel provisions of the Code and authorizing statutes.<sup>49</sup> The Code provisions govern deposit of revenues from the fuel tax into the Inland Waterways Trust Fund and approve general expenditure programs. The authorizing statutes specify expenditure programs.

Amounts in the Inland Waterways Trust Fund are available, as provided by appropriation Acts, for making construction and rehabilitation expenditures for navigation on the inland and coastal waterways of the United States described in section 206 of the Inland Waterways Revenue Act of 1978, as in effect on the date of the enactment of section 9506. There is a limit of 50 percent that can be paid from the Inland Waterways Trust Fund for the cost of any construction under section 102(a) of the Water Resources Development Act of 1986 (as in effect on the date of enactment of section 9506). The remaining 50 percent is to be paid from the General Fund.

<sup>46</sup> Sec. 9502(e)(1).

<sup>47</sup> Sec. 4042. Like other taxable motor fuels, inland waterway fuels are subject to an additional excise tax of 0.1 cents per gallon to fund the LUST Trust Fund. See Part 1.B.1.

<sup>48</sup> The term inland or intracoastal waterway of the United States means any inland or intra-coastal waterway of the United States which is described in section 206 of the Inland Waterways Revenue Act of 1978 and includes the Mississippi River upstream from Baton Rouge, the Mississippi River's tributaries, and specified waterways, including the Gulf of Mexico and Atlantic Intra-coastal Waterways, and the Tennessee-Tombigbee Waterway.

<sup>49</sup> Sec. 9506 and 33 U.S.C. sec. 2212.

#### **4. Harbor Maintenance Trust Fund excise tax**

##### *Tax and exemptions*

A 0.125-percent excise tax is imposed on the value of commercial cargo loaded or unloaded at taxable United States ports and on charges for transportation of passengers to or from such ports.<sup>50</sup> No tax is imposed on cargo movements within a U.S. port. The tax is permanent. Unlike most Federal excise taxes, the harbor maintenance excise tax is administered by the U.S. Customs Service (rather than the Internal Revenue Service or the Treasury Department's Tax and Trade Bureau). Administrative rules applicable to the tax are those applicable to customs duties. Shippers and importers are liable for the tax.

The tax generally is imposed on all cargo (other than exports) and passengers that are loaded or unloaded at U.S. ports, defined as any channel or harbor in the United States that is open to public navigation. The tax does not apply to waterways where the inland waterways fuels excise tax is imposed or to ports with respect to which no Federal funds have been used since 1977 for construction, maintenance, or operation, or which were de-authorized by Federal law before 1985. Transportation at ports on the Columbia River is taxable only if the ports are downstream of the Bonneville lock and dam.

In addition to exported cargo, the tax does not apply to cargo shipped between the continental United States and Alaska (except for crude oil), Hawaii, and/or U.S. possessions, or to cargo shipped between Alaska, Hawaii, and/or such possessions. This exemption includes passenger cruises within Alaska or Hawaii that also include travel in international waters, if the cruises do not include any stops at ports of call located outside the State from which the cruise begins. Transportation on regularly scheduled ferries transporting passengers (and their vehicles) that operate within the United States or between the U.S. and contiguous countries (e.g., Canada) are not subject to tax. There is an exemption for cargo owned by nonprofit organizations intended for use in humanitarian or development assistance overseas. Ships' stores and fish (not previously loaded on shore) also are exempt.

##### *Overview of Harbor Maintenance Trust Fund expenditure provisions*

Operation of the Harbor Maintenance Trust Fund is governed by parallel provisions of the Code and authorizing statutes.<sup>51</sup> The Code provisions govern deposit of revenues into the Harbor Maintenance Trust Fund and approve general expenditure programs. The authorizing statutes specify expenditure programs.

The Harbor Maintenance Trust Fund generally is limited to financing the operations and maintenance costs for federally-authorized public harbors and channels for commercial navigation incurred by the U. S. Corps of Engineers under section 210 of the Water Resources Development Act of 1986 (as in effect on the date of the enactment of the Water Resources Development Act of 1996).

<sup>50</sup> Sec. 4461.

<sup>51</sup> Sec. 9505 and Pub. L. No. 104-303.

Harbor Maintenance Trust Fund expenditures have principally been for operations and maintenance costs of access channels to deep-draft harbors, i.e., dredging expenses and not channel deepening projects.

Also, St. Lawrence Seaway Development Corporation operations and maintenance expenditures related to the seaway are financed from the Harbor Maintenance Trust Fund, as well as rebates of tolls or charges pursuant to section 13(b) of the Act of May 13, 1954 (as in effect on April 1, 1987).

Certain ancillary activities directly related to maintenance dredging or related to keeping a waterway unobstructed also are financed from the Harbor Maintenance Trust Fund.<sup>52</sup> Further, the administrative costs of collecting the harbor maintenance tax (not to exceed \$5 million for any fiscal year) are authorized to be paid from the Harbor Maintenance Trust Fund.

## **B. Excise Taxes Dedicated to Environmental Trust Funds or Designated Funds**

### ***1. Leaking Underground Storage Tank Trust Fund excise taxes***

#### *Tax and exemptions*

Fuels of a type subject to other trust fund excise taxes generally are subject to an add-on excise tax of 0.1 cent per gallon to fund the Leaking Underground Storage Tank ("LUST") Trust Fund.<sup>53</sup> For example, the LUST excise tax applies, to gasoline, diesel fuel, kerosene, and most alternative fuels subject to highway and aviation fuels excise taxes, and to fuels subject to the inland waterways fuel excise tax. This excise tax is imposed on both uses and parties subject to the other taxes, and to situations (other than export) in which the fuel otherwise is tax-exempt. For example, off-highway business use of gasoline and off-highway use of diesel fuel and kerosene generally are exempt from highway motor fuels excise tax. Similarly, States and local governments and certain other parties are exempt from such tax. Nonetheless, all such uses and parties are subject to the 0.1-cent-per-gallon LUST excise tax.

Liquefied natural gas, compressed natural gas, and liquefied petroleum gas are exempt from the LUST tax. Additionally, methanol and ethanol fuels produced from coal (including peat) are taxed at a reduce rate of 0.05 cents per gallon.

The LUST tax is scheduled to expire after September 30, 2011.<sup>54</sup>

#### *Overview of Leaking Underground Storage Tank Trust Fund expenditure provisions*

Amounts in the LUST Trust Fund are available, as provided in appropriations Acts, for purposes of making expenditures to carry out sections 9003(h)–(j), 9004(f), 9005(c), and 9010–9013 of the Solid Waste Disposal Act, as in effect on the date of enactment of Public Law 109–168. Any claim filed against the LUST Trust Fund

<sup>52</sup> See, 33 U.S.C. 2241(2).

<sup>53</sup> Secs. 4041, 4042, and 4081.

<sup>54</sup> For Federal budget scorekeeping purposes, the LUST Trust Fund tax, like other excise taxes dedicated to trust funds, is assumed to be permanent. See, Part III.A. for a description of these Federal budget rules.

may be paid only out of such fund, and the liability of the United States for claims is limited to the amount in the fund.

The monies in the LUST Trust Fund are used to pay expenses incurred by the Environmental Protection Agency (the "EPA") and the States for preventing, detecting, and cleaning up leaks from petroleum underground storage tanks, as well as programs to evaluate the compatibility of fuel storage tanks with alternative fuels, MTBE additives, and ethanol and biodiesel blends.

The EPA makes grants to States to implement the program, and States use cleanup funds primarily to oversee and enforce corrective actions by responsible parties. States and EPA also use cleanup funds to conduct corrective actions where no responsible party has been identified, where a responsible party fails to comply with a cleanup order, in the event of an emergency, and to take cost recovery actions against parties. In 2005, Congress authorized EPA and States to use trust fund monies for non-cleanup purposes as well, specifically for administration and enforcement of the leak prevention requirements of the UST program.<sup>55</sup> Although States report that trust fund allotments are insufficient to cover the costs of federal program mandates, annual appropriations have remained less than the annual amounts earned in interest on the LUST Trust Fund.

## **2. Oil Spill Liability Trust Fund excise tax**

### *Tax and exemptions*

The Oil Spill Liability Trust Fund is financed with revenues from an eight-cents-per-barrel<sup>56</sup> excise tax on crude oil received at a United States refinery and on imported petroleum products.<sup>57</sup> The tax rate is scheduled to increase to nine cents per barrel in calendar year 2017, after which it currently is scheduled to expire.<sup>58</sup> A back-up "use tax" is imposed on crude oil that is used in or exported from the United States before being received at a refinery (sec. 4611(b)). Crude oil is defined to include oil condensates and natural gas. Under a special rule, natural gasoline produced from natural gas at a refinery is treated as received at the refinery at the time of its production and is subject to tax at that time.

Unlike the excise taxes dedicated to transportation trust funds, the oil spill liability excise tax applies in Puerto Rico, all U.S. possessions, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands as well as in the 50 States and the District of Columbia.<sup>59</sup> The term "United States" is

<sup>55</sup> Pub. L. No. 109-58.

<sup>56</sup> A barrel equals 42 gallons.

<sup>57</sup> Sec. 4611(a). Petroleum products include crude oil (sec. 4612(a)(3)). Statutorily, the tax also applies to domestic crude oil exported from the United States before being received at a U.S. refinery (sec. 4611(b)(1)).

<sup>58</sup> For Federal budget scorekeeping purposes, the oil spill excise tax is assumed to be permanent. See, Part III.A., for a description of these Federal budget rules. Under prior law, the tax was required to terminate if the trust fund balance were to reach \$2.7 billion in a calendar quarter. That requirement was repealed in the Emergency Economic Stabilization Act of 2008 (Pub. L. No. 110-343, sec. 405(b)(1) Div. B).

<sup>59</sup> Revenues from the tax imposed in Puerto Rico and the U.S. Virgin Islands are retained in the Federal Treasury, unlike revenues from the excise tax on rum imported or brought in to the United States (and certain tobacco products produced in those possessions), which are "covered over" to the two possessions.

defined for purposes of this tax to include foreign trade zones and the U.S. continental shelf.

*Overview of the Oil Spill Liability Trust Fund provisions*

Operation of the Oil Spill Liability Trust Fund is governed by parallel provisions of the Code and authorizing statutes.<sup>60</sup> The Code provisions govern deposit of revenues into the Oil Spill Liability Trust Fund and approve general Oil Spill Liability Trust Fund expenditure programs. The authorizing statutes specify expenditure programs.

Amounts in the Oil Spill Liability Trust Fund are available, as provided in appropriation Acts or section 6002(b) of the Oil Pollution Act of 1990, for the following oil spill-related expenditures:

1. Payment of removal costs and other costs, expenses, claims, and damages under section 1012 of the 1990 Act;
2. Costs relating to oil pollution or the substantial threat of oil pollution (under sections 5 and 7 of the Intervention on the High Seas Act);
3. Payment of liabilities incurred by the revolving fund under section 311(k) of the Federal Water Pollution Control Act;
4. Payments for prevention, removal, and enforcement related to oil discharges (under section 311(b)–(d), (j), and (l) of the Federal Water Pollution Control Act);
5. Payment of liabilities incurred by the Deepwater Port Liability Fund; and
6. Payment of liabilities incurred by the Offshore Pollution Compensation Fund.

There is a general limit of \$1 billion per incident that may be paid out of the Oil Spill Liability Trust Fund, with costs of natural resource damage assessments and claims for any single incident limited to \$500 million. Except in the case of payments of oil removal costs, payments may be made from the Trust Fund only if the Fund maintains a minimum balance of \$30 million after such payment. Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of the Fund.

Under prior law, the Oil Spill Liability Trust Fund had the authority to borrow monies from the General Fund, as repayable advances, with a limit of \$1 billion of repayable advances at any one time. Such advances were to be repaid to the General Fund with interest. The authority to make advances to the Oil Spill Liability Trust Fund expired after December 31, 1994.

***3. Sport Fish Restoration and Boating Trust Fund excise taxes***

*In general*

The Sport Fish Restoration and Boating Trust Fund<sup>61</sup> is financed by revenues from three principal excise taxes.<sup>62</sup> First, revenue equivalent to the highway excise taxes collected on gasoline

<sup>60</sup> Sec. 9509 and 33 U.S.C. secs. 2701–2761, et. seq.

<sup>61</sup> Formerly the “Aquatic Resources Trust Fund.”

<sup>62</sup> In addition to the excise tax revenue sources, the Trust Fund receives revenue from import duties on fishing tackle and on yachts and pleasure craft.

and other motor fuels used in motorboats is transferred from the Highway Trust Fund to this trust fund in lieu of allowing refunds to consumers for this off-highway use.<sup>63</sup> Second, the trust fund receives revenues (also transferred from the Highway Trust Fund) equivalent to excise taxes collected on "small engine fuel." Small-engine fuel means gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment (i.e., non-commercial off-highway vehicles such as snowmobiles and small-engine outdoor power equipment such as snow blowers and lawn mowers).<sup>64</sup>

The third excise tax revenue source for the trust fund is imposed on manufacturers and importers of "sport fishing equipment."<sup>65</sup> The articles subject to tax, and the applicable tax rates, are shown in the following table.

*Articles subject to tax at 10 percent rate:*

Fishing rods and poles (and component parts therefor)<sup>66</sup>

Fishing reels

Fly fishing lines, and other fishing lines not over 130 pounds test

Fishing spears, spear guns, and spear tips

Items of terminal tackle, including leaders, artificial lures, artificial baits, and artificial flies, fishing hooks, bobbers, sinkers, snaps, drayles, and swivels<sup>67</sup>

Fish stringers

Creels

Bags, baskets, or other containers designed to hold fish

Portable bait containers

Fishing vests

Gaff hooks

Fishing hook disgorgers

Dressing for fishing lines and artificial flies

Fishing rod belts, fishing rodholders, fishing harnesses, fish fighting chairs, fishing outriggers, and fishing downriggers

*Articles subject to tax at 3 percent rate:*

Tackle boxes

Electric outboard motors

Parts and accessories sold by manufacturers or importers in connection with the sale of any taxable article are included in the tax base for the article.

*Overview of Sport Fish Restoration and Boating Trust Fund expenditure provisions*

Operation of the Sport Fish Restoration and Boating Trust Fund is governed by parallel provisions of the Internal Revenue Code

<sup>63</sup> The first \$1 million of such revenues is transferred to the Land and Water Conservation Fund, discussed in Part I.A.4. Off-highway business use generally is exempt from the highway gasoline excise tax, and off-highway use generally is exempt from those taxes on diesel fuel and kerosene (sec. 4082, 4041, and 6421).

<sup>64</sup> The fuels subject from which tax revenues are transferred to the Trust Fund are subject to an additional 0.1-cent-per-gallon excise tax for the LUST Trust fund in the same manner as other highway motor fuels.

<sup>65</sup> Sec. 4161.

<sup>66</sup> The tax on fishing rods and poles is limited to a maximum of \$10 per taxable article.

<sup>67</sup> Terminal tackle does not include natural bait or any item of terminal tackle designed for use and ordinarily used on fishing lines over 130 pounds test.



and authorizing statutes.<sup>68</sup> The Code provisions govern deposit of revenues into the trust fund and approve general expenditure programs. The authorizing statutes specify expenditure programs.

Income received in this trust fund in any fiscal year is to be allocated to eligible programs in the following fiscal year. The following eight programs are funded from the trust fund:<sup>69</sup>

1. Coastal wetlands conservation and restoration programs, the majority of which is for Corps of Engineers Louisiana Coastal Wetlands Restoration;
2. Recreational boating safety grant program to the States, administered by the U.S. Coast Guard's Office of Boating Safety;
3. Grant program for states to construct sewage pump-out and dump stations for recreational boating sewage disposal;
4. State grant programs for construction or upgrade of docking facilities for transient large recreational boats (26 feet or more in length);
5. Grants for national aquatic resource outreach and communications programs to encourage participation in recreational boating and fishing and greater public involvement in aquatic stewardship and to improve communication with anglers, boaters, and the general public;
6. State conservation grants for wildlife and sport fish restoration;
7. Interstate fishery commissions and the Sport Fishing and Boating Partnership Council; and
8. After the previously listed programs are funded, the remaining amounts are to be used for State grants for sport fish restoration programs, with 60% of the grants based on the number of anglers and 40 percent on its land and water area.

#### **4. *Land and Water Conservation Fund (Federal Aid to Wildlife Restoration Program) and dedicated excise taxes***

##### *In general*

The Federal Aid to Wildlife Program (the "Fund"), although not a formal trust fund, receives revenues from three dedicated excise tax sources. First, the Fund receives \$1 million per year of the excise taxes imposed on motorboat fuels. Second, revenues from an 11-percent manufacturers' or importers' excise tax on certain bows and arrows and taxes on certain "regular" firearms are dedicated to the Fund. The latter two excise taxes are outlined in the following table.

<sup>68</sup>Sec. 9504. 16 U.S.C. sec. 777, 16 USC sec. 3951, et. seq., and Pub. L. No. 105-178, sec. 7204.

<sup>69</sup>See, Ranger, *The Sport Fish Restoration and Boating Trust Fund* (CRS Report RS22060, January 25, 2010).

Tax (and Code section)	Tax rates
<b>Bows and arrows (sec. 4161)</b>	
Bows having a peak draw weight of 30 pounds or more .....	11 percent of price
Archery equipment <sup>70</sup> .....	11 percent of price
Arrow shafts for use as part of an arrow (a) that measures at least 18 inches in length, or (b) if shorter, that is suitable for use with a taxable bow <sup>71</sup> .....	45 cents per shaft (2011) <sup>72</sup>
<b>Regular firearms and ammunition (sec. 4181) <sup>73</sup></b>	
Pistols and revolvers .....	10 percent of price
Other firearms <sup>74</sup> .....	11 percent of price
Shells and cartridges .....	11 percent of price

*Overview of Federal Aid to Wildlife Restoration Fund provisions*

*In general.*—The Federal Aid to Wildlife Restoration Act of September 2, 1937, commonly referred to as the “Pittman-Robertson Act” <sup>75</sup> became effective on July 1, 1938. As amended by the Dingell-Johnson Act and other amendments, the program provides dedicated funds in the Treasury for Federal aid to States for management and restoration of fish and game wildlife (including acquisition and improvement of wildlife habitat), hunter education programs (including operation of target ranges), hunter safety programs, and development of fish and wildlife management plans.

*Specific Federal Wildlife Restoration Fund expenditure purposes.*—The Federal Aid to Wildlife Restoration Act authorizes appropriations from the Fund attributable to revenues from Federal excises on regular firearms (rifles, shotguns, pistols and revolvers), ammunition, and bows and arrows received during the prior fiscal year to be made available until expended. Any State-apportioned amounts that are unspent or unobligated at the end of the following fiscal year may be used by the Secretary of the Interior to carry out the provisions of the Migratory Bird Conservation Act.

<sup>70</sup> Taxable archery equipment is any part or accessory suitable for inclusion in or attachment to a taxable bow, and any quiver, broadhead, or point suitable for use with a taxable bow.

<sup>71</sup> The tax applies to shafts sold separately or as part of a finished arrow.

Otherwise taxable shafts consisting of all natural wood with no laminations or artificial means of enhancing the spine, which are designed to be (or are) incorporated into a finished arrow measuring 5/16 of an inch or less in diameter and which are not suitable for use with a taxable bow are exempt from tax.

<sup>72</sup> The tax rate is adjusted annually for inflation (measured by the CPI).

<sup>73</sup> Otherwise taxable firearms manufactured by persons that manufacture or import fewer than 50 such articles during a calendar year are exempt from tax. Sales to the U.S. Department of Defense also are exempt.

<sup>74</sup> “Other firearms” are firearms (other than pistols and revolvers) such as regular rifles and shotguns that are exempt from the “non-regular firearms” excise tax of sec. 5811 of the National Firearms Act. See, Part II.C.

<sup>75</sup> 16 U.S.C. 669–669i; 50 Stat. 917.

Monies attributable to the excise tax on sporting firearms (rifles and shotguns) and ammunition are appropriated to the Secretary of the Interior and apportioned to States for paying up to 75 percent of the approved wildlife restoration projects (including acquisition and development of access facilities for public use) and hunter education programs.

One-half of the monies accruing to the Fund from the excise taxes on pistols, revolvers, and bows and arrows are to be apportioned among the states based on population. One half of the other 50 percent of the monies is apportioned among the States based on geographic size, and the balance is apportioned based on the number of paid hunting license holders in each State. The States may use such apportioned amounts to finance up to 75 percent of the costs of the approved plan or project (not to include law enforcement or public relation costs), i.e., 25 percent must come from State and local government sources. States may use funds apportioned on the basis of population for up to 75 percent of the costs of hunter safety programs and the construction and operation of public target ranges.

Federal administrative expenses are allowed from the Fund monies. Limited monies are also available for such aid to U. S. territories and possessions. For fiscal year 2003, \$8,212,000 of the monies in the Fund may be used for administering the Federal Aid in Wildlife Restoration Act and the Migratory Bird Conservation Act. This amount is indexed for inflation for fiscal years 2004 and thereafter.<sup>76</sup> For fiscal year 2010, the administration cap amount was \$9.798 million.

## **C. Excise Taxes Dedicated to Health-Related Trust Funds**

### ***1. Black Lung Disability Trust Fund excise taxes***

#### *Coal excise tax*

To finance the Black Lung Disability Trust Fund, a producer (manufacturer) excise tax is imposed on coal (other than lignite) mined in the United States.<sup>77</sup> The present tax rate is \$1.10 per ton for coal from underground mines and 55 cents per ton for coal from surface mines. Both rates are limited to a maximum of 4.4 percent of the coal's selling price. The coal excise tax rates are scheduled to decline to 50 cents per ton for underground mines and 25 cents per ton for surface mines (both limited to two percent of the coal's selling price) on the earlier of January 1, 2019 or the first January 1 after which there is no balance of repayable advances that have been made to the Trust Fund and no unpaid interest on previous such advances.<sup>78</sup>

The tax does not apply to lignite<sup>79</sup> or to coal mined in the United States that is to be exported.<sup>80</sup>

<sup>76</sup> 16 U.S.C. sec. 669c(a)(1)(B).

<sup>77</sup> Sec. 4121.

<sup>78</sup> Sec. 4121(e).

<sup>79</sup> Sec. 4121(c).

<sup>80</sup> See, *Ranger Fuel Corp. v. U.S.*, 33 F.Supp.2d 466 (E.D. Va., 1998).

*Black lung benefit trusts and penalty excise taxes*

Present law allows coal mine operators that are liable for paying black lung benefits to miners or their survivors to fund that liability through deductible contributions to a qualified tax-exempt trust.<sup>81</sup> To qualify, the trust must be established for the sole purpose of satisfying the operator's liability under Black Lung Acts, paying premiums for insurance exclusively covering such liability, and paying administrative expenses of the trust.

The Code imposes three "penalty excise taxes" to regulate potential misuse of monies in these trusts. Revenues from the penalty excise taxes are dedicated to the Black Lung Disability Trust Fund. Because raising revenue is not the primary purpose of these taxes, revenues raised by the penalty excise taxes historically have been relatively small. The following table summarizes these penalty excise taxes.

Tax (and Code section)	Tax rates
Self-dealing (sec. 4951) <sup>82</sup>	<p><i>Initial tax.</i>—10 percent of the amount of self-dealing on the self dealer; 2.5 percent of such amount on the trustee</p> <p><i>Additional tax.</i>—If not corrected, additional tax of 100 percent of amount involved on the self dealer; 50 percent of such amount on the trustee</p>
Taxable expenditures (sec. 4952) <sup>83</sup>	<p><i>Initial tax.</i>—10 percent of taxable expenditure on the fund; 2.5 percent of such amount on the trustee</p> <p><i>Additional tax.</i>—If not corrected, additional tax of 100 percent of amount of expenditure on the fund; 50 percent of such amount on the trustee</p>
Excess contributions to benefit trust (sec. 4953)	Five percent of excess contribution on the contributor

*Overview of Black Lung Disability Trust Fund expenditure provisions*

*In general.*—Operation of the Black Lung Disability Trust Fund is governed by parallel provisions of the Code and authorizing statutes.<sup>84</sup> The Code provisions govern deposit of revenues into the trust fund and approve general expenditure programs. The authorizing statutes specify expenditure programs.

<sup>81</sup> Sec. 501(c)(21).

<sup>82</sup> Self-dealing is defined as sale, leasing, etc. of real or personal property, lending of money or other extension of credit, furnishing of goods, services or facilities, and payment of compensation between a benefit trust and a disqualified person. A disqualified person is a contributor to the benefit trust, a trustee, or an owner of more than 10 percent of the combined voting power of a corporation, the profits interest of a partnership, or the beneficial interest of a trust or unincorporated entity that is a contributor to the benefit trust. Officers, directors, and employees of contributors to the benefit trust and spouses, family members, and certain related corporations and trusts also are disqualified persons.

<sup>83</sup> A taxable expenditure is any expenditure other than for a purpose described in sec. 501(c)(21).

<sup>84</sup> Sec. 9501 and 30 U.S.C. sec. 901 et seq.

*Black Lung Disability Trust Fund expenditure purposes.*—Amounts in the trust fund are available, as provided in appropriation Acts, for the following purposes:

1. Payment of benefits under section 422 of the Black Lung Benefits Act in cases where the Secretary of Labor determines that (a) the coal mine operator liable for the payment of such benefits has not commenced payment of benefits within 30 days after the date of an initial determination of eligibility or has not made a payment within 30 days after the payment is due, or (b) there is no operator who is liable for payment of such benefits;

2. Payment of obligations incurred by the Secretary of Labor for claims of miners or their survivors where the miner's last coal mine employment was before January 1, 1970;

3. Repayment to the General Fund of amounts paid by the Secretary of Labor for claims under part C of the Black Lung Benefits Act that were attributable to eligibility between January 1, 1974–March 31, 1978;

4. Repayment of advances (and interest on advances) to the General Fund;

5. Payment of administrative expenses incurred on or after March 1, 1978, by the Department of Labor or Department of Health and Human Services under Part C of the Black Lung Benefits Act (other than sections 427(a) or 433), or by the Department of the Treasury in administering the excise tax and the Trust Fund;

6. Reimbursement of operators for amounts paid (other than for penalties or interest) before April 1, 1978, in satisfaction of claims of miners employed before Payment January 1, 1970; and

7. Reimbursement of operators and insurers for amounts paid (other than for penalties, interest, or attorney's fees) for any claim denied before March 1, 1978, and which is or has been approved under section 435 of the Black Lung Benefits Act.

## **2. Vaccine Injury Compensation Trust Fund excise taxes**

### *In general*

A 75-cents-per-dose<sup>85</sup> excise tax is imposed on the sale or use by a manufacturer or importer of listed vaccines to finance the Vaccine Injury Compensation Trust Fund program.<sup>86</sup> The tax is imposed on sale or use by private parties and governmental entities, including the Federal, State, and local governments. The tax further is imposed within the 50 States and the District of Columbia and in Puerto Rico, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific, and all other U.S. possessions.

The following table lists the currently taxable vaccines.

<sup>85</sup> Vaccines comprised of more than one taxable component vaccine are taxed as if the components were separate doses.

<sup>86</sup> Sec. 4131.

<b>Taxable vaccines:</b>
Any vaccine containing diphtheria toxoid
Any vaccine containing tetanus toxoid
Any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens
Any vaccine against measles, mumps, or rubella
Any vaccine containing polio virus
Any vaccine against hepatitis A, hepatitis B, chicken pox, or rotavirus gastroenteritis
Any conjugate vaccine against streptococcus pneumoniae
Any trivalent vaccine against influenza
Any meningococcal vaccine
Any vaccine against the human papillomavirus

*Overview of Vaccine Injury Compensation Trust Fund provisions*

Operation of the Vaccine Injury Compensation Trust Fund is governed by parallel provisions of the Code and authorizing statutes.<sup>87</sup> The Code provisions govern deposit of revenues into the trust fund and approve general expenditure programs. The authorizing statutes specify expenditure programs.

Amounts in the Vaccine Injury Compensation Trust Fund are available, as provided in appropriations Acts, only for the following:

1. Payment of compensation under subtitle 2 of Title XXI of the Public Health Service Act (as in effect on October 18, 2000) for vaccine-related injury or death with respect to any vaccine which is (a) administered after September 30, 1988, and (b) a taxable vaccine (defined in sec. 4132(a)(1)) at the time compensation is paid; or
2. Payment of expenses of administration (not to exceed \$9.5 million for any fiscal year) incurred by the Federal Government in administering subtitle 2.

Liability of the United States relating to vaccine injury compensation is limited to the amount in the Vaccine Injury Compensation Trust Fund, and any claim filed against the fund may be paid only out of the fund.

<sup>87</sup> Sec. 9510 and 42 U.S.C. sec. 300aa.

### ***3. Patient-Centered Outcomes Research Trust Fund excise taxes***

#### *In general*

The “Patient Protection and Affordable Care Act,” as amended by the “Health and Education Reconciliation Act of 2010” (the “Health-Care Reform Act”)<sup>88</sup> imposed two new excise taxes, or “fees” on insured and self-insured health plans.<sup>89</sup> Revenues from the taxes are dedicated to the Patient-Centered Outcomes Research Trust Fund. These excise taxes become effective for policy years ending after September 30, 2012.

The tax rates are phased in, beginning at \$1.00 for “specified health insurance policies” for insured plans in FY 2013 and \$2.00 for such policies in FY 2014. For self-insured plans, the tax rates are \$1.00 for self-insured plans in FY 2013 and \$2.00 in FY 2014. In both cases, the tax is determined by applying the applicable rate to the average number of lives covered under the policy or plan. After FY 2014, the tax rate is indexed to reflect projected annual increases in the per capita amount of national health expenditures.

The taxes are imposed on all persons issuing taxable insurance policies or providing self-insured plans, including governmental entities (other than Medicare, Medicaid, the State Children’s Health Insurance Program (“SCHIP”), and Federal programs for providing medical care (other than through insurance policies) to members of the Armed Forces, veterans, or members of Indian tribes). The taxes further are imposed both within the 50 States and the District of Columbia, and in all U.S. possessions (including Puerto Rico, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific).

A “specified health insurance policy” is an accident or health insurance policy that is issued with respect to individuals residing in the United States.<sup>90</sup>

A taxable self-insured plan is any plan providing accident or health coverage if any portion of the coverage is provided other than through an insurance policy and such plan is established or maintained by (1) an employer for benefit of its employees, (2) an employee organization for the benefit of its members (or former members), (3) a Voluntary Employee Beneficiary Association (“VEBA”) under section 501(c)(9), (4) any section 501(c)(6) organization, or (5) a multiple employer welfare arrangement or rural electric or telephone cooperative.

#### *Overview of Patient-Centered Outcomes Research Trust Fund provisions*

The Health-Care Reform Act establishes the Patient-Centered Outcomes Research Institute, a non-government, non-profit corporation to support research, evidence synthesis, and dissemination

<sup>88</sup> Pub. L. No. 111–148 and Pub. L. No. 111–152 (2010).

<sup>89</sup> Secs. 4375 and 4376.

<sup>90</sup> A specified health insurance policy does not include a policy substantially all of the benefits of which are excepted benefits under section 9832(c). Examples of excepted benefits are coverage for only accident or disability insurance, or any combination thereof, liability insurance, workers’ compensation or similar insurance, automobile medical payment insurance, coverage for on-site medical clinics, limited scope dental or vision benefits, benefits for long-term care, nursing home care, community-based care, coverage for only a specified disease or illness, hospital indemnity or other fixed indemnity insurance, and Medicare supplemental coverage.

of research findings on “the manner in which diseases, disorders, and other health conditions can effectively and appropriately be prevented, diagnosed, treated, monitored and managed.” The Patient-Centered Outcomes Research Institute is funded through a newly established Patient-Centered Outcomes Research Trust Fund.<sup>91</sup>

#### ***4. Annual fee on branded prescription pharmaceutical manufacturers and importers***

An annual fee is imposed on certain manufacturers and importers of branded prescription drugs for sale to any specified government program or pursuant to coverage under any such program. Fees collected are credited to the Medicare Part B trust fund.

The aggregate annual fee imposed on all covered manufacturers and importers is \$2.5 billion for calendar year 2011, \$2.8 billion for calendar years 2012 and 2013, \$3 billion for calendar years 2014 through 2016, \$4 billion for calendar year 2017, \$4.1 billion for calendar year 2018, and \$2.8 billion for calendar year 2019 and thereafter. The aggregate fee is apportioned among the covered manufacturers and importers each year based on their relative share of branded prescription drug sales taken into account during the previous calendar year.

A covered manufacturer’s or importer’s relative market share for a calendar year is the manufacturer’s or importer’s branded prescription drug sales taken into account during the preceding calendar year as a percentage of the aggregate branded prescription drug sales of all manufacturers and importers taken into account during the preceding calendar year. Sales taken into account during any calendar year with respect to a manufacturer or importer is: (1) zero percent of sales not more than \$5 million; (2) 10 percent of sales over \$5 million but not more than \$125 million; (3) 40 percent of sales over \$125 million but not more than \$225 million; (4) 75 percent of sales over \$225 million but not more than \$400 million; and (5) 100 percent of sales over \$400 million.

Branded prescription drug sales are sales of branded prescription drugs made to any specified government program, or pursuant to coverage under any such program. The term “branded prescription drug” includes any drug which is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act and for which an application was submitted under section 505(b) of such Act. Branded prescription drugs also include any biological product the license for which was submitted under section 351(a) of the Public Health Service Act. Branded prescription drug sales does not include sales of any drug or biological product with respect to which an orphan drug tax credit was allowed for any taxable year under section 45C. The exception for orphan drug sales does not apply to any drug or biological product after such drug or biological product is approved by the Food and Drug Administration for marketing for any indication other than the rare disease or condition with respect to which the section 45C credit was allowed.

Specified government programs include: (1) the Medicare Part D program under part D of title XVIII of the Social Security Act; (2)

<sup>91</sup> Sec. 9512.



the Medicare Part B program under part B of title XVIII of the Social Security Act; (3) the Medicaid program under title XIX of the Social Security Act; (4) any program under which branded prescription drugs are procured by the Department of Veterans Affairs; (5) any program under which branded prescription drugs are procured by the Department of Defense; or (6) the TRICARE retail pharmacy program under section 1074g of title 10, United States Code.

For purposes of procedure and administration under the rules of Subtitle F of the Code, the fee under this provision is treated as an excise tax with respect to which only civil actions for refund under Subtitle F apply. The Secretary of the Treasury may redetermine the amount of a covered entity's fee for any calendar year for which the statute of limitations remains open.

For purposes of section 275, relating to the nondeductibility of specified taxes, the fee is considered to be a nondeductible tax described in section 275(a)(6).

The fees apply to covered manufacturers and importers for calendar years beginning after December 31, 2010.

## **II. GENERAL FUND EXCISE TAXES**

### **A. Principal General Fund Excise Taxes**

#### ***1. Distilled spirits, wine and beer excise taxes***

##### *In general*

Federal excise taxes on alcohol were first imposed by the Distilled Spirits Tax Act of 1791, but the origins of most of the excise taxes on distilled spirits, wine, and beer dates from the 1860s when they were enacted to fund the Federal Government's costs of the Civil War. Under present law, taxes are imposed at different rates for distilled spirits, wine, and beer and are imposed on these products when produced or imported. Generally, these excise taxes are administered and enforced by the Alcohol and Tobacco Tax and Trade Bureau (TTB), Department of the Treasury, except these taxes on imported bottled distilled spirits, wine, and beer are collected by the Customs and Border Protection Bureau (CBP), Department of Homeland Security, under delegation by the Secretary of the Treasury.

The following table outlines the present rates of tax on distilled spirits, wine, and beer:

Tax (and Code section)	Tax rates
<b>Distilled spirits (sec. 5001)</b> .....	\$13.50 per proof gallon <sup>92</sup>
<b>Wines (sec. 5041)</b>	
"Still wines" <sup>93</sup> not more than 14 percent alcohol .....	\$1.07 per wine gallon <sup>94</sup>
"Still wines" more than 14 percent, but not more than 21 percent, alcohol .....	\$1.57 per wine gallon
"Still wines" more than 21 percent, but not more than 24 percent, alcohol .....	\$3.15 per wine gallon
"Still wines" more than 24 percent alcohol .....	\$13.50 per proof gallon (taxed as distilled spirits)
Champagne and other sparkling wines .....	\$3.40 per wine gallon
Artificially carbonated wines .....	\$3.30 per wine gallon
Hard apple cider <sup>95</sup> .....	\$0.226 per wine gallon
<b>Beer (sec. 5051)</b> .....	\$18 per barrel (31 gallons) generally

The liability for the excise tax on distilled spirits comes into existence at the moment the alcohol is produced but is not determined and payable until the bottled distilled spirits are removed from the bonded premises of the distilled spirits plant. The liability for the excise taxes on wine and beer also come into existence when the alcohol is produced but is not payable until the wine or beer is removed from the bonded wine cellar or winery or brewery for consumption or sale. Generally, bulk distilled spirits and bulk and bottled wine may be transferred in bond between bonded premises and beer may be transferred between commonly owned breweries without payment of the tax; however, the tax liability follows these products. Imported bulk distilled spirits, bulk natural wine, and bulk beer may be released from customs custody without payment of the tax and transferred in bond to a distillery, winery, or brewery. Distilled spirits, wine, and beer may be exported without payment of the tax and these products may be withdrawn without payment of tax or free of tax from the production facility for certain authorized uses, including industrial uses and non-beverage uses.

<sup>92</sup> A proof gallon is a U.S. liquid gallon consisting of 50 percent alcohol.

<sup>93</sup> A "still wine" is a non-carbonated wine. Most common table wines are still wines.

<sup>94</sup> A wine gallon is a U.S. liquid gallon.

<sup>95</sup> Hard apple cider is defined as apple cider otherwise classified as a still wine, the alcohol content of which is at least one-half of one percent but less than seven percent by volume.

A portion of the revenues from the distilled spirits excise tax imposed on rum imported or brought into<sup>96</sup> the United States (less certain administrative costs) is transferred ("covered over") to Puerto Rico and the U.S. Virgin Islands.<sup>97</sup> The amount covered over is \$10.50 per proof gallon (\$13.25 per proof gallon during the period from July 1, 1999, through December 31, 2011).

Eligible distilled spirits wholesale distributors and distillers receive an income tax credit for the average cost of carrying previously imposed excise tax on beverages stored in their warehouses.<sup>98</sup>

*Reduced rates and exemptions for certain wine and beer producers*

Domestic wineries having aggregate annual production not exceeding 250,000 gallons receive a credit against the wine excise tax equal to 90 cents per gallon (the amount of a wine tax increase enacted in 1990) on the first 100,000 gallons of wine removed during a calendar year.<sup>99</sup> The credit is reduced by one percent for each 1,000 gallons produced in excess of 150,000 gallons. The credit does not apply to champagne and other sparkling wines. The credit rate is 5.6 cents per gallon for hard apple cider. Production of hard cider and other wines produced by a qualifying winery are aggregated in applying the per-winery volume limits of the credit.

Small domestic brewers are subject to a reduced tax rate of \$7 per barrel on the first 60,000 barrels of beer removed each year.<sup>100</sup> Small brewers are defined as brewers producing fewer than two million barrels of beer during a calendar year. The credit reduces the effective per-gallon tax rate from approximately 58 cents per gallon to approximately 22.6 cents per gallon for this beer.

Individuals may produce limited quantities of wine and beer for personal or family use without payment of tax during each calendar year. The limits for each beverage are 200 gallons per calendar year for households of two or more adults and 100 gallons per calendar year for single-adult households.

## **2. Tobacco excise taxes**

*In general*

Excise taxes are imposed on tobacco products and cigarette papers and tubes that are manufactured or imported into the United States. "Tobacco products" means cigars, cigarettes, smokeless tobacco (snuff and chewing tobacco), pipe tobacco, and roll your own tobacco. Processed tobacco is regulated under the internal revenue laws but no excise tax is imposed on it. The tax liability comes into existence when the domestic tobacco products are manufactured and is determined and payable when the tobacco products or cigarette papers and tubes are removed in packages from the bonded premises of the manufacturer. Manufacturers and export warehouse proprietors are subject to an annual special (occupational)

<sup>96</sup> Because Puerto Rico is inside U.S. customs territory, articles entering the United States from that commonwealth are "brought into" rather than "imported into" the U.S.

<sup>97</sup> Sec. 7652.

<sup>98</sup> Sec. 5011. Section 5011 is administered and enforced by the Internal Revenue Service.

<sup>99</sup> Sec. 5041(c).

<sup>100</sup> Sec. 5051(a)(2).

tax. These excise taxes are administered and enforced by TTB, except that the taxes on imported tobacco products and cigarette papers and tubes are collected by CBP, under a delegation from the Secretary of the Treasury, except where such imported products are transferred in bond to the bonded premises of a manufacturer of tobacco products or cigarette papers and tubes or export warehouse proprietor. Tobacco products and cigarette papers and tubes may be exported from the United States without payment of tax.

Tax (and Code section)	Tax rates
Tobacco products (sec. 5701)	
"Small cigarettes" (weighing three pounds or less per thousand) .....	\$50.33 per thousand <sup>101</sup>
"Large cigarettes" (weighing more than three pounds per thousand) .....	\$105.69 per thousand <sup>102</sup>
"Small cigars" (weighing three pounds or less per thousand) .....	\$50.33 per thousand
"Large cigars" (weighing more than three pounds per thousand).	52.75 percent of manufacturer's sales price, but not more than 40.26 cents per cigar <sup>103</sup>
Snuff .....	\$1.51 per pound (proportionate rate on fractional parts of a pound)
Chewing tobacco .....	50.33 cents per pound (proportionate rate on fractional parts of a pound)
Pipe tobacco .....	\$2.8311 per pound (proportionate rate on fractional parts of a pound)
"Roll-your-own" tobacco .....	\$24.78 per pound (proportionate rate on fractional parts of a pound)
Cigarette papers <sup>104</sup> .....	3.15 cents for each 50 papers (or fractional part thereof)
Cigarette tubes .....	6.30 cents for each 50 tubes (or fractional part thereof)
Manufacturers and export warehouse proprietors occupational tax (sec. 5731).	\$1,000 per taxable year, per premise (\$500 per year, per premise for businesses having gross receipts of less than \$500,000 in the preceding taxable year) <sup>105</sup>

### 3. Communications excise tax

Local telephone service, teletypewriter service, and prepaid telephone cards (that are expressly for local-only service) are subject to a three-percent excise tax.<sup>106</sup> The taxes on local telephone service and teletypewriter service are imposed on the amount billed to consumers. The consumer is liable for the tax, with service pro-

<sup>101</sup> The tax rate equals \$1.0066 per pack of 20 cigarettes.

<sup>102</sup> Large cigarettes more than 6.5 inches long are taxed as small cigarettes, counting each 2.75 inches in length (or fraction) as one cigarette.

<sup>103</sup> The price of large cigars on which tax is based is inclusive of any charge for putting the cigar into a condition ready for sale, and is exclusive of (1) Federal excise tax and (2) separately stated retail sales taxes imposed by any State or local government (regardless of whether the vendor or purchaser is liable for the tax).

<sup>104</sup> Cigarette papers measuring more than 6.5 inches in length are taxed at the rate prescribed, counting each 2.75 inches (or fraction thereof) as one cigarette paper. An identical rule applies to cigarette tubes more than 6.5 inches in length.

<sup>105</sup> The taxable year is July 1 through June 30.

viders being responsible for collecting and remitting tax to the Government. The tax on prepaid telephone cards is based on the face amount of the card and is imposed when the cards are transferred from a telecommunications carrier to any person who is not such a carrier.

Statutorily, the tax applies to "toll," or long distance, telephone service as well. However, toll service is defined in the Code as service for which charges vary based on *both* distance and elapsed time. Present long distance service typically does not vary based on both of these elements; therefore, tax is not imposed on such service. After July 31, 2006, collectors stopped collecting and paying over the tax on long distance service. The Internal Revenue Service allowed taxpayers to claim income tax credits for past excise tax collected on non-taxable service that was billed after February 28, 2003, and before August 1, 2006, on their 2006 Federal income tax returns.<sup>107</sup>

#### 4. Gas Guzzler excise tax

Automobiles with a fuel efficiency rating less than 22.5 miles per gallon ("mpg") are subject to an excise tax ranging from \$1,000 to \$7,700.<sup>108</sup> The tax is imposed on manufacturers and importers. Taxable automobiles include four-wheeled highway vehicles rated at 6,000 pounds unloaded gross vehicle weight or less. The following table outlines the rates imposed on vehicles at different fuel efficiency levels.

Fuel economy rating (in mpg)	Tax per vehicle
At least 22.5 .....	No tax
At least 21.5, but less than 22.5 .....	\$1,000
At least 20.5 but less than 21.5 .....	\$1,300
At least 19.5 but less than 20.5 .....	\$1,700
At least 18.5 but less than 19.5 .....	\$2,100
At least 17.5 but less than 18.5 .....	\$2,600
At least 16.5 but less than 17.5 .....	\$3,000
At least 15.5 but less than 16.5 .....	\$3,700
At least 14.5 but less than 15.5 .....	\$4,500
At least 13.5 but less than 14.5 .....	\$5,400
At least 12.5 but less than 13.5 .....	\$6,400
Less than 12.5 .....	\$7,700

Fuel economy ratings are determined by the Environmental Protection Agency based upon the average number of miles traveled by the automobile per gallon of gasoline.

Exemptions are provided for automobiles classified as non-passenger vehicles under rules prescribed by the Department of Transportation for purposes of section 501 of the Motor Vehicles Information and Cost Savings Act (as in effect on November 9, 1978), emergency vehicles used as ambulances or ambulance/hearses, police and law-enforcement vehicles, and other emergency-use vehicles specified in Treasury Department regulations. The Treasury Department further has excluded certain sport utility vehicles (and

<sup>106</sup> Sec. 4251.

<sup>107</sup> Notice 2006-50, 2006 I.R.B. 25, and Notice 2007-11, 2007 I.R.B. 261.

trucks) from the term “automobile” as defined for purposes of the tax.

### **5. Water Transportation Passenger excise tax**

A \$3 per passenger retail excise tax is imposed on “covered voyages” on commercial vessels.<sup>109</sup> The ship operator is liable for payment of the tax. A covered voyage is defined generally as any voyage during which passengers embark or disembark the vessel in the United States, and (1) which extends for one or more nights on a passenger vessel having berth or stateroom accommodations for more than 16 passengers, or (2) on which passengers may engage in gambling aboard the vessel while beyond the territorial waters of the United States (i.e., more than three nautical miles from shore). The tax does not apply to voyages on any vessel owned or operated by the United States or a State or any agency or political subdivision, nor does it apply to a voyage of fewer than 12 hours between two U.S. ports.

### **6. Ozone-Depleting Chemicals excise tax**

#### *Chemicals*

A manufacturers and importers excise tax is imposed on listed ozone-depleting chemicals sold or used in the United States.<sup>110</sup> The tax rate per pound of listed chemicals is determined as the product of a base tax amount and each chemical’s statutorily prescribed “ozone depleting factor.” The base tax amount is \$12.55 for calendar year 2011; this amount increases by \$0.45 each year. The following table outlines the chemicals subject to tax, their statutorily prescribed ozone-depleting factors, and the 2011 tax applicable to those chemicals.

Chemicals	Ozone-depleting factor	2011 Tax per pound
CFC-11, CFC-12, CFC-13, CFC-111, CFC-112, CFC-114, and CFC-211 through CFC-217 .....	1.0	\$12.55
CFC-113 .....	0.8	\$10.04
CFC-115 .....	0.6	\$7.53
Halon-1211 .....	3.0	\$37.65
Halon-1301 .....	10.0	\$125.50
Halon-2402 .....	6.0	\$75.30
Carbon tetrachloride .....	1.1	\$13.80
Methyl chloroform .....	0.1	\$1.25

Ozone-depleting chemicals that are diverted or recovered in the United States as part of a recycling process (and not as part of an original manufacturing or production process) and certain exported chemicals are exempt from tax. Chemicals used as propellants in metered-dose inhalers are exempt from tax.

<sup>109</sup> Sec. 4471.

<sup>110</sup> Sec. 4681.



### *Imported taxable products*

Imported products manufactured or produced using taxable ozone-depleting chemicals as materials are subject to tax at a rate that would have been imposed on the ozone-depleting chemicals had those chemicals used been sold in the United States. If an importer does not furnish adequate information to the Treasury Department to determine a tax rate for a product, the assumed rate is one percent of the value of the imported product.

## **B. Foreign Procurement Excise Tax**

Foreign persons are subject to an excise tax of two percent on any specified procurement payment.<sup>111</sup> A specified procurement payment is a payment made by the United States government or its agents, pursuant to a contract under which the United States purchases goods or services from a source in a country that is not party to an international government procurement agreement ("GPA") with the United States. Goods are from such a source if produced or manufactured in such country. Payments for services are subject to the tax if the services are provided in a country that is not a party to such an agreement with the United States. If the origin of the goods or services is in a country that is not a member of the GPA, payments made to a foreign parent located in a country that is a member of the GPA are subject to the excise tax.

The excise tax is imposed on the gross amount of the payment under contracts entered into on or after January 2, 2011.<sup>112</sup> It is treated as an income tax solely for purposes of subtitle F of the Internal Revenue Code, permitting assessment and collection of the amounts in a manner similar to the withholding taxes under chapter 3.

## **C. General Fund Excise Taxes Related to Health Care<sup>113</sup>**

### **1. Excise Tax on Indoor Tanning Services**

A retail sales tax is imposed on indoor tanning services.<sup>114</sup> The tax rate is 10 percent of the amount paid for such services. Consumers are liable for the tax, with service providers being responsible for collecting and remitting the tax to the Federal Government.<sup>115</sup> The tax applies to tanning services provided after June 30, 2010.

Indoor tanning services are services employing any electronic product designed to induce skin tanning and which incorporate one or more ultraviolet lamps with wavelengths in air between 200 and 400 nanometers. Taxable services do not include phototherapy service performed by a licensed medical professional.

<sup>111</sup> Sec. 5000C.

<sup>112</sup> The provision was enacted as section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. No. 111-347. The President signed the bill on January 2, 2011.

<sup>113</sup> For purposes of this pamphlet, Pub. L. No. 111-148 (2010), the "Patient Protection and Affordable Care Act" and Pub. L. No. 111-152 (2010), the "Healthcare and Education Reconciliation Act of 2010" are collectively referred to as the "Health-Care Reform Act." The annual fee on branded prescription pharmaceutical manufacturers and importers, added by the Health-Care Reform Act, is discussed, *supra*, in I.C.4, relating to excise taxes dedicated to health-related trust funds.

<sup>114</sup> Sec. 5000B.

<sup>115</sup> This structure is like that of the communications excise tax on local telephone service and the domestic air passenger excise tax.

## ***2. Excise Tax on Certain Medical Devices***

A 2.3-percent excise tax is imposed on the sale of medical devices by the manufacturer or importer. "Medical device" is defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act.<sup>116</sup> Section 201(h) defines "device" as an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory which is (1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them, (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (3) intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

The tax does not apply to eyeglasses, contact lenses, hearing aids, or to other medical devices specified by the Treasury Department to be generally sold in retail establishments or over the Internet to individuals for their personal use. Examples of such items could be pregnancy test kits, diabetes testing supplies, denture adhesives, and certain bandages and tipped applicators.

The tax, which takes effect after December 31, 2012, applies to sales to State or local governments, nonprofit organizations, and qualified blood collectors as well to sales to private parties.

## ***3. Annual Fee on Health Insurance Providers***

An annual fee is imposed on any covered entity engaged in the business of providing health insurance with respect to United States health risks. The aggregate annual fee for all covered entities is \$8 billion for calendar year 2014, \$11.3 billion for calendar years 2015 and 2016, \$13.9 billion for calendar year 2017, and \$14.3 billion for calendar year 2018. For calendar years after 2018, the fee is the amount for the preceding calendar year indexed to the rate of premium growth.

The aggregate annual fee is apportioned among the providers based on a ratio designed to reflect relative market share of U.S. health insurance business. For each covered entity, the fee for a calendar year is an amount that bears the same ratio to the aggregate annual fee as (1) the covered entity's net premiums written during the preceding calendar year with respect to health insurance for any United States health risk, bears to (2) the aggregate net written premiums of all covered entities during such preceding calendar year with respect to such health insurance.

Net written premiums means premiums written, including reinsurance premiums written, reduced by reinsurance ceded, and reduced by ceding commissions. Net written premiums do not include amounts arising under arrangements that are not treated as insur-

<sup>116</sup>Sec. 4191; 21 U.S.C. sec. 321.

ance (i.e., in the absence of sufficient risk shifting and risk distribution for the arrangement to constitute insurance).<sup>117</sup>

The amount of net premiums written that are taken into account for purposes of determining a covered entity's market share is subject to dollar thresholds. A covered entity's net premiums written during the calendar year that are not more than \$25 million are not taken into account for this purpose. With respect to a covered entity's net premiums written during the calendar year that are more than \$25 million but not more than \$50 million, 50 percent are taken into account, and 100 percent of net premiums written in excess of \$50 million are taken into account.

After application of the above dollar thresholds, a special rule provides an exclusion, for purposes of determining an otherwise covered entity's market share, of 50 percent of net premiums written that are attributable to the exempt activities<sup>118</sup> of a health insurance organization that is exempt from Federal income tax<sup>119</sup> by reason of being described in section 501(c)(3) (generally, a public charity), section 501(c)(4) (generally, a social welfare organization), section 501(c)(26) (generally, a high-risk health insurance pool), or section 501(c)(29) (a consumer operated and oriented plan ("CO-OP") health insurance issuer).

A covered entity generally is an entity that provides health insurance with respect to United States health risks during the calendar year in which the fee under this section is due. Thus for example, an insurance company subject to tax under part I or II of subchapter L, an organization exempt from tax under section 501(a), a foreign insurer that provides health insurance with respect to United States health risks, or an insurer that provides health insurance with respect to United States health risks under Medicare Advantage, Medicare Part D, or Medicaid, is a covered entity except as provided in specific exceptions.

Specific exceptions are provided to the definition of a covered entity. A covered entity does not include an employer to the extent that the employer self-insures the health risks of its employees. A covered entity does not include any governmental entity, or an entity that (1) qualifies as nonprofit under applicable State law, (2) meets the private inurement and limitation on lobbying provisions described in section 501(c)(3), and (3) receives more than 80 percent of its gross revenue from government programs that target low-income, elderly, or disabled populations (including Medicare, Medicaid, the State Children's Health Insurance Plan ("SCHIP"), and dual-eligible plans).

A covered entity does not include an organization that qualifies as a VEBA under section 501(c)(9) that is established by an entity other than the employer (i.e., a union) for the purpose of providing health care benefits. This exclusion does not apply to multi-employer welfare arrangements ("MEWAs").

<sup>117</sup> See *Helvering v. Le Gierse*, 312 U.S. 531 (1941).

<sup>118</sup> The exempt activities for this purpose are activities other than activities of an unrelated trade or business defined in section 513 of the Code.

<sup>119</sup> Section 501(m) of the Code provides that an organization described in section 501(c)(3) or (4) is exempt from Federal income tax only if no substantial part of its activities consists of providing commercial-type insurance. Thus, an organization otherwise described in section 501(c)(3) or (4) that is taxable (under the Federal income tax rules) by reason of section 501(m) is not eligible for the 50-percent exclusion under the insurance fee.

A United States health risk means the health risk of an individual who is a U.S. citizen, is a U.S. resident within the meaning of section 7701(b)(1)(A) (whether or not located in the United States), or is located in the United States, with respect to the period that the individual is located there.

Health insurance does not include coverage only for accident, or disability income insurance, or a combination thereof. Health insurance does not include coverage only for a specified disease or illness, nor does health insurance include hospital indemnity or other fixed indemnity insurance. Health insurance does not include any insurance for long-term care or any Medicare supplemental health insurance (as defined in section 1882(g)(1) of the Social Security Act).

For purposes of procedure and administration under the rules of Subtitle F of the Code, the fee is treated as an excise tax with respect to which only civil actions for refund under Subtitle F apply. The Secretary of the Treasury may redetermine the amount of a covered entity's fee for any calendar year for which the statute of limitations remains open.

For purposes of section 275, relating to the nondeductibility of specified taxes, the fee is considered to be a nondeductible tax described in section 275(a)(6).

The annual fee is required to be paid in each calendar year beginning after December 31, 2013. The fee is determined with respect to net premiums written after December 31, 2012, with respect to health insurance for any United States health risk.

#### ***4. Excise Tax on Individuals Without Essential Coverage***

Effective after December 31, 2013, most United States citizens and legal residents will be required to maintain a minimum level of health insurance coverage ("minimum essential coverage" or "MEC"). Minimum essential coverage includes government-sponsored programs, eligible employer-sponsored plans, certain plans in the individual market, grandfathered group health plans, or other coverage recognized by the Departments of Treasury and Health and Human Services. Individuals who fail to maintain minimum essential coverage may be subject to an excise tax.<sup>120</sup>

The amount of the excise tax is the lesser of (1) the sum of the monthly penalty amounts for months during a taxable year when an applicable individual is not covered under MEC, or (2) the national average premium for "bronze level" coverage applicable to the taxpayer's family size under qualified health plans offered through the applicable local insurance exchange established under the Health-Care Reform Act for the taxable year in issue. The monthly penalty amount for any taxpayer for any month is  $\frac{1}{12}$  of the greater of (1) the flat dollar amount or (2) a percentage (set at one percent for 2014, two percent for 2015, and 2.5 percent for 2016 and all subsequent taxable years) of the excess of the taxpayer's household income for the taxable year over the income tax return filing threshold (under section 6012) for that taxpayer for that taxable year. The flat dollar amount is the lesser of (1) the sum of the applicable dollar amounts for all applicable individuals

<sup>120</sup>Sec. 5000A.

who do not have MEC in that month, or (2) 300 percent of the applicable dollar amount. The applicable dollar amount is phased in for 2014 and for 2015 at \$95 and \$325 respectively, and reaches \$695 for 2016. For subsequent taxable years, the applicable dollar amount is indexed. For an applicable individual under the age of 18, the applicable dollar amount is 50 percent of that for an adult.

Exemptions are provided for the following classes of taxpayers: (1) those who cannot afford coverage because of the required contribution for MEC would exceed eight percent of their household incomes,<sup>121</sup> (2) those whose household incomes fall below the income tax return filing threshold, (3) members of Indian tribes, (4) those whose coverage gaps last for a continuous period of less than three months, and (5) those for whom obtaining coverage under a qualified health plan would cause hardships as certified by the Secretary of Health and Human Services.<sup>122</sup>

For employees, and individuals who are eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination of whether coverage is affordable to the employee and any such individual is made by reference to the required contribution of the employee for self-only coverage. For individuals not eligible for employer sponsored minimum essential coverage the determination will be made by reference to the cost of a bronze plan in the applicable exchange. Individuals are liable for penalties imposed with respect to their dependents (as defined in section 152). An individual filing a joint return with a spouse is jointly liable for any penalty imposed with respect to the spouse.

No tax is imposed on individuals if the failure to maintain minimum coverage lasts for a continuous period of less than three months (determined without regard to the calendar year in which the months in the period occur). If a continuous period is greater than three months the penalty will be applied to the entire time of the failure.

Subject to the exception for brief coverage gaps, the excise tax applies to any period the individual does not maintain minimum essential coverage and is determined on a monthly basis. The excise tax is assessed in the same manner as an assessable penalty under the enforcement provisions of subtitle F of the Code.<sup>123</sup> As a result, it is assessable without regard to the restrictions of section 6213(b). Although assessable and collectible under the Code, the IRS authority to use certain collection methods is limited. Specifically, the filing of notices of liens and levies otherwise authorized for collection of taxes does not apply to the collection of this penalty. In addition, the statute waives criminal penalties for non-compliance with the requirement to maintain minimum essential coverage. However, the authority to offset refunds or credits is not limited by this provision.

<sup>121</sup> The eight percent affordability measure is subject to indexing for tax years after 2014.

<sup>122</sup> The eight percent amount is increased annually after 2014 by the amount by which health insurance premium growth exceeds income growth.

<sup>123</sup> IRS authority to assess and collect taxes is generally provided in subtitle F, "Procedure and Administration" in the Code. That subtitle establishes the rules governing both how taxpayers are required to report information to the IRS and pay their taxes as well as their rights. It also establishes the duties and authority of the IRS to enforce the Code, including civil and criminal penalties.

## 5. Excise Tax on Large Employers Not Offering Health Care Coverage

Effective after December 31, 2013, large employers who fail to offer minimum affordable health care coverage to all full-time employees under the Health-Care Reform Act may be subject to a penalty excise tax.<sup>124</sup> A large employer is defined as an employer having an average of at least 50 full-time employees during the preceding calendar year.<sup>125</sup> A large employer that does not offer coverage for all of its full-time employees, offers minimum coverage that is unaffordable, or offers minimum coverage that consists of a plan under which the plan's share of the total allowed cost of benefits is less than 60 percent, is subject to a penalty excise tax if any full-time employee is certified to the employer as having purchased health insurance through an exchange established pursuant to the Health-Care Reform Act and a tax credit or cost-sharing reduction provided under that Act is allowed or paid to the employee.<sup>126</sup>

*Tax for not offering coverage.*—The tax for not offering coverage is imposed monthly. The tax is equal to the total number of full-time employees of the employer in excess of 30 during the applicable month (regardless of how many employees receive tax credits or cost-sharing reductions) multiplied by one-twelfth of \$2,000.<sup>127</sup> For calendar years after 2014, the \$2,000 amount is increased by the percentage by which the average per capita premium for health insurance coverage in the United States for the preceding calendar year exceeds the average per capita premium for calendar year 2013.

*Penalty tax if employer offers coverage.*—The tax on employers offering coverage any of whose full-time employees are certified as having enrolled in health insurance plans under an exchange and who are allowed either tax credits or cost-sharing reductions on such plans is imposed monthly at a rate of one-twelfth of \$3,000 for each such employee. The tax on employers offering coverage is limited to the amount of the tax that would apply if the employer was not offering coverage. For calendar years after 2014, the \$3,000 amount is increased by the percentage by which the average per capita premium for health insurance coverage in the United States for the preceding calendar year exceeds the average per capita premium for calendar year 2013.

<sup>124</sup> Health insurance coverage is considered to be unaffordable if the coverage has an employee-paid premium that is more than 9.5 percent of the employee's household income. This percentage is indexed to the per capita growth in premiums for the insurance market after 2014.

<sup>125</sup> An employer is not treated as being below this threshold if (1) its workforce exceeds 50 for 120 days or fewer during the calendar year or (2) the employees who cause the workforce to exceed 50 are seasonal workers.

<sup>126</sup> An employee who is offered minimum essential coverage by his or her employer is only eligible for a premium tax credit and cost sharing reduction if the coverage is either unaffordable or consists of a plan under which the plan's share of the total allowed cost of benefits is less than 60 percent, and the employee declines to enroll in the coverage and purchases coverage through the exchange instead. Unaffordable is defined as coverage with a premium required to be paid by the employee that is more than 9.5 percent of the employee's household income. The percentage of the employee's income is indexed to the per capita growth in premiums for the insured market as determined by the Secretary of Health and Human Services. Also, an employee is not eligible for a premium tax credit for any month in which the employee has a "free choice voucher" (an employer-provided voucher for certain lower-income employees allowed to secure insurance coverage through a local exchange).

<sup>127</sup> Only one 30-employee threshold is allowed when a group of employers are aggregated and treated as a single employer, such as for a controlled group of employers.

## **6. Failure To Satisfy Continuation Coverage Requirements of Group Health Plans**

The Code contains rules that require certain group health plans to offer certain individuals ("qualified beneficiaries") the opportunity to continue to participate for a specified period of time in the group health plan ("continuation coverage") after the occurrence of certain events that otherwise would have terminated such participation ("qualifying events").<sup>128</sup> These continuation coverage rules are often referred to as "COBRA continuation coverage" or "COBRA," which is a reference to the acronym for the law that added the continuation coverage rules to the Code.<sup>129</sup>

The Code imposes excise tax penalties on group health plans that violate COBRA continuation coverage rules.<sup>130</sup> Generally, the excise tax is \$100 per qualified beneficiary per day in the "noncompliance period" (\$200 per day when the failure relates to two or more qualified beneficiaries). The "noncompliance period" begins on the date the failure to comply with COBRA occurs, and ends when the failure is corrected, or if earlier, six months after the last date on which the employer could have been required to provide COBRA coverage, without regard to the payment of premiums.<sup>131</sup> A failure to satisfy COBRA continuation coverage requirements is corrected if the failure is retroactively undone to the extent possible, and the qualified beneficiary is placed in a financial position which is as good as if the failure had not occurred.

The Code provides for various limitations on the amount of excise tax imposed on noncompliant plans. First, if none of the persons who could be liable for the tax knew, or exercising reasonable diligence would have known, of the plan's failure to comply, the noncompliance period does not begin until the first date on which the individual knew or should have known of the failure.<sup>132</sup> This is widely known as the "inadvertent failure rule." Second, the excise tax does not apply to failures due to reasonable cause (and not to willful neglect) that are corrected within 30 days after any person liable for the tax knew, or exercising reasonable diligence would have known, of the plan's failure to comply.<sup>133</sup> This is widely known as the "self correction rule." Both the inadvertent failure rule and the self correction rule are overridden if the relevant failure is not corrected before the IRS sends the employer maintaining the plan an audit letter and the failure occurred or continued during the period under examination. In such a case, the excise tax may not be less than the lesser of (1) \$2,500 (\$15,000 if the failures for any year are more than de minimis), or (2) the excise tax deter-

<sup>128</sup> Sec. 4980B.

<sup>129</sup> The COBRA rules were added to the Code by the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272. The rules were originally added as Code sections 162(i) and (k). The rules were later restated as Code section 4980B, pursuant to the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647.

<sup>130</sup> Sec. 4980B.

<sup>131</sup> A person that provides coverage under a group health plan may be liable for the penalty if requested in writing to provide COBRA continuation coverage to a qualified beneficiary. Sec. 4980B(c)(2)(B). In such a case, the noncompliance period does not begin until 45 days after the written request is provided to the person. Sec. 4980B(b)(2).

<sup>132</sup> Sec. 4980B(c)(1).

<sup>133</sup> Sec. 4980B(c)(2).

mined without regard to the inadvertent failure rule and the self correction rule.<sup>134</sup>

There is an overall limitation on the penalty tax liability for failures during the taxable year, which are due to reasonable cause (and not willful neglect).<sup>135</sup> For single employer plans the overall limit is \$500,000, or if less, 10% of the amount the employer paid or incurred during the preceding taxable year for group health plans. For multiemployer plans the limit is \$500,000, or if less, 10% of the amount paid or incurred by the trust to provide medical care during the taxable year in which the failure occurred. Coverage providers who may become liable for the penalty tax on receipt of a written request to provide COBRA continuation coverage have an overall limitation of \$2,000,000 for a taxable year with respect to all plans for which they provide coverage. There are no overall limitations in cases of willful neglect.

The Secretary of the Treasury may waive part or all of the penalty tax if it is excessive relative to the failure involved. There is no waiver allowed in cases of willful neglect.

In general, the penalty tax is imposed on the employer maintaining the plan for single employer plans, and on the plan itself for multiemployer plans. The employer includes any entity that is a member of a controlled group of corporations, a group of trade or businesses under common control, and an affiliated service group under Code section 414(b), (c), (m) or (o), and any successor employer.<sup>136</sup> Under certain conditions, however, other persons (e.g., insurer, third party administrators) may be liable for the penalty tax.<sup>137</sup>

## **7. Failure to Meet Certain Group Health Plan Requirements**

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA")<sup>138</sup> created a new chapter 100 to the Code, which, among other things, provides for increased portability of coverage through limitations on preexisting condition exclusions and prohibits discrimination against individual participants and beneficiaries based on health status. Chapter 100 has been expanded in the wake of HIPAA, notably, the Genetic Information Nondiscrimination Act of 2008 ("GINA")<sup>139</sup> amended HIPAA portability rules in the Code and added new provisions regarding genetic information.

An excise tax is imposed on group health plans for failure to comply Chapter 100 of the Code. Generally, the amount of the excise tax is \$100 per day of noncompliance for each individual to whom the failure relates.<sup>140</sup> The excise tax is imposed on the plan sponsor for noncompliance by single employer plans, and on plan for noncompliance by multiple employer plans. There are, however, certain exceptions to the imposition of the tax. First, the tax may not apply if the noncompliant group health plan can demonstrate that it did not know—and in exercising reasonable diligence would

<sup>134</sup> Sec. 4980B(c)(3).

<sup>135</sup> Sec. 4980B(c)(4).

<sup>136</sup> Treas. Reg. sec. 54.4980B-2.

<sup>137</sup> Sec. 4980B(e).

<sup>138</sup> Pub. L. No. 104-191.

<sup>139</sup> Sec. 4980D.

<sup>140</sup> The excise tax does not apply to group health insurance issuers because the requirements imposed on such issuers are not contained in the Code.



not have known—that it was noncompliant.<sup>141</sup> The tax may also not apply if the failure was due to reasonable cause (and not willful neglect) and was corrected within 30 days after the plan first knew (or in exercising reasonable diligence should have known) of the failure.<sup>142</sup>

The minimum tax imposed on a plan which has uncorrected compliance issues and to which an audit letter has been sent is \$2,500, increased to \$15,000 if violations are more than de minimis.<sup>143</sup> The maximum tax imposed for unintentional failures is the lesser of 10% of the amount paid during the preceding tax year by the employer for group health plans, or \$500,000. The excise tax does not apply to certain small employers<sup>144</sup> providing health coverage only through a fully insured plan through a contract with a health insurance issuer if the failure is only due to the health insurance coverage offered by the issuer.<sup>145</sup> The Secretary of the Treasury may waive part or all of the tax if it is excessive relative to the failure involved. There is, however, no waiver allowed in cases of willful neglect.

### **8. Failure of Employer to Make Comparable Archer MSA Contributions**

An Archer medical savings account (“Archer MSA”)<sup>146</sup> is a tax-exempt trust or custodial account established for the purpose of paying medical expenses. Within limits, contributions to an Archer MSA are deductible if made by an eligible individual (or excludable if made by an employer on behalf of an eligible individual). Earnings on amounts in an Archer MSA, and distributions from an Archer MSA for medical expenses, are generally not taxable. Generally, an individual is eligible to make tax-free contributions to an Archer MSA if he or she is covered under a high deductible health plan (“HDHP”) sponsored by a small employer (or is self employed and covered by a HDHP), and is not covered under any other plan.

A tax is imposed on the failure of an employer to meet the “comparability rule” for the calendar year in which the employer makes a contribution to the Archer MSA of any employee with respect to coverage under a high HDHP of the employer.<sup>147</sup> Generally, the amount of the tax imposed on any failure for any calendar year is equal to 35 percent of the aggregate amount contributed by the employer to Archer MSAs of employees for tax years of the employees ending with or within the calendar year.<sup>148</sup> If, however, the failure is due to reasonable cause and not to willful neglect, part or all of the tax may be waived, to the extent that the payment of the tax would be excessive relative to the failure involved.<sup>149</sup>

<sup>141</sup> Sec. 4980D(c)(1).

<sup>142</sup> Sec. 4980D(c)(2).

<sup>143</sup> Sec. 4980D(b).

<sup>144</sup> For this purpose a small employer is one that employed an average of at least two, but no more than 50, employees in the preceding calendar year and that employs at least two employees on the first day of the plan year. Entities treated as a single employer for purposes of the controlled group rules of section 414 are treated as one employer. Sec. 4980D(d)(2).

<sup>145</sup> Sec. 4980D(d).

<sup>146</sup> Sec. 220. After 2007, no new contributions can be made to Archer MSA, except by or for individuals who previously had Archer MSA contributions and employees who are employed by a participating employer.

<sup>147</sup> Sec. 4980E(a).

<sup>148</sup> Sec. 4980E(b).

<sup>149</sup> Sec. 4980E(c).

A comparability rule provides that if an employer provides HDHP coverage coupled with an Archer MSA to employees, and makes employer contributions to the Archer MSAs, the employer must make available a comparable contribution on behalf of all employees with comparable coverage during the same period.<sup>150</sup> An employer meets the requirements of the comparability rule for any calendar year if the employer makes available "comparable contributions" to the Archer MSAs of all "comparable participating employees" for each coverage period during the calendar year.<sup>151</sup> For purposes of the comparability rule, all persons treated as a single employer for employee benefit plan purposes are treated as one employer.<sup>152</sup>

"Comparable contributions" means contributions that are the same amount or the same percentage of the annual deductible limit under the HDHP covering the employees.<sup>153</sup> "Comparable participating employees" means all employees who (1) are eligible individuals covered under any HDHP of the employer, and (2) have the same category of coverage (that is, self-only or family coverage).<sup>154</sup> The provision with respect to "comparable participating employees" is applied separately to part-time employees and other employees. For this purpose, "part-time employee" means any employee who is customarily employed for fewer than 30 hours per week.<sup>155</sup>

### **9. Failure By Employer To Make Comparable Health Savings Account Contributions**

A health savings account ("HSA") is a tax-exempt trust or custodial account established for the purpose of paying qualified medical expenses. An individual who is covered under a qualifying HDHP<sup>156</sup> (purchased either through the individual market or through an employer) is permitted to establish and make contributions (or have contribution made on his or her behalf) to an HSA. Subject to certain limitations,<sup>157</sup> contributions made to an HSA by an employer, including contributions made through a cafeteria plan through salary reduction, are excluded from income (and from wages for payroll tax purposes). Contributions made by individuals are deductible for income tax purposes, regardless of whether the individuals itemize their tax deductions. Distributions from HSAs that are used for qualified medical expenses are excludible from gross income.

An employer is not required to contribute to the HSAs of its employees. In general, however, if an employer makes contributions to any employee's HSA, the employer must make comparable contributions to the HSAs of all comparable participating employ-

<sup>150</sup> Conf. Rept. No. 104-736 (Pub. L. No. 104-191).

<sup>151</sup> Sec. 4980E(d)(1).

<sup>152</sup> Sec. 4980E(e).

<sup>153</sup> Sec. 4980E(d)(2)(A).

<sup>154</sup> Sec. 4980E(d)(3).

<sup>155</sup> *Ibid.*

<sup>156</sup> For 2011, a qualifying HDHP must have a deduction of at least \$1,200 for self only coverage or \$2,400 for family coverage and must limit annual out-of-pocket expenses beneficiary to \$5,950 for self only coverage and \$11,900 for family coverage.

<sup>157</sup> For 2011, the maximum aggregate annual contribution that can be made to an HSA is \$3,050 in the case of self-only coverage and \$6,150 in the case of family coverage. The annual contribution limits are increased by \$1,000 for individuals who have attained age 55 by the end of the taxable year (referred to as "catch-up contributions"). Contributions, including catch-up contributions, cannot be made once an individual is enrolled in Medicare.

ees.<sup>158</sup> If employer contributions do not satisfy the comparability rules for a calendar year, the employer is subject to an excise tax equal to 35 percent of the aggregate amount contributed by the employer to HSAs for that period.<sup>159</sup>

Contributions are comparable if, for each month in a calendar year, the contributions are either the same amount or the same percentage of the deductible under the HDHP for employees who are eligible individuals with the same category of coverage on the first day of that month.<sup>160</sup>

Comparable participating employees are eligible individuals who are in the same category of employees and who have the same category of HDHP coverage.<sup>161</sup> Generally, the categories of coverage are self-only coverage and family coverage.<sup>162</sup> The categories of employees for comparability testing are generally (1) current full-time employees; (2) current part-time employees; and (3) former employees.<sup>163</sup> For purposes of section 4980G, part-time employees are employees who are customarily employed for fewer than 30 hours per week. Collectively bargained employees are not comparable participating employees.

#### ***10. Excise Tax on Issuers of Qualified Long Term Care Contracts***

Long term care contract terms, and issuers of such contracts, are required to satisfy certain consumer protection provisions of the long-term care insurance model Act and model regulations promulgated by the National Association of Insurance Commissioners ("NAIC") (as adopted as of January 1993).<sup>164</sup> The consumer protection provisions that apply with respect to the terms of the contract apply only for purposes of determining whether a contract is a qualified long-term care insurance contract.

An excise tax is imposed on the issuers of a long term care insurance contract equal to \$100 per insured per day for failure to satisfy the consumer protection requirements.<sup>165</sup> The consumer protection requirements for issuers apply with respect to contracts that are qualified long-term care insurance contracts within the meaning of section 7702B.

The issuers of long term care insurance contracts must meet the consumer protection requirements under the model regulation re-

<sup>158</sup> Treas. Reg. sec. 54.4980G-1, A-1.

<sup>159</sup> Treas. Reg. sec. 54.4980G-1, A-4. In the case of a failure which is due to reasonable cause and not to willful neglect, all or a portion of the excise tax imposed under section 4980G may be waived to the extent that the payment of the tax would be excessive relative to the failure involved. See sections 4980G(b) and 4980E(c). See Treas. Reg. sec. 54.4980G-5, A-4.

<sup>160</sup> Treas. Reg. sec. 54.4980G-4, A-1. Employers may make larger HSA contributions for employees who are not highly compensated employees (as defined in section 414(q)) and who are comparable participating employees than for highly compensated employees who are comparable participating employees. See Treas. Reg. 54.4980G-6, A-1. The comparability rules do not apply to HSA contributions that an employer makes through a section 125 cafeteria plan. However, contributions to an HSA made through a cafeteria plan are subject to the section 125 non-discrimination rules (eligibility rules, contributions and benefits tests and key employee concentration tests). See Treas. Reg. sec. 54.4980G-5, A-1.

<sup>161</sup> Treas. Reg. sec. 54.4980G-1, A-1.

<sup>162</sup> Treas. Reg. sec. 54.4980G-1, A-2.

<sup>163</sup> There is an exception for former employees with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1)).

<sup>164</sup> Sec. 7702B(g)(2)(B)(i).

<sup>165</sup> Sec. 4980C(b). In the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax to the extent that payment of the tax would be excessive relative to the failure involved.

lating to application forms and replacement coverage, reporting requirements, marketing, appropriateness of purchase, format, delivering a shopper's guide, right to return, outline of coverage, group plans, policy summary, monthly reports on accelerated death benefits, and incontestability period. Further, under the consumer protection requirements for issuers, if an application for a qualified long term contract (or certificate under such contract) is approved, the issuer must deliver the applicant (or policyholder or certificate holder) the contract (or certificate) of the insurance not later than 30 days after the date of approval. If a claim under a qualified long-term care contract is denied, the issuer must, within 60 days of a written request by the policy holder or certificate holder, provide a written explanation of the reasons for the denial and make available all information relating to the denial. Also, the issuer must disclose in the policy and outline of coverage that the policy is intended to be a qualified long term care insurance contract within the meaning of section 7702B.

For purposes of both the requirements as to contract terms and the requirements relating to issuers of contracts, the determination of whether any requirement of a model regulation or model Act has been met is made by the Secretary.<sup>166</sup>

### ***11. Nonconforming group health plans***

An excise tax is imposed on any employer (including a self-employed person) or employee organization that contributes to a nonconforming group health plan.<sup>167</sup> The tax is equal to 25 percent of the employer's, or employee organization's, expenses incurred during the calendar year for each group health plan to which the employer (including a self-employed person), or employee organization, contributes. This tax does not apply to an employer that is a Federal or other governmental entity.

A nonconforming group health plan is a group health plan that does not comply with the secondary payor requirements with respect to Medicare under the Social Security Act which, with certain exceptions, require a group health plan not to take into account entitlement to benefits under Medicare and provide that an individual subject to the secondary payor requirements be entitled to the same benefits under the plan under the same conditions as an individual not entitled to Medicare.<sup>168</sup> Thus, the Social Security Act requires that Medicare be the secondary payor for items and services covered by a group health plan with respect to employees. The scope of this requirement generally depends on the size of the employer,<sup>169</sup> and the basis upon which the individual qualifies for Medicare. Specifically, the secondary payor rules generally apply for any group health plan that covers an employee or dependent who qualifies for Medicare on the basis of end-stage renal disease

<sup>166</sup> Sec. 7702B(g)(2)(B)(iii).

<sup>167</sup> A group health plan for this purpose is a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

<sup>168</sup> Sec. 1862(b) of the Social Security Act.

<sup>169</sup> The employer aggregation rules under section 414(b), (c), (m), and (o) apply for purposes of this provision. Under that rule, generally all employees of entities under common control (e.g., members of the same control group) are required to be aggregated and are treated as a single employer.

for the first 30 months of Medicare coverage.<sup>170</sup> The secondary payor rules also apply to a group health plan (other than a group plan of a small employer)<sup>171</sup> that covers Medicare beneficiaries age 65 and older by virtue of an individual's current employment status, or the current employment status of a spouse of any age. Finally, for a large group health plan,<sup>172</sup> the secondary payor rules also apply in the case of individuals under age 65 who are eligible for Medicare on the basis of disability, where the group health plan coverage is by virtue of the individual's or a family member's current employment status with the employer.<sup>173</sup>

## ***12. Excise Tax on Insurers For High-Cost Employer-Sponsored Health Coverage***

Effective after December 31, 2017, an excise tax will be imposed on the aggregate value of employer-sponsored health insurance for an employee that exceeds a threshold amount.<sup>174</sup> The tax equals 40 percent of the aggregate value of the coverage in excess of \$10,200 for individual coverage and \$27,500 for family coverage (both multiplied by a "health care cost adjustment percentage," discussed below).<sup>175</sup> This tax further is increased by an age and gender adjusted "excess premium amount."<sup>176</sup>

The value of health insurance coverage equals the sum of (1) the aggregate premiums for the coverage, (2) the amount of any salary reduction contributions to a Health FSA for the taxable year, and (3) the dollar amount of employer contributions to an HSA or an Archer MSA.

The "health care adjustment percentage" is designed to account for possible increases in the cost of U.S. health care in excess of projected growth for the period 2010 through 2017. The adjustment percentage equals 100 percent of the excess, if any, of (1) the percentage by which the per employee costs of coverage under the Blue Cross/Blue Shield standard benefit option of the Federal Employees Health Benefits plan ("standard FEHBP coverage") for plan year 2018 exceeds the per employee costs of that plan for 2010 over (2) 55 percent.<sup>177</sup> Beginning in 2019, the threshold amounts will be indexed to the CPI-U plus one percentage point in 2019 and CPI-U thereafter.

In general, the age and gender adjustment equals the excess, if any, of (1) the premium costs of standard Federal Employee's health coverage for the coverage provided to the individual (assuming age and gender characteristics of the employer's workforce) over (2) premium costs for that coverage priced for age and gender

<sup>170</sup> Sec. 1862(b)(1)(A)(iii) of the Social Security Act.

<sup>171</sup> A small employer is an employer that has 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year or the preceding calendar year. See section 1862(b)(1)(A)(iv) of the Social Security Act.

<sup>172</sup> Generally a large group health plan is a group health plan of an employer with at least 100 employees on a typical day in the previous calendar year.

<sup>173</sup> Sec. 1862(b)(1)(A).

<sup>174</sup> The tax also is imposed if the threshold amount is exceeded for any former employee, surviving spouse, or any other primary insured individual.

<sup>175</sup> In general, the family threshold applies to employees enrolled in multi-employer plans regardless of whether the employees maintain family or individual coverage.

<sup>176</sup> Unlike most Federal excise taxes, the amount of this tax is *not* deductible for Federal income tax purposes.

<sup>177</sup> For purposes of this calculation, the 2010 benefit package is to be priced in 2018 dollars.

characteristics of the national workforce. Special rules apply for certain retirees and employees in high-risk professions.

The excise tax is imposed on issuers of the insurance. In the case of self-insured group health insurance, a Health FSA or an HRA, the tax is paid by the entity that administers the benefits (or the employer, if the employer is the plan administrator).

#### **D. Miscellaneous Regulatory Excise Taxes**

In addition to the excise taxes imposed to raise revenues for trust fund programs and for the General Fund, the Code historically has included numerous excise taxes imposed primarily to regulate activities or products (e.g., wagering and “non-regular” firearms) or to promote adherence to other tax policies (e.g., penalty taxes on specified activities with respect to private foundations and retirement plans).

Most of these regulatory excise taxes raise less than \$50 million per year, with certain exceptions. For fiscal years 2011–2020, the excise tax on domestic private foundation net investment income (sec. 4940) is projected to raise \$13.3 billion. The excise tax on insurance policies issued by foreign insurers (casualty insurance and indemnity bonds life insurance, sickness and accident policies, and annuity contracts; reinsurance) (sec. 4371) is projected to raise approximately \$6.3 billion during fiscal years 2011–2020. The following table provides an overview of these excise taxes.

Tax (and Code section)	Tax rates
<b>1. "Non-Regular" Firearms</b> <sup>178</sup>	
a. Occupational taxes (sec. 5801) <sup>179</sup>	
Manufacturers and im- porters .....	\$1,000 per year, per premise (\$500 for businesses with gross receipts of less than \$500,000 in the preceding tax- able year).
Dealers .....	\$500 per year, per premise.
b. Transfer taxes for certain concealable weapons (sec. 5811) .....	\$5.00 per transfer.
c. Making tax (sec. 5821) .....	\$200 per firearm.
<b>2. Wagering Excise Taxes</b>	
a. Certain wagers (sec. 4401) <sup>180</sup> .....	Two percent of amount of wager, except tax is 0.25 per- cent in States where wagering is authorized by State law.
b. Occupational taxes (sec. 4411) .....	\$500 per year on person en- gaged or employed in business of accepting wagers, except that the tax is \$50 per year in States where wagering is au- thorized by State law. <sup>181</sup>

<sup>178</sup>The taxes on non-regular firearms are administered by the Bureau of Alcohol, Tobacco, Firearms, and Explosives in the Department of Justice. The chapter of the Code imposing these excise taxes is named the "National Firearms Act".

The term "non-regular" firearm includes machine guns, destructive devices (e.g., explosive devices such as bombs, grenades, small rockets, and mines), sawed-off shotguns or rifles, silencers, and certain concealable weapons.

<sup>179</sup>July 1–June 30 is the taxable year for the occupational taxes. There also are Federal licensing fees for manufacturers, importers, and dealers in destructive devices or ammunition for such devices. See, 18 U.S.C. sec. 923.

<sup>180</sup>The tax is imposed on any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers, any wager placed in a wagering pool with respect to a sports event or contest (if such pool is conducted for profit), and certain lottery-type wagers (including numbers games and similar types of wagering). No tax is imposed on pari-mutuel wagering licensed under State law, coin-operated wagers, State-conducted lotteries, games where wagers are placed and winners are determined and prizes are distributed with all persons placing wagers present, or drawings by tax-exempt organizations where no part of the proceeds inures to the benefit of any private shareholder or individual. The person accepting the wager is liable for the tax.

<sup>181</sup>The taxable year is July 1–June 30.

Tax (and Code section)	Tax rates
<b>3. Excise Tax on Domestic Private Foundation Net Investment Income (sec. 4940)</b>	<p><i>Tax-exempt foundations.</i>—Two percent of net investment income in general (one percent where foundation meets certain distribution requirements).</p> <p><i>Taxable foundations.</i>—Excess of section 4940 excise tax that would be imposed if foundation were tax-exempt plus unrelated business tax that would have been imposed over regular income tax imposed on the foundation.</p>
<b>4. Excise Tax on Foreign Private Foundation Net Investment Income (sec. 4948)</b>	Four percent of gross investment income from sources within the United States.
<b>5. Excise Tax on Insurance Policies Issued by Foreign Insurers (sec. 4371) <sup>182</sup></b>	<p>Four cents per dollar, or fractional part, of premium paid.</p> <p>One cent per dollar, or fractional part, of premium paid.</p> <p>One cent per dollar, or fractional part, of premium paid on reinsurance of policies subject to tax under a. or b.</p>
<b>6. Excise Tax on Lobbying Expenditures</b>	<p>25 percent of excess lobbying expenditures.</p> <p>Five percent of lobbying expenditures on the organization; five percent of lobbying expenditures on the organization manager in certain cases.</p>
<p>a. Casualty insurance and indemnity bonds .....</p> <p>b. Life insurance, sickness and accident policies, and annuity contracts .....</p> <p>c. Reinsurance .....</p> <p>a. Public charities making an election under sec. 501(h) (sec. 4911) .....</p> <p>b. Charitable organizations disqualified from tax-exempt status because of lobbying expenditures (sec. 4912) .....</p>	

<sup>182</sup>The tax does not apply to insurance on exports. See, *U.S. v. International Business Machines*, 517 U.S. 843 (1996).



Tax (and Code section)	Tax rates
<b>7. Excise Taxes on Certain Private Foundation Activities</b>	
a. Self-dealing (sec. 4941) ....	<p><i>Initial tax.</i>—Ten percent of the amount of self-dealing on the self-dealer; five percent on the foundation manager in certain cases (up to \$20,000 including any additional tax).</p> <p><i>Additional tax.</i>—If not corrected within specified period, 200-percent tax on self-dealer, 50-percent tax on foundation manager in certain cases (up to \$20,000 including any additional tax).</p>
b. Failure to distribute income (sec. 4942) .....	<p><i>Initial tax.</i>—30-percent tax on foundation on amount of undistributed income remaining undistributed at beginning of succeeding taxable year.</p> <p><i>Additional tax.</i>—If not corrected within specified period, tax of 100 percent of amount not distributed.</p>
c. Excess business holdings (sec. 4943) .....	<p><i>Initial tax.</i>—Ten percent tax on foundation on value of excess holdings.</p> <p><i>Additional tax.</i>—If not corrected within specified period, tax of 200 percent of excess holdings.</p>
d. Investments jeopardizing charitable purpose (sec. 4944) .....	<p><i>Initial tax.</i>—Ten-percent tax on foundation on amount of investment; ten-percent tax on foundation manager in certain cases (up to \$10,000).</p> <p><i>Additional tax.</i>—25-percent tax on foundation if not corrected within specified period; five-percent tax on foundation manager in certain cases (up to \$20,000).</p>
e. Taxable expenditures (sec. 4945) .....	<p><i>Initial tax.</i>—20 percent of amount of expenditure on foundation; five-percent tax on foundation manager in certain cases (up to \$10,000).</p>

Tax (and Code section)	Tax rates
<b>8. Excise Tax on Political Expenditures of Section 501(c)(3) Organizations (sec. 4955)</b>	<p><i>Additional tax.</i>—If not corrected within specified period, tax of 100 percent of taxable expenditure on foundation; 50-percent tax on foundation manager in certain cases (up to \$10,000).</p> <p><i>Initial tax.</i>—20 percent of political expenditure on organization; 2.5-percent tax on organization manager in certain cases (up to \$10,000).</p> <p><i>Additional tax.</i>—If not corrected within specified period, tax of 100 percent of expenditure on organization, 50-percent tax on organization manager in certain cases (up to \$20,000).</p>
<b>9. Excise Tax on Excess Benefit Transactions of Certain Section 501(c)(3) and 501(c)(4) Organizations (sec. 4958) <sup>183</sup></b>	<p><i>Initial tax.</i>—25 percent of amount of excess benefit on disqualified person who is the beneficiary of the transaction; 10-percent tax on the organization manager in certain cases (up to \$20,000).</p> <p><i>Additional tax.</i>—If not corrected within specified period, tax of 200 percent of excess benefit on the disqualified person.</p>

<sup>183</sup> Private foundations are not subject to the excise tax.

Tax (and Code section)	Tax rates
<b>10. Excise Taxes Relating to Employee Pension and Benefit Plans</b>	
a. Failure to meet minimum funding standards (sec. 4971) .....	<p><i>Initial tax.</i>—For simple-employer plan, 10 percent of unpaid required contributions on employer; for multiemployer plan of five percent accumulated funding deficiency on employer.</p> <p><i>Additional tax.</i>—If not corrected within specified period, 100 percent of unpaid required contributions on accumulated funding deficiency on employer.</p>
b. Nondeductible contributions to qualified employer plan (sec. 4972) .....	10 percent of nondeductible contributions under plan on employer.
c. Excess contributions to IRA's, Archer MSA's, etc. (sec. 4973) .....	Six percent of excess contributions on account owner.
d. Certain accumulations in IRA's, etc. (sec. 4974) .....	50 percent of amount by which minimum required to be distributed during year exceeds amount actually distributed on the payee.
e. Prohibited transactions (sec. 4975) .....	<p><i>Initial tax.</i>—15 percent of amount involved in prohibited transaction on disqualified person engaging in transaction.</p> <p><i>Additional tax.</i>—If not corrected within specified period, 100 percent of amount involved on disqualified person.</p>
f. Disqualified welfare benefits (sec. 4976) .....	100 percent of disqualified benefit amount on the employer.
g. Excess fringe benefits provided by an employer (sec. 4977) .....	30 percent of excess benefits on employer electing aggregation of lines of business.

Tax (and Code section)	Tax rates
h. Dispositions of sec. 1042 securities by ESOP's and worker-owned cooperatives (sec. 4978) .....	10 percent of amount realized on disposition on employer or cooperative.
i. Dispositions of sec. 133 securities by ESOP's (sec. 4978B) .....	10 percent of amount realized on disposition on employer.
j. Excess contributions under a cash or deferred arrangement (sec. 4979) ..	10 percent of sum of excess contributions and any excess aggregate contributions under the plan for plan year on employer.
k. Prohibited allocations of qualified securities by ESOP's and worker-owned cooperatives (sec. 4979A) .....	50 percent of amount involved in prohibited allocation or ownership on employer, cooperative or S corporation.
l. Reversion of qualified plan assets to employer (sec. 4980) .....	20 percent of amount of employer reversion on employer (generally); 50 percent if employer does not maintain a qualified replacement plan or provide certain pro-rata benefit increases.
m. Failure to provide of benefit accrual reduction (sec. 3980F) .....	\$100 per day per failure, up to specified maximum.
<b>11. Excise Taxes on Real Estate Investment Trusts and Regulated Investment Companies</b>	
a. Real estate investment trusts (sec. 4981) .....	Four percent of excess required distribution for calendar year over distributed amount.
b. Regulated investment companies (sec. 4982) .....	Four percent of excess required distribution for calendar year over distributed amount.

Tax (and Code section)	Tax rates
<b>12. Excise Tax on Issuers of "Registration-Required Obligations" Not in Registered Form (sec. 4701)</b>	One percent of principal amount of obligation multiplied by number of years in obligation term.
<b>13. Excise Tax on "Golden Parachute" Payments (sec. 4999)</b>	20 percent of excess payment as defined in sec. 280G(b).
<b>14. Excise Tax on "Greenmail" (sec. 5881)</b>	50 percent of "greenmail" <sup>184</sup>
<b>15. Excise Tax on Certain Tax-Exempt Entities Entering into Prohibited Tax Shelter Transactions (sec. 4965)</b>	<p><i>Entity.</i>—In general, highest corporate rate multiplied by greater of entity's net income for taxable year of prohibited transaction attributable to transaction or 75 percent of proceeds received for taxable year (for subsequently listed transactions, amount allocable to period beginning on date transaction identified or first day of taxable year).</p> <p>For certain "knowing transactions," tax equals greater of 100 percent of income attributable to transaction or 75 percent of proceeds received from transaction.</p> <p><i>Entity manager.</i>—\$20,000 for each approval (or other act causing participation).</p>

Tax (and Code section)	Tax rates
<b>16. Excise Taxes on Certain Donor Advised Fund Activities</b>	
a. Taxable distributions (sec. 4966) .....	20 percent of taxable distribution on sponsoring organization; five percent of amount involved in fund management in certain cases (up to \$10,000).
b. Prohibited benefits (sec. 4967) .....	125 percent of benefit on a person advising fund to make distribution or receiving benefit; 10 percent of benefit on fund management in certain cases (up to \$10,000).
c. Tax on failures by hospital organizations (sec. 4959) .....	\$50,000 on hospital organization that fails to satisfy the community health needs assessment requirement of sec. 501(c)(3) for any taxable year.

<sup>184</sup> "Greenmail" is defined as any consideration transferred by a corporation to acquire its stock if (1) the stock has been held by the shareholder for fewer than two years, (2) the shareholder (or any related person or other person acting in concert) made or threatened to make a public tender offer for stock during this period, and (3) such acquisition is pursuant to an offer which was not made on the same terms to all shareholders.

### III. INFORMATION ON SELECTED TRUST FUND BALANCES AND RELATED FEDERAL EXCISE TAX RECEIPTS

#### A. Background

This Part contains background information on Federal excise tax receipts and projected expenditures from Trust Funds to which these receipts are dedicated. Interpretation of this information requires an understanding of several provisions of Federal budget law, including various budget scorekeeping rules adhered to in compliance with that law.

#### ***Assumption that dedicated excise taxes are permanent***

Federal budget law provides that excise taxes that are dedicated to Trust Funds are assumed to be permanent for budget scorekeeping purposes.<sup>185</sup> This means that revenues from the Trust Fund excise taxes automatically are included each year in the Congressional Budget Office ("CBO") and Office of Management and Budget ("OMB") forecasts of Government receipts (the "revenue baseline") as if there were no scheduled expirations. This occurs even if the taxes are statutorily scheduled to expire before the end of the baseline period. The CBO issues its annual baseline as part of its overall economic forecast each February; the forecast is used in developing the Congressional Budget Resolution.

As a result of their inclusion in the revenue baseline on a permanent basis, extensions (without modifications) of Trust Fund excise taxes are *not* scored as raising revenues when extensions are enacted *before their actual expiration and adoption of a new revenue baseline*. On the other hand, increases in those excise taxes are scored as raising revenue. Similarly, reductions in dedicated excise taxes (even as part of an extension of the underlying taxes) are scored as losing revenue because the excise taxes are included in the revenue baseline at their present rates.

The information in the excise tax receipts and Trust Fund balance tables, below, is presented consistent with these Federal budget rules. Thus, revenues for all currently imposed Trust Fund excise taxes are assumed to continue through the periods reflected, notwithstanding any earlier scheduled expiration of the underlying excise taxes. For example, the highway excise taxes (other than 4.3 cents per gallon of the motor fuels rates) are scheduled to expire after September 30, 2011; however Table 1 assumes imposition of these taxes (and their present structure) on a permanent basis.

<sup>185</sup> Direct, or mandatory, spending likewise is considered to be permanent for budget scorekeeping purposes. On the other hand, while estimates of discretionary spending are included in the budget baseline, that spending is not considered to be permanent for budget scorekeeping purposes. Thus, the entire amount of Federal discretionary spending provided for in annual appropriations Acts is scored. As described below, most spending from Federal Trust Funds described in this document is classified as discretionary.

### ***Gross receipts versus net revenues***

In general, the relevant provisions of the Code transfer “gross receipts” to Trust Funds financed with proceeds of dedicated excise taxes, rather than the “net revenues” to the Federal Government produced by those taxes.<sup>186</sup> One exception is that net revenues from the excise tax on certain vaccines are transferred to the Vaccine Injury Compensation Trust Fund. The concept of net revenues reflects budget scorekeeping conventions that reduce excise tax revenues by the amount that income tax receipts are expected to decrease as a result of monies being removed from the private economy for payment of excise taxes. Under this concept, net revenues equal approximately 75 percent of gross receipts.

Federal budget law divides non-defense Federal spending into two major categories: direct spending and discretionary spending. Direct spending is spending for which no appropriation is required (e.g., entitlements such as Social Security old age benefits). Discretionary spending may occur only when funds are appropriated. Discretionary spending for various Federal Government programs competes for a fixed pool of dollars under aggregate annual limits included in the annual Congressional Budget Resolution. Thus, amounts in excess of net revenues to the Federal Government (i.e., gross receipts) may be deposited in the Trust Funds without creating a budgetary shortfall because Trust Fund spending is discretionary.<sup>187</sup>

The excise tax receipts shown in the tables in this Part represent gross receipts to the Federal Government (and to any relevant Trust Fund) except in the case of the Vaccine Injury Compensation Trust Fund, for which net revenues are reflected.

### ***Differences between available balances and cash balances***

Many Trust Fund programs involve capital projects. Financing for these projects may involve contracts providing for cash disbursements that will continue for a period of several years. Pending actual disbursement, the monies continue to be reflected in the cash balance of the Trust Funds where they are held on deposit. However, the funds are not “available” to finance additional projects. Rather, they are classified as part of the Trust Fund’s “obligated balance.” An example of such capital expenditures are funds financing the Federal Government’s share of highway construction projects undertaken jointly with States or local governments when the Federal Government is contractually bound to pay the amounts as construction is completed. For Federal Trust Funds, the CBO baseline reports cash balances, and in relevant cases available balances. The trust fund tables in the Part reflect cash balances.

<sup>186</sup> Joint Committee on Taxation, *Overview of Revenue Estimating Procedures and Methodologies Used by the Staff of the Joint Committee on Taxation*, (JCX-1-05), February 2, 2005 at pp. 14-15.

<sup>187</sup> The Highway Trust Fund benefits from an additional General Fund subsidy in that the costs of refunds for certain tax overpayments and excise tax credits for alcohol fuels, biodiesel and renewable diesel, and alternative fuels are borne by the General Fund.



## **B. Estimated Revenues and Outlays for Selected Federal Trust Funds (FY 2011–2020)**

The following tables reflect projections of revenues and outlays for selected trust funds for fiscal years 2011 through 2020. The estimates were prepared by the Congressional Budget Office in August 2010 at the request of the staff of the Joint Committee on Taxation for purposes of this pamphlet. **Table 1** relates to the Highway Trust Fund. **Table 2** relates to the Airport and Airway Trust Fund. **Table 3** relates to the Inland Waterways Trust Fund. **Table 4** relates to Harbor Maintenance Trust Fund. **Table 5** relates to the Leaking Underground Storage Tank Trust Fund. **Table 6** relates to the Oil Spill Liability Trust Fund. **Table 7** relates to the Sport Fish Restoration and Boating Safety Trust Fund. **Table 8** relates to the Federal Aid in Wildlife Restoration Fund. **Table 9** relates to the Black Lung Disability Trust Fund. **Table 10** relates to the Vaccine Injury Compensation Trust Fund.

**Table 1.—Estimates of Revenue and Outlays for the Highway Trust Fund  
Fiscal Years 2011–2020**

[Billions of dollars]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>Highway Account:</b>										
Beginning of Year										
Balance** .....	23.0	18.8	9.7	0.9	−7.5	−15.6	−23.8	−31.9	−40.3	−48.7
Est. Flexing—										
Transfer of Cash*	−0.8	−0.9	−1.0	−1.0	−1.0	−1.0	−1.0	−1.0	−1.0	−1.0
Revenues & Interest .....	34.0	34.7	35.5	36.5	37.1	37.4	37.7	37.9	38.2	38.5
General Fund Transfer	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
(Outlays) .....	(37.4)	(42.9)	(43.3)	(43.9)	(44.2)	(44.6)	(44.9)	(45.2)	(45.7)	(46.6)
End of Year Balance **	18.8	9.7	0.9	−7.5	−15.6	23.8	−31.9	−40.3	−48.7	−57.8
<b>Transit Account:</b>										
Beginning of Year Balance** .....	8.4	5.8	3.6	0.6	−3.1	−6.8	−10.3	−13.7	−17.2	−21.0
Est. Flexing—										
Transfer of Cash*	0.8	0.9	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Revenues & Interest .....	5.3	5.4	5.4	5.5	5.6	5.6	5.6	5.7	5.7	5.7
General Fund Transfer	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
(Outlays) .....	(8.7)	(8.4)	(9.4)	(10.1)	(10.3)	(10.1)	(10.0)	(10.2)	(10.4)	(10.6)
End of Year Balance **	5.8	3.6	0.6	−3.1	−6.8	−10.3	−13.7	−17.2	−21.0	−24.9

\*The law allows for States to request the transfer of certain amounts between the Federal Highways Administration (FHWA) and the Federal Transit Administration (FTA). Those amounts are “flexed.” Typically, on net, more is transferred from FHWA to FTA, and the net of those transfers is represented by this line.

\*\* Under current law, the Highway Trust Fund cannot incur negative balances. The negative balances shown in the above table illustrate the projected inability of the fund to pay obligations as they are incurred by the states. If the Highway Trust Fund’s resources became exhausted, spending on programs financed by the fund could continue at a slower pace as motor fuel taxes are collected. The Department of Transportation has stated that if the fund faced a shortfall, it would ration the amounts it reimburses states in order to maintain a positive balance in the fund.

**Table 2.—Estimates of Revenue and Outlays for the Airport and Airway Trust Fund (AATF)**  
**Fiscal Years 2011–2020**

[Billions of dollars]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>BOY Cash Balance</b> .....	<b>9,449</b>	<b>10,027</b>	<b>10,981</b>	<b>12,786</b>	<b>15,445</b>	<b>18,760</b>	<b>22,740</b>	<b>27,391</b>	<b>32,715</b>	<b>38,753</b>
Revenue .....	11,333	11,864	12,671	13,576	14,335	15,088	15,853	16,604	17,390	18,244
Interest .....	191	234	329	461	606	763	912	1,081	1,269	1,480
<b>Total Income</b> .....	<b>11,524</b>	<b>12,098</b>	<b>13,000</b>	<b>14,037</b>	<b>14,941</b>	<b>15,851</b>	<b>16,765</b>	<b>17,685</b>	<b>18,659</b>	<b>19,724</b>
<b>(Outlays)</b> .....	<b>(10,947)</b>	<b>(11,144)</b>	<b>(11,194)</b>	<b>(11,378)</b>	<b>(11,625)</b>	<b>(11,871)</b>	<b>(12,114)</b>	<b>(12,361)</b>	<b>(12,621)</b>	<b>(12,831)</b>
<b>EOY Cash Balance</b> .....	<b>10,027</b>	<b>10,981</b>	<b>12,786</b>	<b>15,445</b>	<b>18,760</b>	<b>22,740</b>	<b>27,391</b>	<b>32,715</b>	<b>38,753</b>	<b>45,646</b>

**Table 3.—Estimates of Revenue and Outlays for the Inland Waterways Trust Fund**  
**Fiscal Years 2011–2020**

[Millions of dollars]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>BOY Cash Balance</b> .....	<b>56</b>	<b>53</b>	<b>49</b>	<b>45</b>	<b>41</b>	<b>35</b>	<b>27</b>	<b>17</b>	<b>5</b>	<b>0</b>
Tax Revenue .....	75	75	76	78	78	78	78	78	78	78
Interest .....	2	2	2	1	1	1	*	*	*	*
<b>Total Income</b> .....	<b>77</b>	<b>77</b>	<b>78</b>	<b>79</b>	<b>79</b>	<b>79</b>	<b>78</b>	<b>78</b>	<b>78</b>	<b>78</b>
<b>(Outlays)</b> .....	<b>(80)</b>	<b>(81)</b>	<b>(82)</b>	<b>(83)</b>	<b>(85)</b>	<b>(87)</b>	<b>(88)</b>	<b>(90)</b>	<b>(92)</b>	<b>(94)</b>
<b>EOY Cash Balance</b> .....	<b>53</b>	<b>49</b>	<b>45</b>	<b>41</b>	<b>35</b>	<b>27</b>	<b>17</b>	<b>5</b>	<b>0</b>	<b>0</b>

\* Less than \$500,000.

**Table 4.—Estimates of Revenue and Outlays for the Harbor Maintenance Trust Fund  
Fiscal Years 2011–2020**

[Millions of dollars]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>BOY Cash Balance .....</b>	<b>5,629</b>	<b>6,253</b>	<b>7,030</b>	<b>8,056</b>	<b>9,360</b>	<b>10,882</b>	<b>12,605</b>	<b>14,494</b>	<b>16,589</b>	<b>18,921</b>
Tax Revenue .....	1,355	1,472	1,619	1,780	1,891	1,996	2,085	2,201	2,338	2,469
Interest .....	178	200	228	258	290	325	363	404	449	490
<b>Total Income .....</b>	<b>1,533</b>	<b>1,672</b>	<b>1,847</b>	<b>2,038</b>	<b>2,181</b>	<b>2,321</b>	<b>2,448</b>	<b>2,605</b>	<b>2,787</b>	<b>2,959</b>
<b>(Outlays) .....</b>	<b>(836)</b>	<b>(845)</b>	<b>(858)</b>	<b>(873)</b>	<b>(889)</b>	<b>(908)</b>	<b>(927)</b>	<b>(945)</b>	<b>(964)</b>	<b>(963)</b>
<b>EOY Cash Balance .....</b>	<b>6,325</b>	<b>7,080</b>	<b>8,019</b>	<b>9,221</b>	<b>10,652</b>	<b>12,295</b>	<b>14,125</b>	<b>16,154</b>	<b>18,411</b>	<b>20,897</b>

**Table 5.—Estimates of Revenue and Outlays for the Leaking Underground Storage Tank Trust Fund  
Fiscal Years 2011–2020**

[Millions of dollars]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>BOY Cash Balance .....</b>	<b>3,543</b>	<b>3,745</b>	<b>3,962</b>	<b>4,187</b>	<b>4,419</b>	<b>4,658</b>	<b>4,900</b>	<b>5,145</b>	<b>5,393</b>	<b>5,645</b>
Tax Revenue .....	196	211	216	222	225	227	228	229	230	231
Interest .....	116	119	123	127	132	136	140	145	150	155
<b>Total Income .....</b>	<b>312</b>	<b>330</b>	<b>339</b>	<b>349</b>	<b>357</b>	<b>363</b>	<b>368</b>	<b>374</b>	<b>380</b>	<b>386</b>
<b>(Outlays) .....</b>	<b>(110)</b>	<b>(113)</b>	<b>(115)</b>	<b>(117)</b>	<b>(118)</b>	<b>(121)</b>	<b>(123)</b>	<b>(126)</b>	<b>(128)</b>	<b>(134)</b>
<b>EOY Cash Balance .....</b>	<b>3,745</b>	<b>3,962</b>	<b>4,187</b>	<b>4,419</b>	<b>4,658</b>	<b>4,900</b>	<b>5,145</b>	<b>5,393</b>	<b>5,645</b>	<b>5,897</b>

**Table 6.—Estimates of Revenue and Outlays for the Oil Spill Liability Trust Fund**  
**Fiscal Years 2011–2020**

[Millions of dollars]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>BOY Cash Balance .....</b>	<b>1,601</b>	<b>1,970</b>	<b>2,392</b>	<b>2,777</b>	<b>3,239</b>	<b>3,845</b>	<b>4,518</b>	<b>5,271</b>	<b>6,051</b>	<b>6,853</b>
Tax Revenue .....	458	453	457	465	469	470	530	534	534	535
Fines and Penalties .....	5	5	5	34	135	152	152	152	152	152
Recoveries .....	6	6	6	6	30	59	59	59	59	59
Interest .....	52	65	78	121	138	159	182	206	231	256
<b>Total Income .....</b>	<b>1</b>	<b>529</b>	<b>546</b>	<b>626</b>	<b>772</b>	<b>840</b>	<b>923</b>	<b>951</b>	<b>976</b>	<b>1,002</b>
<b>(Outlays) .....</b>	<b>(152)</b>	<b>(107)</b>	<b>(161)</b>	<b>(164)</b>	<b>(166)</b>	<b>(167)</b>	<b>(170)</b>	<b>(171)</b>	<b>(174)</b>	<b>(176)</b>
<b>EOY Cash Balance .....</b>	<b>1,970</b>	<b>2,392</b>	<b>2,777</b>	<b>3,239</b>	<b>3,845</b>	<b>4,518</b>	<b>5,271</b>	<b>6,051</b>	<b>6,853</b>	<b>7,679</b>

**Table 7.—Estimates of Revenue and Outlays for the Sport Fish Restoration and Boating Safety**  
**Trust Fund**  
**Fiscal Years 2011–2020**

[Millions of dollars]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>BOY Cash Balance .....</b>	<b>968</b>	<b>925</b>	<b>867</b>	<b>830</b>	<b>789</b>	<b>737</b>	<b>665</b>	<b>574</b>	<b>457</b>	<b>310</b>
Revenues .....	599	606	618	630	637	640	643	643	642	644
Interest .....	40	27	26	21	21	20	19	18	12	6
<b>Total Income .....</b>	<b>639</b>	<b>633</b>	<b>644</b>	<b>651</b>	<b>658</b>	<b>660</b>	<b>662</b>	<b>661</b>	<b>654</b>	<b>650</b>
<b>(Outlays) .....</b>										
Sport Fish .....	(477)	(473)	(467)	(478)	(491)	(506)	(521)	(538)	(555)	(574)
Coastal .....	(88)	(90)	(80)	(78)	(79)	(82)	(84)	(87)	(89)	(92)
Boat Safety .....	(117)	(128)	(134)	(136)	(140)	(144)	(148)	(153)	(157)	(162)
<b>(Total Outlays) .....</b>	<b>(682)</b>	<b>(691)</b>	<b>(681)</b>	<b>(692)</b>	<b>(710)</b>	<b>(732)</b>	<b>(753)</b>	<b>(778)</b>	<b>(801)</b>	<b>(828)</b>
<b>EOY Cash Balance .....</b>	<b>925</b>	<b>867</b>	<b>830</b>	<b>789</b>	<b>737</b>	<b>665</b>	<b>574</b>	<b>457</b>	<b>310</b>	<b>132</b>

**Table 8.—Estimates of Revenue and Outlays for the Federal Aid in Wildlife Restoration Fund  
Fiscal Years 2011–2020**

[Millions of dollars]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>BOY Cash Balance .....</b>	<b>624</b>	<b>788</b>	<b>968</b>	<b>1,164</b>	<b>1,404</b>	<b>1,664</b>	<b>1,950</b>	<b>2,261</b>	<b>2,590</b>	<b>2,930</b>
Revenues .....	507	521	544	568	584	599	613	627	640	657
Interest .....	24	26	26	39	39	47	56	63	65	68
<b>Total Income .....</b>	<b>531</b>	<b>547</b>	<b>570</b>	<b>607</b>	<b>623</b>	<b>646</b>	<b>669</b>	<b>690</b>	<b>705</b>	<b>725</b>
<b>(Outlays) .....</b>	<b>(367)</b>	<b>(367)</b>	<b>(374)</b>	<b>(367)</b>	<b>(363)</b>	<b>(360)</b>	<b>(358)</b>	<b>(361)</b>	<b>(365)</b>	<b>(368)</b>
<b>EOY Cash Balance .....</b>	<b>788</b>	<b>968</b>	<b>1,164</b>	<b>1,404</b>	<b>1,664</b>	<b>1,950</b>	<b>2,261</b>	<b>2,590</b>	<b>2,930</b>	<b>3,287</b>

**Table 9.—Estimates of Revenue and Outlays for the Black Lung Disability Trust Fund  
Fiscal Years 2011–2020**

[Millions of dollars]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>BOY Balance* .....</b>	<b>-5,925</b>	<b>-5,716</b>	<b>-5,517</b>	<b>-5,346</b>	<b>-5,194</b>	<b>-5,049</b>	<b>-4,895</b>	<b>-4,726</b>	<b>-4,552</b>	<b>-4,633</b>
Revenues .....	650	647	642	638	635	635	631	631	377	377
Interest Charges* .....	-170	-195	-234	-263	-281	-285	-276	-266	-264	-269
<b>Total Income .....</b>	<b>480</b>	<b>452</b>	<b>408</b>	<b>375</b>	<b>354</b>	<b>350</b>	<b>355</b>	<b>365</b>	<b>113</b>	<b>108</b>
<b>(Outlays) .....</b>	<b>(271)</b>	<b>(253)</b>	<b>(237)</b>	<b>(222)</b>	<b>(209)</b>	<b>(197)</b>	<b>(186)</b>	<b>(190)</b>	<b>(194)</b>	<b>(199)</b>
<b>EOY Cash Balance .....</b>	<b>-5,716</b>	<b>-5,517</b>	<b>-5,346</b>	<b>-5,194</b>	<b>-5,049</b>	<b>-4,895</b>	<b>-4,726</b>	<b>-4,552</b>	<b>-4,633</b>	<b>-4,723</b>

\* The Black Lung Disability Trust Fund has borrowed from the General Fund. Negative numbers represent interest expense.

**Table 10.—Estimates of Revenue and Outlays for the Vaccine Injury Compensation Trust Fund  
Fiscal Years 2011–2020**

[Millions of dollars]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>BOY Cash Balance</b> .....	<b>3,022</b>	<b>3,229</b>	<b>3,462</b>	<b>3,732</b>	<b>4,043</b>	<b>4,390</b>	<b>4,767</b>	<b>5,166</b>	<b>5,588</b>	<b>6,034</b>
Net revenues .....	228	231	236	243	247	250	252	254	257	259
Interest .....	103	130	163	201	235	265	288	311	336	362
<b>Total Income</b> .....	<b>331</b>	<b>361</b>	<b>399</b>	<b>444</b>	<b>481</b>	<b>515</b>	<b>540</b>	<b>566</b>	<b>593</b>	<b>621</b>
<b>(Outlays)</b> .....	<b>(125)</b>	<b>(127)</b>	<b>(130)</b>	<b>(132)</b>	<b>(135)</b>	<b>(138)</b>	<b>(141)</b>	<b>(144)</b>	<b>(146)</b>	<b>(150)</b>
<b>EOY Cash Balance</b> .....	<b>3,229</b>	<b>3,462</b>	<b>3,732</b>	<b>4,043</b>	<b>4,390</b>	<b>4,767</b>	<b>5,166</b>	<b>5,588</b>	<b>6,034</b>	<b>6,506</b>

## APPENDICES

### Appendix A.—Schedule of Present Federal Excise Tax Rates<sup>188</sup>

Tax (and Code Section)	Tax Rates <sup>189</sup> and Nonrefundable Income Tax/Refundable Excise Tax Credits
<b>1. Highway Trust Fund Excise Taxes</b>	
<i>Major highway motor fuels excise taxes and credits</i>	
<b>Taxable fuels:</b>	
a. Gasoline and gasoline blendstocks (sec. 4081) <sup>190</sup> .....	18.3 cents per gallon.
b. Diesel fuel and kerosene (secs. 4081 and 4041) .....	24.3 cents per gallon.
c. Diesel-water fuel emulsion (sec. 4081) <sup>191</sup> .....	19.7 cents per gallon.
d. Alcohol fuels (sec. 4041) .....	18.3 cents per gallon.

<sup>188</sup> This table includes rates for all excise taxes described in Parts I and II., except for the taxes listed in the table contained in Part II.C. (Miscellaneous Regulatory Excise Taxes). Tax rates are as in effect on January 1, 2011, except where noted. For more information on the excise taxes listed in the table, and the meaning of defined terms, see Parts I and II, above.

<sup>189</sup> With the exception of liquefied petroleum gas (propane), compressed natural gas ("CNG"), and liquefied natural gas ("LNG"), highway motor fuels are subject to an additional 0.1 cent-per-gallon tax to fund the Leaking Underground Storage Tank ("LUST") Trust Fund (through September 30, 2011). See, Part I.B.1., for a description of this excise tax and Trust Fund.

<sup>190</sup> Gasoline blendstocks are defined in Treasury Department regulations as: alkylate, butane, catalytically cracked gasoline, coker gasoline, ethyl tertiary butyl ether ("ETBE"), hexane, hydrocrackate, isomerate, methyl tertiary butyl ether ("MTBE"), mixed xylene (including any separated isomer of xylene), natural gasoline, pentane, pentane mixture, polymer gasoline, raffinate, reformate, straight-run gasoline, straight-run naphtha, tertiary amyl methyl ether ("TAME"), tertiary butyl alcohol (gasoline grade), thermally cracked gasoline, and toluene. See, Treas. Reg. sec. 48.4081-1(c)(3).

<sup>191</sup> Diesel-water fuel emulsion consists of a mixture of diesel fuel and at least 14 percent water combined with an emulsion additive that is registered by a U.S. manufacturer with the EPA pursuant to section 211 of the Clean Air Act (as in effect on March 31, 2003) (sec. 4081(a)(2)(D)).



Tax (and Code Section)	Tax Rates <sup>189</sup> and Nonrefundable Income Tax/Refundable Excise Tax Credits
<b>Alcohol credits:</b>	
a. Ethanol and ethanol fuel mixtures (secs. 40, 6426 and 6427(e))	45 cents per gallon of ethanol (E-100 is nonrefundable in- come tax credit only).
b. Alcohol or alcohol fuel mixtures (other than ethanol) (secs. 40, 6426 and 6427(e))	60 cents per gallon of alcohol (100 percent alcohol fuel not in a mixture eligible for non- refundable income tax credit only).
c. Small ethanol pro- ducer credit (sec. 40)	10 cents per gallon (nonrefund- able income tax credit only).
d. Cellulosic biofuel pro- ducer credit (sec. 40)	41 cents per gallon; (46 cents per gallon for ethanol) (non- refundable income tax credit only).

Tax (and Code Section)	Tax Rates <sup>189</sup> and Nonrefundable Income Tax/Refundable Excise Tax Credits
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***Special motor fuel, alternative fuels, and biodiesel taxes and credits***

**Taxable fuels:**

- |   |  |
|---|--|
| a. Liquid fuel produced from coal (sec. 4041) <sup>192</sup> .                        | 24.3 cents per gallon.   |
| b. Partially exempt ethanol produced from natural gas (sec. 4041(m)) <sup>193</sup> . | 11.3 cents per gallon.   |
| c. Partially exempt methanol fuel produced from natural gas (sec. 4041(m)).           | 9.15 cents per gallon.   |
| d. B-100 (100% biodiesel) and renewable diesel (sec. 4081) <sup>194</sup> .           | 24.3 cents per gallon.   |
| e. Biodiesel and renewable diesel fuel mixtures (sec. 4081).                          | 24.3 cents per gallon.   |
| f. Compressed natural gas ("CNG") (sec. 4041).  | 18.3 cents per gasoline gallon equivalent ("GGE") (GGE = 126.67 c.f.). |
| g. Liquefied petroleum gas ("LPG") (sec. 4041).                                       | 18.3 cents per gallon.   |
| h. Liquefied natural gas ("LNG") (sec. 4041).   | 24.3 cents per gallon.   |
| i. Liquid fuel derived from biomass (sec. 4041).                                      | 24.3 cents per gallon.   |
| j. "P Series" fuels (sec. 4041).  | 18.3 cents per gallon.   |
| k. Liquefied hydrogen fuel (sec. 4041).   | 18.3 cents per gallon.   |
| l. Qualified ethanol and methanol fuels produced from coal (sec. 4041).               | 18.3 cents per gallon.   |

<sup>192</sup>Taxable fuels are fuels derived from coal (including peat) through the "Fischer-Tropsch" process.

<sup>193</sup>Partially exempt ethanol and methanol fuel means a liquid at least 85 percent of which consists of ethanol, methanol, or other alcohol produced from natural gas. After September 30, 2011, the tax rates on these fuels are scheduled to decline to 4.3 cents per gallon (ethanol) and 2.15 cents per gallon (methanol and other non-ethanol alcohol).

<sup>194</sup>Biodiesel contains monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet EPA requirements and ASTM D6751. Renewable diesel is defined as a liquid fuel meeting EPA requirements and ASTM D975 and D396 (or other equivalent standards approved by the Treasury Department). Renewable diesel fuel does include any fuel derived by co-processing biomass with a feedstock that is not biomass.

Tax (and Code Section)	Tax Rates <sup>189</sup> and Nonrefundable Income Tax/Refundable Excise Tax Credits
<b>Tax credits:</b>	
a. Biodiesel and biodiesel fuel mixtures (secs. 40A, 6426, and 6427(e)) .....	\$1.00 per gallon of biodiesel (B-100 eligible for nonrefundable income tax credit only).
b. Renewable diesel and renewable fuel mixtures (secs. 40A, 6426, 6427(e)) .....	\$1.00 per gallon of renewable diesel (100% renewable diesel fuel eligible for nonrefundable income tax credit only).
c. Small agri-biodiesel producer credit (sec. 40A) .....	10 cents per gallon (nonrefundable income tax credit only).
d. Cellulosic biofuel producer credit (sec. 40) .....	\$1.01 per gallon (nonrefundable income tax credit only).
e. Alternative fuels and alternative fuel mixtures (LPG, "P Series" fuels, CNG, LNG, liquefied hydrogen, liquid fuel derived from coal, and liquid fuel derived from biomass) (secs. 6426, 6427(e)) .....	50 cents per gallon (refundable excise tax credit only).

Tax (and Code Section)	Tax Rates <sup>189</sup> and Nonrefundable Income Tax/Refundable Excise Tax Credits
<b><i>Non-fuels taxes imposed on heavy highway vehicles:</i></b>	
a. Retail sales tax on highway tractors (over 19,500 lbs), heavy trucks (over 33,000 lbs.), and trail- ers (over 26,000 lbs.) (sec. 4051) <sup>195</sup> .....	12 percent of retail price.
b. Manufacturers excise tax on tires for heavy vehicles (sec. 4071) ....	9.45 cents for each 10 lbs. in ex- cess of 3,500 lbs. of maximum rated load capacity (4.725 cents for biasply tires and super single tires) <sup>196</sup>
c. Annual heavy vehicle use tax (sec. 4481) <sup>197</sup>	Under 55,000 lbs.—No tax 55,000–75,000 lbs.—\$100 plus \$22 per 1,000 lbs. over 55,000 lbs. Over 75,000 lbs.—\$550.

<sup>195</sup>Weight is determined on "gross vehicle weight," which is the fully-loaded, certificated weight for the vehicle.

<sup>196</sup>Biasply tire means a pneumatic tire on which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread (sec. 4072(d)). Super single tires are single tires greater than 13 inches in cross section width designed to replace two tires in a dual fitment (other than for steering) (sec. 4072(c)).

<sup>197</sup>Weight is defined as "taxable gross weight," which is the customary fully loaded weight.

Tax (and Code Section)	Tax Rates <sup>199</sup> and Nonrefundable Income Tax/Refundable Excise Tax Credits
<b>2. Airport and Airway Trust Fund Excise Taxes</b>	
a. Domestic air passengers (sec. 4261) ....	7.5 percent of fare, plus \$3.70 (2011) per domestic flight segment generally. <sup>198</sup>
b. International air passengers (sec. 4261) ....	\$16.30 (2011) per arrival or departure. <sup>199</sup>
c. Amounts paid for right to award free or reduced rate passenger air transportation (sec. 4261) .....	7.5 percent of amount paid.
d. Air cargo (freight) transportation (sec. 4271) .....	6.25 percent of amount charged for domestic transportation; no tax on international cargo transportation.
e. Aviation fuels (sec. 4081); <sup>200</sup>	
i. Commercial aviation .....	4.3 cents per gallon.
ii. Non-commercial (general) aviation:	
Aviation gasoline .....	19.3 cents per gallon.
Jet fuel .....	21.8 cents per gallon.

<sup>198</sup> The domestic flight segment portion of the tax is adjusted annually (effective each January 1) for inflation (adjustments based on the changes in the consumer price index (the "CPI")).

<sup>199</sup> The international arrival and departure tax rate is adjusted annually for inflation (measured by changes in the CPI).

<sup>200</sup> Like most other taxable motor fuels, aviation fuels are subject to an additional 0.1-cent-per-gallon excise tax to fund the LUST Trust Fund. See, Part I.B.1.

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**Tax (and Code Section)**
**Tax Rates<sup>189</sup> and Nonrefundable  
Income Tax/Refundable Excise Tax  
Credits**


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**3. Inland Waterways Trust Fund Excise Tax**

Diesel fuel and other liquid fuels  
used by commercial cargo ves-  
sels on specified inland and  
intra-coastal waterways (sec.  
4041) ..... 20 cents per gallon.

**4. Harbor Maintenance Trust Fund Excise Tax (sec. 4461)**

0.125 percent of value of com-  
mercial cargo loaded or un-  
loaded at taxable U.S. ports  
and of charges made for  
transportation of passengers  
traveling to or from such  
ports.

**5. Leaking Underground Storage Tank Trust Fund Excise Tax**

Fuels of a type subject to other  
excise taxes (e.g., gasoline,  
diesel fuel, kerosene, and in-  
land waterways fuels, without  
regard to exemptions from the  
other excise taxes) (secs. 4041,  
4042, and 4081) ..... 0.1 cent per gallon (LNG, CNG,  
and LPG exempt); methanol  
and ethanol fuels produced  
from coal subject to 0.05-cent-  
per-gallon rate.

**6. Oil Spill Liability Trust Fund Excise Tax**

Crude oil received at a U.S. re-  
finery or exported and im-  
ported refined petroleum prod-  
ucts (sec. 4611(a)) ..... Eight cents per barrel through  
December 31, 2016; nine cents  
per barrel in 2017.

Tax (and Code section)	Tax rates
<b>7. Sport Fish Restoration and Boating Trust Fund Excise Taxes</b>	
a. Sport fishing equipment (sec. 4161) .....	<p><i>Articles subject to tax at 10 percent rate:</i></p> <p>Fishing rods and poles (and component parts).<sup>201</sup></p> <p>Fishing reels.</p> <p>Fly fishing lines, and other fishing lines not over 130 pounds test.</p> <p>Fishing spears, spear guns, and spear tips.</p> <p>Items of terminal tackle, including leaders, artificial lures, artificial baits, and artificial flies, fishing hooks, bobbers, sinkers, snaps, drayles, and swivels.</p> <p>Fish stringers.</p> <p>Creels.</p> <p>Bags, baskets, or other containers designed to hold fish.</p> <p>Portable bait containers.</p> <p>Fishing vests.</p> <p>Gaff hooks.</p> <p>Fishing hook disgorgers.</p> <p>Dressing for fishing lines and artificial flies.</p> <p>Fishing rod belts, fishing rodholders, fishing harnesses, fish fighting chairs, fishing outriggers, and fishing downriggers.</p> <p><i>Articles subject to tax at 3 percent rate:</i></p> <p>Tackle boxes.</p> <p>Electric outboard motors.</p>

<sup>201</sup> The tax on fishing rods and poles is limited to a maximum of \$10.

Tax (and Code Section)	Tax Rates
b. Gasoline and other motor fuels used in motorboats and certain small-engine equipment (secs. 4041 and 4081) .....	18.3 cents per gallon or 24.3 cents per gallon, depending on Highway Trust Fund tax rate applicable to such fuel.

## 8. Federal Aid to Wildlife Program Excise Taxes

- a. Bows and arrows (sec. 4161)
  - i. Bows having a peak draw weight of 30 pounds or more ..... 11 percent of price.
  - ii. Archery equipment ... 11 percent of price.
  - iii. Arrow shafts for use as part of an arrow
    - (a) that measures at least 18 inches in length, or (b) if shorter, that is suitable for use with a taxable bow ..... 45 cents per shaft (2011).
- b. Regular firearms and ammunition (sec. 4181)
  - i. Pistols and revolvers ..... 10 percent of price.
  - ii. Other regular firearms<sup>202</sup> ..... 11 percent of price.
  - iii. Shells and cartridges. .... 11 percent of price.

<sup>202</sup> Other regular firearms are firearms (other than pistols and revolvers) like shotguns and rifles that are exempt from the non-regular firearms excise tax of sec. 5811 of the National Firearms Act.



Tax (and Code section)	Tax rates
<b>9. Black Lung Disability Trust Fund Excise Taxes</b>	
a. Coal (sec. 4121) .....	\$1.10 per ton for coal from underground U.S. mines and 55 cents per ton for coal from U.S. surface mines; both rates subject to a maximum of 4.4 percent of the coal's selling price.
b. Black lung benefit trust penalty excises	
i. Self-dealing (sec. 4951) .....	<i>Initial tax.</i> —10 percent of the amount of self-dealing on the self-dealer; 2.5 percent of such amount on trustee. <i>Additional tax.</i> —If not corrected within specified time, additional tax of 100 percent of amount involved on self-dealer; 50 percent of such amount on trustee.
ii. Taxable expenditures (sec. 4952) .....	<i>Initial tax.</i> —10 percent of taxable expenditure on fund; 2.5 percent of such amount on trustee. <i>Additional tax.</i> —If not corrected within specified time, additional tax of 100 percent of amount of expenditure on fund; 50 percent of such amount on trustee.
iii. Excess contributions to benefit trust (sec. 4953) .....	5 percent of excess contribution on the contributor.
<b>10. Vaccine Injury Compensation Trust Fund Excise Tax (sec. 4131)</b>	
Taxable vaccines: .....	75 cents per dose of vaccine.

Tax (and Code section)	Tax rates
Any vaccine containing diphtheria toxoid	
Any vaccine containing tetanus toxoid	
Any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens	
Any vaccine against measles, mumps, or rubella	
Any vaccine containing polio virus	
Any vaccine against hepatitis A, hepatitis B, chicken pox, or rotavirus gastroenteritis	
Any conjugate vaccine against streptococcus pneumoniae	
Any trivalent vaccine against influenza	
Any meningococcal vaccine	
Any vaccine against the human papillomavirus	

# **11. Patient-Centered Outcomes Research Trust Fund Excise Taxes**

- a. Insured and self-insured health plans (sec. 4375) ... \$2.00 per "specified health insurance policy" times the average number of lives covered under the policy in 2014 (\$1.00 in 2013; indexed after 2014).
- b. Self-insured plans (sec. 4376) ..... \$2.00 per self-insured plan times the average number of lives covered under the plan in 2014 (\$1.00 in 2013; indexed after 2014).

Tax (and Code section)	Tax rates
<b>12. Annual fee on branded prescription pharmaceutical manufacturers and importers</b>	Aggregate annual fee for all covered manufacturers and importers: \$2.5 billion for calendar year 2011, \$2.8 billion for calendar years 2012 and 2013, \$3 billion for calendar years 2014 through 2016, \$4 billion for calendar year 2017, \$4.1 billion for calendar year 2018, and \$2.8 billion for calendar year 2019 and thereafter.
<b>13. Alcoholic Beverage Excise Taxes</b>	
a. Distilled spirits (sec. 5001) .....	\$13.50 per proof gallon.
b. Wines (sec. 5041)	
i. "Still wines" not more than 14 percent alcohol .....	\$1.07 per wine gallon.
ii. "Still wines" more than 14 percent, but not more than 21 percent, alcohol .....	\$1.57 per wine gallon.
iii. "Still wines" more than 21 percent, but not more than 24 percent, alcohol .....	\$3.15 per wine gallon.
iv. "Still wines" more than 24 percent alcohol .....	\$13.50 per proof gallon (taxed as distilled spirits).
v. Champagne and other sparkling wines	\$3.40 per wine gallon.
vi. Artificially carbonated wines .....	\$3.30 per wine gallon.
vii. Hard apple cider	
Beer (sec. 5051) .....	\$0.226 per wine gallon.
c. Beer (sec. 5051) .....	\$18 per barrel (31 gallons) generally.
<b>14. Tobacco Excise Taxes</b>	
a. Tobacco products (sec. 5701)	
i. "Small cigarettes" (weighing three pounds or less per thousand) .....	\$50.33 per thousand (\$1.0066 per pack of 20 cigarettes).

Tax (and Code section)	Tax rates
ii. "Large cigarettes" (weighing more than three pounds per thousand) .....	\$105.69 per thousand.
iii. "Small cigars" (weighing three pounds or less per thousand) .....	\$50.33 per thousand.
iv. "Large cigars" (weighing more than three pounds per thousand) .....	52.75 percent of manufacturer's sales price, but not more than 40.26 cents per cigar.
v. Snuff .....	\$1.51 per pound (proportionate rate on fractional parts of a pound).
vi. Chewing tobacco .....	50.33 cents per pound (propor- tionate rate on fractional parts of a pound).
vii. Pipe tobacco .....	\$2.8311 per pound (propor- tionate rate on fractional parts of a pound).
viii. "Roll-your-own" to- bacco .....	\$24.78 per pound (proportionate rate on fractional parts of a pound).
ix. Cigarette papers .....	3.15 cents for each 50 papers (or fractional part thereof).
x. Cigarette tubes .....	6.30 cents for each 50 tubes (or fractional part thereof).
b. Manufacturers and ex- port warehouse propri- etors occupational tax (sec. 5731) .....	\$1,000 per taxable year, per premise (\$500 per year, per premise for businesses having gross receipts of less than \$500,000 in the preceding tax- able year).

#### 15. Communications Excise Taxes (sec. 4251)

- a. Local telephone service and teletypewriter service Three percent of amount billed.
- b. Prepaid telephone cards .. Three percent of face amount.

#### 16. Gas Guzzler Excise Tax (sec. 4064)

*Vehicle fuel economy rating  
(mpgs):*

- At least 22.5 ..... No tax.
- At least 21.5, but less than  
22.5 ..... \$1,000

Tax (and Code section)	Tax rates
At least 20.5 but less than 21.5 .....	\$1,300
At least 19.5 but less than 20.5 .....	\$1,700
At least 18.5 but less than 19.5 .....	\$2,100
At least 17.5 but less than 18.5 .....	\$2,600
At least 16.5 but less than 17.5 .....	\$3,000
At least 15.5 but less than 16.5 .....	\$3,700
At least 14.5 but less than 15.5 .....	\$4,500
At least 13.5 but less than 14.5 .....	\$5,400
At least 12.5 but less than 13.5 .....	\$6,400
Less than 12.5 .....	\$7,700
<b>17. Water Transportation Passenger Excise Tax (sec. 4471)</b>	
	\$3.00 per passenger per "covered voyage".
<b>18. Ozone-Depleting Chemicals Excise Tax (sec. 4681)</b>	
<i>Taxable chemicals:</i>	<i>2011 Tax Rates</i>
CFC-11, CFC-12, CFC-13, CFC-111, CFC-112, CFC-114, and CFC-211 through CFC-217 .....	\$12.55
CFC-113 .....	\$10.04
CFC-115 .....	\$7.53
Halon-1211 .....	\$37.65
Halon-1301 .....	\$125.50
Halon-2402 .....	\$75.30
Carbon tetrachloride .....	\$13.80
Methyl chloroform .....	\$1.25
<b>19. Foreign Procurement Excise Tax</b>	
a. Specified Federal procurement payments for goods or services from countries not party to an international procurement agreement with the U.S.	2 percent tax withheld from specified Federal procurement payments received under contracts entered into on or after January 2, 2011.
<b>20. General Fund Excise Taxes Related to Health Care</b>	
a. Indoor tanning services (sec. 5000B) .....	10 percent of amount paid (effective July 1, 2010).
b. Certain medical devices (sec. 4191) .....	2.3 percent of manufacturers' or importers' sales price (effective January 1, 2013).

Tax (and Code section)	Tax rates
c. Annual fee on health insurance providers .....	Aggregate annual fee for all covered entities: \$8 billion for calendar year 2014, \$11.3 billion for calendar years 2015 and 2016, \$13.9 billion for calendar year 2017, and \$14.3 billion for calendar year 2018. For calendar years after 2018, the fee is the amount for the preceding calendar year indexed to the rate of premium growth.
d. Individuals not securing minimum coverage (sec. 5000A) .....	In general, greater of 2.5 percent of amount household's income exceeds income tax filing threshold or per-adult amount of \$95 (2014), \$325 (2015), and \$695 (2016), with indexing thereafter; tax limited to 300 percent of per-adult amount or national average premium for "bronze level" plan offered by applicable health care exchange.
e. Large employers not offering affordable coverage to full-time employees and dependents (sec. 4980H).	Failure to offer coverage—1/12th of \$2,000 in 2014 (indexed thereafter) times number of full-time employees over 30 during month. Employees receiving tax credits/premium cost sharing—1/12th of \$3,000 in 2014 (indexed thereafter) for each employee enrolling in health insurance from an applicable exchange and receiving tax credits/cost sharing payments on such insurance (limited to amount equal to number of full-time employees over 30 during month).
f. Violations of health care continuation (sec. 4980B).	\$100 per day per failure, up to specified maximum.
g. Failure to meet group health plan requirements (sec. 4980D) .....	\$100 per day per failure, up to specified maximum.

Tax (and Code section)	Tax rates
h. Failure by employer to make comparable medical savings account contributions (sec. 4780E) .....	35 percent of employer's contributions.
i. Excise Tax on Issuers of Qualified Long-Term Care Insurance Contracts (sec. 4980C) .....	\$100 per insured, per day for failure to meet requirements with respect to qualified long-term care insurance contracts.
j. Excise Tax on Large Group Health Plans (sec. 5000) .....	25 percent of expenses of "non-conforming large group health plan" (defined under sec. 1862(b)(4)(A)(i) of the Social Security Act).
k. High-cost employer-sponsored health coverage (sec. 4980I) .....	40 percent of aggregate value of coverage in excess of \$10,200 (individual coverage) or \$27,500 (family coverage) times "health care cost adjustment percentage" and plus age and gender-adjusted "excess premium amount" (effective after December 31, 2017).

## **Appendix B.—Expired Hazardous Substance Superfund Excise Taxes**

### ***Prior-Law Hazardous Substance Superfund Excise Taxes***

Before 1996, three separate excise taxes were imposed to finance the Hazardous Substance Superfund ("Superfund").<sup>203</sup> The Superfund also received revenues from an environmental income tax imposed on corporations.<sup>204</sup> The environmental income tax rate equaled 0.12 percent of the "modified alternative minimum taxable income" of the corporation in excess of \$2 million.

*Crude oil excise tax.*—The first Superfund excise tax was a tax on crude oil received at a U.S. refinery or imported into the United States and on imported refined petroleum products.<sup>205</sup> When the excise tax expired, the tax rate was 9.7 cents per barrel. Crude oil or products used before receipt at a refinery were taxed upon use. The excise tax also applied to oil and refined products that were exported from the United States.

*Feedstock chemicals excise tax.*—A second Superfund excise tax was imposed on the sale or use of 42 specified organic and inorganic substances if they were produced in or imported into the United States.<sup>206</sup> The taxable chemicals generally were chemicals that were considered to be hazardous or chemicals the use of which could create hazardous products or wastes. The rates varied from 22 cents per ton to \$4.87 per ton. Exemptions were provided for methane or butane used as a fuel, certain substances used in the production of fertilizer, sulfuric acid produced as a byproduct of air pollution control, and substances derived from coal. The following table lists the 42 taxable chemicals and the rates at which they were subject to tax at the time the excise tax expired.

<sup>203</sup> Secs. 4611, 4661, and 4671.

<sup>204</sup> Sec. 59A.

<sup>205</sup> Sec. 4611. The tax base and operative rules for this tax are the same as those for the Oil Spill Liability Trust Fund excise tax, described in Part I.B.2.

<sup>206</sup> Sec. 4661.



Feedstock chemical	Tax per ton
Acetylene .....	\$4.87
Benzene .....	4.87
Butane .....	4.87
Butylene .....	4.87
Butadiene .....	4.87
Ethylene .....	4.87
Methane .....	3.44
Naphthalene .....	4.87
Propylene .....	4.87
Toluene .....	4.87
Xylene .....	4.87
Ammonia .....	2.64
Antimony .....	4.45
Antimony trioxide .....	3.75
Barium sulfide .....	2.30
Bromine .....	4.45
Cadmium .....	4.45
Chlorine .....	2.70
Chromium .....	4.45
Chromite .....	1.52
Potassium dichromate .....	1.69
Sodium dichromate .....	1.87
Cobalt .....	4.45
Cupric sulfate .....	1.87
Cupric oxide .....	3.59
Cuprous oxide .....	3.97
Hydrochloric acid .....	0.29
Hydrogen fluoride .....	4.23
Lead oxide .....	4.14
Mercury .....	4.45
Nickel .....	4.45
Phosphorus .....	4.45
Stannous chloride .....	2.85
Stannic chloride .....	2.12
Zinc chloride .....	2.22
Zinc sulfate .....	1.90
Potassium hydroxide .....	0.22
Sodium hydroxide .....	0.28
Sulfuric acid .....	0.26
Nitric acid .....	0.24

*Tax on certain imported substances.*—The third excise tax that funded the Superfund was a tax on certain imported substances.<sup>207</sup> The substances were comprised of materials that were produced or manufactured using chemicals subject to the tax on feedstock chemicals. The tax rate was that generally applicable to the chemicals used in the manufacture or production of the substance. If an importer failed to furnish adequate information to the Treasury Department on the amount of chemicals used, the tax rate was five percent of the value of the imported substance.

An initial list of taxable imported substances was statutorily prescribed. The Treasury Department was authorized, and did, list additional taxable substances. The additional substances were those with respect to which Treasury determined that taxable chemicals constituted more than 50 percent of the weight or value of the materials used to produce the substances (determined on the basis of the predominate method of production). The Treasury Department also was authorized to remove imported substances from the list if the substances no longer satisfied both the weight and value tests.

The following table lists the statutorily prescribed taxable imported substances.

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**Statutorily Listed Taxable Substances:**

Cumene	Ethylbenzene
Styrene	Methylene chloride
Ammonium nitrate	Polypropylene
Nickel oxide	Propylene glycol
Isopropyl alcohol	Formaldehyde
Ethylene glycol	Acetone 207
Cumene	Ethylbenzene
Vinyl chloride	Acrylonitrile
Polyethylene resins, total	Methanol
Polybutadiene	Propylene oxide
Styrene-butadiene, latex	Polypropylene resins
Styrene-butadiene, snpf	Ethylene oxide
Synthetic rubber, not containing fillers	Ethylene dichloride
Urea	Cyclohexane
Ferronickel	Maleic anhydride
Ferrochromium nov 3 pct	Phthalic anhydride
Ferrochrome ov 3 pct carbon	Ethyl methyl ketone
Unwrought nickel	Chloroform
Nickel waste and scrap	Carbon tetrachloride
Wrought nickel rods and wire	Chromic acid
Nickel powders	Hydrogen peroxide
Phenolic resins	Polystyrene homopolymer resins
Polyvinylchloride resins	Melamine
Polystyrene resins and copolymers	Acrylic and methacrylic acid resins
Ethyl alcohol for nonbeverage use	Vinyl resins
Isophthalic acid	Vinyl resins, NSPF

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<sup>207</sup> Sec. 4671.

The following table lists the additional taxable substances listed by the Treasury Department as of the date the tax expired.

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**Additional Listed Taxable Substances:**

1,3-butylene glycol	Formic acid
1,4-butanediol	Glycerine
1,5,9-cyclododecatriene	Hexabromocyclododecane
2,2,4-trimethyl-1,3-pentanediol diisobutyrate	Hexamethylene diamine
Isobutyl acetate	2,2,4-trimethyl-1,3-pentanediol monoisobutyrate
Linear alpha olefins	2-ethyl hexanol
Methyl acrylate	2-ethyhexyl acrylate
Methyl chloroform	Methyl methacrylate
Acetic acid	Monochlorobenzene
Adipic acid	Monoethanolamine
Adiponitrile	Monoisopropanolamine
Allyl chloride	Alpha-methylstyrene
Normal butyl acetate	Aniline
Nylon 6/6	Normal propyl acetate
Benzaldehyde	Ortho-Dichlorobenzene
Benzoic acid	Ortho-Nitrochlorobenzene
Bisphenol-A	Para-Dichlorobenzene
Butanol	Para-Nitrochlorobenzene
Butyl acrylate	Para-Nitrophenol
Butyl benzyl phthalate	Paraformaldehyde
Chlorinated polyethylene	Para-Dichlorobenzene
Cyclododecanol	Pentaerythritol
Decarbromodiphenyl oxide	Perchloroethylene
Di-2-ethyl hexyl phthalate	Phenol
Diethanolamine	Phosphorous pentasulfide
Diisopropanolamine	Phosphorous trichloride
Diglycidyl ether of bisphenol-A	Poly (60/31 ethylene/cyclohexylenedimethylene terephthalate)
Dimethyl terephthalate	Dimethyl 1-2,6-naphthalene dicarboxylate
Di-n-hexyl adipate	Poly (97.5/3.5 ethylene/cyclohexylenedimethylene terephthalate)
Diphenyl oxide	Diphenylamine
Epichlorohydrin	Poly (98.5/1.5 ethylene/cyclohexylenedimethylene terephthalate)
Ethyl acetate	Ethyl acrylate
Ethyl chloride	Poly 1,4 butyleneterephthalate
Ethylene dibromide	Polyalphaolefins
Ethylenebistetrabromophthalimide	Polybutylene
Polybutylene/ethylene	Tetrahydrofuran
Polycarbonate	Texanol benzyl phthalate
Polyethylene terrephthalate pellets	Toluene diisocyanate
Propanol	Toluenediamine

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Sodium nitrilotriacetate mono-hydrate	Trichloroethylene
Terephthalic acid	Triisopropanolamine
Tetrabromobisphenol-A	Trimethylolpropane
Tetrachlorophthalic anhydride	Vinyl acetate

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### ***Overview of Hazardous Substance Superfund programs***

Under prior law, operation of the Hazardous Substance Superfund was governed by parallel provisions of the Code and authorizing statutes.<sup>208</sup> The Code provisions governed deposit of specified revenues into the Superfund and general expenditure purposes. The authorizing statutes specified expenditure programs.

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") was enacted to address abandoned hazardous waste sites in the United States and established the Superfund to pay for cleanup of such sites. Monies from the General Fund, fines and penalties, and recoveries from responsible parties have also helped finance hazardous waste cleanup expenditures. The law subsequently was amended by the Superfund Amendments and Reauthorization Act of 1986 and the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

Amounts in the Superfund were available, as provided in appropriations Acts, for making expenditures to carry out sections 111(a)(1), (2), (5), and (6), 111(c), and 111(m) of CERCLA (as in effect on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986).

The Superfund had authority to borrow, as repayable advances, for purposes of the Superfund, limited to amounts that the Treasury Department estimated would be deposited in the Superfund from Superfund taxes during the following 24 months. No advances were allowed after December 31, 1995, and all advances were to be repaid by that date (i.e., when the Superfund taxes expired).

### ***Hazardous Substance Superfund Receipts***

Since expiration of the Superfund taxes after 1995, the Superfund program has been financed with previously collected taxes and General Fund contributions. The following table provides information on receipts and expenditures projected for the Superfund for fiscal years 2011 through 2020.

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<sup>208</sup> Sec. 9507 and U.S.C. sec. 9601 et. seq.

**Table 11.—Estimates of Revenue and Outlays for the Hazardous Substance Superfund  
Fiscal Years 2011–2020**

[Millions of dollars]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>BOY Cash Balance .....</b>	<b>3,926</b>	<b>3,960</b>	<b>4,100</b>	<b>4,342</b>	<b>4,654</b>	<b>4,981</b>	<b>5,331</b>	<b>5,693</b>	<b>6,067</b>	<b>6,455</b>
Revenues* .....	0	0	0	0	0	0	0	0	0	0
Interest .....	88	91	93	96	98	101	104	106	109	112
Recoveries .....	85	85	85	85	85	85	85	85	85	85
Fines/Penalties .....	2	2	2	2	2	2	2	2	2	2
General Fund .....	1,319	1,359	1,400	1,442	1,485	1,530	1,575	1,623	1,671	1,722
<b>Total Deposits/Receipts .....</b>	<b>1,494</b>	<b>1,537</b>	<b>1,580</b>	<b>1,625</b>	<b>1,670</b>	<b>1,718</b>	<b>1,766</b>	<b>1,816</b>	<b>1,867</b>	<b>1,921</b>
<b>(Outlays) .....</b>	<b>(1,461)</b>	<b>(1,386)</b>	<b>(1,348)</b>	<b>(1,313)</b>	<b>(1,343)</b>	<b>(1,368)</b>	<b>(1,404)</b>	<b>(1,442)</b>	<b>(1,480)</b>	<b>(1,518)</b>
<b>EOY Cash Balance .....</b>	<b>3,960</b>	<b>4,110</b>	<b>4,342</b>	<b>4,654</b>	<b>4,981</b>	<b>5,331</b>	<b>5,693</b>	<b>6,067</b>	<b>6,455</b>	<b>6,857</b>

\* Taxes dedicated to the Hazardous Substance Superfund expired on December 31, 1995.