COMPARISON OF THE TAX PROVISIONS CONTAINED IN H.R. 3550, THE "TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS," AS PASSED BY THE HOUSE OF REPRESENTATIVES, AND H.R. 3550, THE "SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION EQUITY ACT OF 2004," AS AMENDED BY THE SENATE

Prepared by the Staff of the
JOINT COMMITTEE ON TAXATION

June 25, 2004
JCX-47-04

Contents

Page

Page

INTRODUCTION

On February 12, 2004, the Senate passed, as amended, S. 1072, the "Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004". On April 2, 2004, the House of Representatives passed H.R. 3550, the "Transportation Equity Act: A Legacy for Users". On May 19, 2004, S. 1072 was incorporated into H.R. 3550 as an amendment in the nature of a substitute and passed by the Senate.

This document[1] prepared by the staff of the Joint Committee on Taxation, presents a side-by-side comparison of the tax provisions in the House and Senate bills. The "House bill" provisions refer to those provisions contained in Title IX of H.R. 3550, as passed by the House. The "Senate Amendment" provisions refer to those provisions contained in Titles I and V of H.R. 3550, as amended by the Senate.

[1] This document may be cited as follows: Joint Committee on Taxation, *Comparison of the Tax Provisions Contained in H.R. 3550, the "Transportation Equity Act: A Legacy for Users," as Passed by the House of Representatives, and H.R. 3550, the "Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004," as Amended by the Senate* (JCX-47-04), June 25, 2004.

Provision	Present Law	House Bill	Senate Amendment
I. TRUST FUND REAUTHORIZATION **A. Extension of Highway Trust Fund Expenditure Authority and Related Taxes (sec. 9101 of the House bill and sec. 5001 of the Senate amendment)**	Six separate excise taxes are imposed to finance the Federal Highway Trust Fund program. Three of these taxes are imposed on highway motor fuels. The remaining three are a retail sales tax on heavy highway vehicles, a manufacturers' excise tax on heavy vehicle tires, and an annual use tax on heavy vehicles. Except for 4.3 cents per gallon of the Highway Trust Fund fuels tax rates, all of these taxes are scheduled to expire after September 30, 2005. The 4.3-cents-per-gallon portion of the fuels tax rates is permanent. Highway Trust Fund expenditure authority is scheduled to expire after June 30, 2004.	Extends Highway Trust Fund taxes through September 30, 2011, and expenditure authority through September 30, 2009.	Extends both the Highway Trust Fund taxes and expenditure authority through September 30, 2009. For each fiscal year, authorizes the expenditure of funds for highway use tax evasion projects for the IRS ($30 million for fuel tax compliance, $10 million for ExSTARS, and $10 million for ExFIRS) and $50 million for the Federal Highway Administration to allocate $1 million to each State to combat fuel tax evasion on the State level. Effective date.–Date of enactment.
B. Prohibition on Use of Highway Account for Certain Rail Projects (sec. 5001(g) of the Senate amendment)	The Highway Trust Fund has a sub account for Mass Transit. The portion of the Highway Trust Fund that is not the Mass Transit Account is referred to as the	No provision.	With respect to rail projects beginning after the date of enactment, prohibits the use of Highway Account funds for any rail project, except for any rail

Provision	Present Law	House Bill	Senate Amendment
	"Highway Account". Present law contains no prohibition on the use of Highway Account money for rail projects.		project involving publicly owned rail facilities or any rail project yielding a public benefit. Effective date.–Date of enactment.
C. Interest Credited on Highway Trust Fund Balances (sec. 5002 of the Senate amendment)	The Highway Trust Fund does not receive interest on its unexpended balances.	No provision.	The Highway Trust Fund is credited with interest on its unexpended balances. Effective date.–Date of enactment.
D. Elimination of Highway Trust Fund Reimbursement of Certain Refunds and Credits Paid Out of the General Fund (sec. 5002 of the Senate amendment)	Under sec. 9503(c)(2), certain transfers are made from the Highway Trust Fund into the General Fund, relating to amounts paid in respect of gasoline used on farms, amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems, amounts relating to fuels not used for taxable purposes, and income tax credits for certain uses of fuels.	No provision.	Section 9503(c)(2), relating to certain transfers from the Highway Trust Fund to the General Fund, is repealed. Effective date.–Applies to amounts paid for which no transfer from the Highway Trust Fund has been made before April 1, 2004.
E. Modification of Adjustments of Apportionments ("Harry Byrd rule") (sec. 5003 of the Senate amendment)	Highway Trust Fund spending is limited by anti-deficit provisions internal to the Highway Trust Fund, the so-called "Harry Byrd rule". The rule requires the Treasury Department to determine, on a quarterly basis, the amount (if	No provision.	The "Harry Byrd rule" is changed from a 24-month to a 48-month receipt rule. Makes the temporary rule permanent, so that for purposes of the 48-month rule, taxes are assumed extended beyond their expiration date.

Provision	Present Law	House Bill	Senate Amendment
	any) by which unfunded highway authorizations exceed projected net Highway Trust Fund tax receipts for the 24-month period beginning at the close of each fiscal year (sec. 9503(d)). Similar rules apply to unfunded Mass Transit Account authorizations. If unfunded authorizations exceed projected 24-month receipts, apportionments to the States for specified programs funded by the relevant Trust Fund Account are to be reduced proportionately. Under a temporary rule (through June 30, 2004) for purposes of determining 24 months of projected revenues for the anti-deficit provisions, the Secretary of the Treasury is instructed to treat each expiring provision relating to appropriations and transfers to the Highway Trust Fund to have been extended through the end of the 24-month period and to assume that the rate of tax during such 24-month period remains at the same rate in effect on the date of enactment of the provision.		Effective date.–Date of enactment.

Provision	Present Law	House Bill	Senate Amendment
F. Extension and Modification of Aquatic Resources Trust Fund, Expenditure Authority and Related Taxes (secs. 9101 and 9201 of the House bill and secs. 5001 and 5411 of the Senate amendment)	The Aquatic Resources Trust Fund is funded by a portion of the receipts from the excise tax imposed on motorboat gasoline and special motor fuels, as well as a portion of the tax imposed on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment ("small engines"), that are initially deposited into the Highway Trust Fund. 4.8 cents per gallon of the total 18.4 cents per gallon imposed on fuel used in motorboats and small engines is retained in the General Fund. 0.1 cent per gallon is transferred to the Leaking Underground Storage Trust ("LUST") Fund. The balance of 13.5 cents per gallon is initially transferred to the Highway Trust Fund, and then retransferred to the Aquatic Resources Trust Fund. The Aquatic Resources Trust Fund is comprised of two accounts, the Boat Safety Account and the Sport Fish Restoration Account. Transfers of motorboat fuel taxes from the Highway Trust Fund to the Boat Safety Account are	Extends transfers from Highway Trust Fund to Aquatic Resources Trust Fund to September 30, 2011 and expenditure authority through September 30, 2009. No taxes on fuel used in motorboats and gasoline used in small engines are retained in the General Fund. Except for the funding of LUST, all these taxes are initially transferred to Highway Trust Fund. After funding of Boat Safety Account and Land and Water Conservation Fund as under current law, the balance of these taxes is transferred to Sport Fish Restoration Account. <u>Effective date</u>.–The provisions extending transfers and expenditure authority are effective on date of	Extends both transfers from Highway Trust Fund to Aquatic Resources Trust Fund and expenditure authority through September 30, 2009. No taxes on fuel used in motorboats and gasoline used in small engines are retained in the General Fund. Except for the funding of LUST, all these taxes are initially transferred to Highway Trust Fund. Eliminates the Aquatics Resources Trust Fund and future transfers to the Boat Safety Account and transforms the Sport Fish Restoration Account into the Sport Fish Restoration Trust Fund. After funding of the LUST and Land and Water Conservation Fund as under present law, the balance of these taxes is transferred from the Highway Trust Fund into the Sport Fish Restoration Trust Fund. Amounts existing in the Boat Safety Account are authorized to be spent down over five years. <u>Effective date</u>.–The provisions extending transfers and expenditure authority are effective on date of

Provision	Present Law	House Bill	Senate Amendment
	limited to amounts not exceeding $70 million per year and are subject to an overall annual limit such that the Account will not have an unobligated balance in excess of $70 million. To the extent of any balance remaining of motorboat fuel taxes, $1 million is transferred from the Highway Trust Fund to the Land and Water Conservation Fund. The Sport Fish Restoration Account receives the remainder of the motorboat fuel taxes that were deposited into the Highway Trust Fund, plus 13.5 cents per gallon of the taxes on gasoline used in small engines. This Account is also funded with receipts from an *ad valorem* manufacturer's excise tax on sport fishing equipment and certain import duties. Transfers from the Highway Trust Fund to the Aquatic Resources Trust Fund are scheduled to expire after September 30, 2005. The expenditure authority for the Aquatic Resources Trust Fund expires after June 30, 2004.	enactment. The provision eliminating retention of the taxes in the General Fund is effective for taxes imposed after September 30, 2003.	enactment. The rest is effective October 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
II. RESTRUCTURING OF INCENTIVES FOR ALCOHOL FUELS, ETC.			
A. Restructuring of Alcohol Fuel Excise Tax Incentives, Elimination of the General Fund's Partial Retention of Alcohol Fuel Taxes, and Extension of Section 40 Alcohol Fuels Income Tax Credit (sec. 9201 and 9202 of the House bill and sec. 5102 of the Senate amendment)	The excise tax on gasoline is 18.4 cents per gallon (including .1 cent of the Leaking Underground Trust Fund tax). The tax on diesel fuel and kerosene is 24.4 cents per gallon (including .1 cent of the Leaking Underground Trust Fund tax) Blends of gasoline and alcohol are taxed at lower rates and gasoline used in the producing gasohol are taxed at lower rates depending on the type of alcohol and its volume in the mixture. A reduced rate also applies to diesel fuel and kerosene that is combined with alcohol. If gasoline, diesel fuel, kerosene or aviation fuel on which the regular rate of tax was imposed is used in producing a qualified alcohol fuel mixture sold in that person's trade or business, that person is entitled to payment equal to the difference between the regular rate and the applicable reduced rate. In the case of gasohol with respect to which a reduced excise tax is paid, 2.5 cents per gallon of the reduced tax is retained in the General Fund; 2.8	Repeals reduced-rate sales of fuel for blending with alcohol. Allows the alcohol fuel mixture credit under section 40(a)(1) (with certain modifications) to be used as a credit against section 4081 tax liability by providing a per-gallon excise tax credit for each gallon of alcohol used to produce a qualified alcohol fuel mixture. The credit is generally 52 cents per gallon of alcohol used by the taxpayer to produce a qualified mixture. The credit is paid out of the General Fund with no Highway Trust Fund reimbursement. The Highway Trust Fund is credited the full amount of tax without regard to any excise tax credits taken. The term alcohol includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from alcohol. Provides that refiners can treat qualified mixtures as sold upon	Repeals reduced-rate sales of fuel for blending with alcohol. Provides a per-gallon excise tax credit for each gallon of alcohol used to produce a qualified alcohol fuel mixture to be used against section 4081 liability. The credit is generally 52 cents per gallon of alcohol used by the taxpayer to produce a qualified mixture. The credit is paid out of the General Fund with no Highway Trust Fund reimbursement. The Highway Trust Fund is credited the full amount of tax without regard to any excise tax credits taken. The term alcohol includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from alcohol. Provides that a qualified mixture includes a mixture of alcohol and a

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

Provision	Present Law	House Bill	Senate Amendment
B. Incentives for Biodiesel and Biodiesel Fuel Mixtures (secs. 5102, 5103, and 5508 of the Senate amendment)	No income or excise tax incentives are provided for biodiesel fuels under present law.	No provision.	**Income tax credit** Provides a 50 cents-per-gallon income tax credit similar to the present-law ethanol benefits for each gallon of biodiesel used or sold as fuel or used in the production of a qualified biodiesel mixture that is used or sold as fuel. Biodiesel derived from virgin sources (agri-biodiesel) receives an increased credit of $1.00 per gallon. A qualified biodiesel mixture is a mixture of biodiesel and diesel fuel sold by the producer of the mixture to any person for use as a fuel or used by the producer as a fuel. The fuels do not have to be sold or used by the producer in a diesel-powered engine to qualify for the credit. Effective date.–Fuel produced and sold or used after September 30, 2004 in taxable years ending after such date and before January 1, 2007. **Excise Tax Credit** Provides per-gallon excise tax credits for qualified biodiesel fuel mixtures.

Provision	Present Law	House Bill	Senate Amendment
			The credit is generally 50 cents and $1.00 per gallon of biodiesel and agri-biodiesel, respectively. Provides outlay payments to producers of biodiesel fuel mixtures and users of neat biodiesel. Credit and payment provisions related to biodiesel terminate after 2006. Importers and producers of biodiesel must be registered with the Secretary. Effective date.–Fuel produced and sold, used or removed after September 30, 2004. Registration requirements are effective April 1, 2005. **GAO Study** The provision directs the General Accounting Office ("GAO") to undertake a study related to biodiesel fuels and assessing the effects of the tax credits for biodiesel fuels. Effective date.–Date of enactment.

Provision	Present Law	House Bill	Senate Amendment
III. FUEL FRAUD PREVENTION **A. Aviation Jet Fuel** **1. Taxation of aviation-grade kerosene (sec. 9302 of the House bill and sec. 5211 of the Senate amendment)**	Aviation fuel is kerosene and any liquid (other than any product taxable under section 4081) that is suitable for use as a fuel in an aircraft. Unlike other fuels that generally are taxed upon removal from a terminal rack, aviation fuel is taxed upon sale of the fuel by a producer or importer. The rate of tax on aviation fuel is 21.9 cents per gallon. In general, aviation fuel sold for use or used in commercial aviation is taxed at a reduced rate of 4.4 cents per gallon. In order to qualify for the 4.4 cents per gallon rate, the person engaged in commercial aviation must be registered with the Secretary and provide the seller with a written exemption certificate. Aviation fuel sold by a producer or importer for use by the buyer in a nontaxable use is exempt from the excise tax on sales of aviation fuel. A producer that is registered with the Secretary may sell aviation fuel	The bill changes the incidence of taxation of aviation fuel from the sale of aviation fuel to the removal of aviation fuel from a refinery or terminal, or the entry into the United States of aviation fuel. The full rate of tax, 21.9 cents per gallon, is imposed upon removal of aviation fuel from a refinery or terminal (or entry into the United States). Aviation fuel may be removed at a reduced rate, either 4.4 or zero cents per gallon, only if the aviation fuel is: (1) removed directly into the wing of an aircraft (i) that is registered with the Secretary as a buyer of aviation fuel for use in commercial aviation, (ii) that is a foreign airline entitled to the present law exemption for aviation fuel used in foreign trade, or (iii) for a tax-exempt use; or (2) removed or entered as part of an exempt bulk transfer. Under a special rule, the provision treats certain refueler trucks, tankers, and tank wagons as a	Similar to House bill, except that refueler trucks, tankers, and tank wagons are not subject to special rules; there is no provision for liability for, and self-assessment of, tax by the person receiving fuel removed from a refinery or terminal directly into the wing of an aircraft (whether by refueling vehicle or otherwise); and refunds by ultimate vendors are paid with interest. Effective date.–The provision is effective for aviation fuel removed, entered, or sold after September 30, 2004.

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

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

Provision	Present Law	House Bill	Senate Amendment
		nonapplication of the tax on de minimis amounts of aviation fuel. Under the provision, 0.1 cents per gallon of such tax is transferred to the LUST Trust Fund. The remainder is transferred to the Airport and Airway Trust Fund. Effective date.–The provision is effective for aviation fuel removed, entered, or sold after September 30, 2004.	
2. Provide for transfer from Airport and Airway Trust Fund to Highway Trust Fund to adjust for continued highway use of aviation fuel (sec. 5212 of the Senate amendment)	Aviation fuel is kerosene and any liquid (other than any product taxable under section 4081) that is suitable for use as a fuel in an aircraft. In general, the rate of tax on aviation fuel is 21.9 cents per gallon. Aviation fuel sold for use or used in commercial aviation is taxed at a reduced rate of 4.4 cents per gallon. Certain sales of aviation fuel are exempt from tax. Taxes received for aviation fuel, except for the LUST Trust Fund financing rate, are appropriated to the Airport and Airway Trust Fund. Such appropriation occurs even if aviation fuel is used for non aviation purposes.	No provision.	Directs the Secretary to pay from the Airport and Airway Trust Fund to the Highway Trust Fund annually an amount as determined by the Secretary equivalent to amounts received in the Airport and Airway Trust Fund that are attributable to fuel that is used primarily for highway transportation purposes. Eleven percent of such amount shall be paid to the Mass Transit Account of the Highway Trust Fund. Effective date.–The provision is effective on October 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
	Taxes received on taxable fuel for transportation purposes generally are appropriated to the Highway Trust Fund.		

Provision	Present Law	House Bill	Senate Amendment
B. Dyed Fuel **1. Mechanical dye injection equipment and penalties related to dyed fuel (sec. 9303 of the House bill and secs. 5221, 5222, and 5223 of the Senate amendment)**	Diesel fuel may be dyed at a terminal rack by manual dyeing or by mechanical injection. A person who sells dyed fuel (or holds dyed fuel for sale) for any use that such person knows (or has reason to know) is a taxable use, or who willfully alters or attempts to alter the dye in any dyed fuel, is subject to a penalty. The penalty also applies to any person who uses dyed fuel for a taxable use (or holds dyed fuel for such a use) and who knows (or has reason to know) that the fuel is dyed. The penalty is the greater of $1,000 per act or $10 per gallon of dyed fuel involved. In determining the amount of the penalty, the $1,000 is increased by the product of $1,000 and the number of prior penalties imposed upon such person (or a related person or predecessor of such person or related person). The penalty may be imposed jointly and severally on any business entity, and each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty.	Requires mechanical dyeing with respect to terminals that offer dyed fuel. The Secretary of the Treasury is to prescribe regulations establishing standards within 180 days after enactment. Additional assessable penalties are imposed: • for tampering with the mechanical system, equal to the greater of $25,000 or $10 per gallon per act. The person tampering is responsible for any additional tax. • upon the system operator for failure to maintain security standards, a penalty of $1,000. An additional penalty is imposed of $1,000 per day for each day a violation remains uncorrected. • Joint and several liability for willful participants and affiliated business entities. Effective date.–180 days after the regulations are issued.	Similar to House bill, except that the Secretary of the Treasury is to prescribe regulations establishing standards by June 30, 2004, and contains the following additional provisions: Denies administrative appeal or review for repeat offenders (more than two violations) of present law after a chemical analysis of the fuel, except in the case of a claim regarding fraud or mistake in the chemical analysis or error in the mathematical calculation of the amount of penalty. Extends present law penalties to any person who knows that the strength or composition of any dye or marking in any dyed fuel has been altered, chemically or otherwise, and who sells (or holds for sale) such fuel for any use that the person knows or has reason to know is a taxable use of such fuel. Effective date.–Penalties relating to mechanical dyeing systems are effective 180 days after the

Provision	Present Law	House Bill	Senate Amendment
			regulations are issued. The prohibition of certain administrative review is effective for penalties assessed after date of enactment. The extension of present law penalties is effective on date of enactment.
2. Terminate dyed diesel use by intercity buses (sec. 5224 of the Senate amendment)	A manufacturer's tax of 24.4 cents per gallon applies to diesel fuel. Diesel fuel that is to be used for a nontaxable purpose will not be taxed upon removal from the terminal if it is dyed to indicate its nontaxable purpose. Use in an intercity bus is a nontaxable use for purposes of the manufacturers tax on diesel fuel. However, diesel fuel is subject to a retail backup tax. Thus, dyed diesel removed from the terminal is exempt from the manufacturers tax but a tax of 7.4 cents per gallon is imposed on the delivery of the dyed fuel into the fuel supply tank of the intercity bus. The operator of the bus is liable for the tax. Under present law, intercity bus operators also may buy fully taxed undyed diesel and seek a refund of the difference between the 24.4 cents per gallon rate and the 7.4 cents per gallon rate.	No provision.	Eliminates the ability of intercity buses to buy dyed diesel and self-assess the 7.4 cents per gallon. Operators of such buses must buy clear fuel and seek a refund of the difference between 24.4 and 7.4 cents per gallon of tax on diesel fuel. The provision also permits ultimate vendors to make refund claims if the bus operator assigns its right to claim a refund to the ultimate vendor. Permits refund claimants to obtain interest if they file their refund claims electronically and the Secretary does not pay such claims within 20 days (45 days for paper claims). If the purchase of the fuel was made by credit card, the person extending the credit is treated as the ultimate vendor. Effective date.–Fuel sold after September 30, 2004.

Provision	Present Law	House Bill	Senate Amendment
C. Modification of Inspection of Records Provisions **1. Authority to inspect on-site records (sec. 9304 of the House bill and sec. 5231 of the Senate amendment)**	The IRS is authorized to inspect any place where taxable fuel is produced or stored (or may be stored). The inspection is authorized to: (1) examine the equipment used to determine the amount or composition of the taxable fuel and the equipment used to store the fuel; and (2) take and remove samples of taxable fuel. The scope of the inspection includes the books and records kept to determine the excise tax liability under section 4081.	The provision expands the scope of the inspection to include any books, records, or shipping papers pertaining to taxable fuel located in any authorized inspection location. Effective date.–Date of enactment.	Same as the House bill.
2. Assessable penalty for refusal of entry (sec. 5232 of the Senate amendment)	The IRS is authorized to inspect any place where taxable fuel is produced or stored (or may be stored). Any person that refuses to allow an inspection is subject to a penalty in the amount of $1,000 for each refusal. The IRS is not able to assess this penalty in the same manner as it would a tax. It must first seek the assistance of the Department of Justice to obtain a judgment. Assessable penalties are payable upon notice and demand	No provision.	In addition to the $1,000 penalty under present law, an assessable penalty is imposed with respect to the refusal of entry of any person with the intent to transport and distribute untaxed, adulterated fuel mixtures or to transport and distribute dyed diesel fuel for taxable use. The assessable penalty is $1,000 for such refusal. The penalty will not apply if it is shown that such failure is due to reasonable cause. If the penalty is

Provision	Present Law	House Bill	Senate Amendment
	by the Secretary and are assessed and collected in the same manner as taxes.		imposed on a business entity, the proposal provides for joint and several liability with respect to each officer, employee, or agent of such entity or other contracting party who willfully participated in the act giving rise to the penalty. If the business entity is part of an affiliated group, the parent corporation also will be jointly and severally liable for the penalty. Effective date.–October 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
D. Registration and Reporting Requirements			
1. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries (sec. 9305 of the House bill and sec. 5241 of the Senate amendment)	In general, gasoline, diesel fuel, and kerosene ("taxable fuel") are taxed upon removal from a refinery or a terminal. Tax also is imposed on the entry into the United States of any taxable fuel for consumption, use, or warehousing. The tax does not apply to any removal or entry of a taxable fuel transferred in bulk (a "bulk transfer") to a terminal or refinery if both the person removing or entering the taxable fuel and the operator of such terminal or refinery are registered with the Secretary. Present law does not require that the vessel or pipeline operator that transfers fuel as part of a bulk transfer be registered in order for the transfer to be exempt. For example, a registered refiner may transfer fuel to an unregistered vessel or pipeline operator who in turn transfers fuel to a registered terminal operator. The transfer is exempt despite the intermediate transfer to an unregistered person.	Requires that for a bulk transfer of a taxable fuel to be exempt from tax, any pipeline or vessel operator that is a party to the bulk transfer be registered with the Secretary. Transfer to an unregistered party will subject the transfer to tax. The Secretary is required to publish periodically a list of all registered persons that are required to register. Effective date.–The provision is effective on October 1, 2004, except that the Secretary is required to publish the list of registered persons beginning on July 1, 2004.	Similar to the House bill, except that with respect to a bulk transfer on which no tax is paid, the Senate amendment imposes a penalty on any person who knowingly transfers taxable fuel in bulk to an unregistered person. The penalty is the greater of $10,000 or $1 per gallon and is increased for multiple prior violations. No penalty is imposed upon a showing by the taxpayer of reasonable cause. The provision authorizes amounts equivalent to the penalties received to be appropriated to the Highway Trust Fund. Effective date.–The provision is effective on October 1, 2004, except that the Secretary is required to publish the list of persons required to register by June 30, 2004.

Provision	Present Law	House Bill	Senate Amendment
2. Display of registration and penalties for failure to display registration and to register (secs. 9306 and 9307 of the House bill and secs. 5242, 5243, 5244 of the Senate amendment)	Blenders, enterers, pipeline operators, position holders, refiners, terminal operators, and vessel operators are required to register with the Secretary with respect to fuels taxes imposed by sections 4041(a)(1) and 4081. A non-assessable penalty for failure to register is $50. A criminal penalty of $5,000, or imprisonment of not more than five years, or both, together with the costs of prosecution also applies to a failure to register and to certain false statements made in connection with a registration application.	Requires that every operator of a vessel who is required to register with the Secretary display on each vessel used by the operator to transport fuel, proof of registration through an electronic identification device prescribed by the Secretary. A failure to display such proof of registration results in a penalty of $500 per month per vessel. The amount of the penalty is increased for multiple prior violations. No penalty is imposed upon a showing by the taxpayer of reasonable cause. The provision authorizes amounts equivalent to the penalties received to be appropriated to the Highway Trust Fund. The provision imposes a new assessable penalty for failure to register of $10,000 for each initial failure, plus $1,000 per day that the failure continues. No penalty is imposed upon a showing by the taxpayer of reasonable cause. In addition, the provision increases the present-law non-assessable penalty for failure to register from $50 to $10,000 and the present law criminal penalty for failure to register from $5,000 to $10,000. The provision authorizes amounts	Similar to House bill, except that: the increase in the penalty for multiple prior violations for failure to display proof of registration is determined differently, and the Secretary shall require that persons that operate a terminal or refinery or a customs bonded storage facility within a foreign trade zone register and report to the Secretary.

Provision	Present Law	House Bill	Senate Amendment
		equivalent to any of such penalties received to be appropriated to the Highway Trust Fund. Effective date.–The provision requiring display of registration is effective on October 1, 2004. The provision relating to penalties is effective for penalties imposed after September 30, 2004.	Effective date.–The provision is effective on October 1, 2004, except that the penalty for failure to register is effective for failures pending or occurring after September 30, 2004.
3. Modification of information reporting and penalties for failure to report (sec. 9307 of the House bill and secs. 5244 and 5246 of the Senate amendment)	A fuel information reporting program, the Excise Summary Terminal Activity Reporting System ("ExSTARS"), requires terminal operators and bulk transport carriers to report monthly on the movement of any liquid product into or out of an approved terminal. Terminal operators file Form 720-TO - Terminal Operator Report, which shows the monthly receipts and disbursements of all liquid products to and from an approved terminal. Bulk transport carriers (barges, vessels, and pipelines) that receive liquid product from an approved terminal or deliver liquid product to an approved terminal file Form 720-CS - Carrier Summary Report, which details such receipts and	The provision imposes a new assessable penalty for failure to file a report or to furnish information required in a report required by the ExSTARS system. The penalty is $10,000 per failure with respect to each vessel or facility (e.g., a terminal or other facility) for which information is required to be furnished. No penalty is imposed upon a showing by the taxpayer of reasonable cause. The provision authorizes amounts equivalent to the penalties received to be appropriated to the Highway Trust Fund. Effective date.–The provision is effective for penalties imposed after September 30, 2004.	Similar to House bill, except that electronic filing of ExSTARS reports is mandated for persons that have 25 or more reportable transactions in a month, and technical wording differences. Effective date.–The provision is effective for failures pending or occurring after September 30, 2004. The electronic reporting

Provision	Present Law	House Bill	Senate Amendment
	disbursements. In general, the penalty for failure to file a report or a failure to furnish all of the required information in a report is $50 per report.		provision is effective on October 1, 2004.
4. Modification of information reporting and penalties for failure to report (sec. 9307 of the House bill and secs. 5244 and 5246 of the Senate amendment)	A fuel information reporting program, the Excise Summary Terminal Activity Reporting System ("ExSTARS"), requires terminal operators and bulk transport carriers to report monthly on the movement of any liquid product into or out of an approved terminal. Terminal operators file Form 720-TO - Terminal Operator Report, which shows the monthly receipts and disbursements of all liquid products to and from an approved terminal. Bulk transport carriers (barges, vessels, and pipelines) that receive liquid product from an approved terminal or deliver liquid product to an approved terminal file Form 720-CS - Carrier Summary Report, which details such receipts and disbursements. In general, the penalty for failure to file a report or a failure to furnish all of the required information in a report is $50 per report.	The provision imposes a new assessable penalty for failure to file a report or to furnish information required in a report required by the ExSTARS system. The penalty is $10,000 per failure with respect to each vessel or facility (e.g., a terminal or other facility) for which information is required to be furnished. No penalty is imposed upon a showing by the taxpayer of reasonable cause. The provision authorizes amounts equivalent to the penalties received to be appropriated to the Highway Trust Fund. Effective date.–The provision is effective for penalties imposed after September 30, 2004.	Similar to House bill, except that electronic filing of ExSTARS reports is mandated for persons that have 25 or more reportable transactions in a month, and technical wording differences. Effective date.–The provision is effective for failures pending or occurring after September 30, 2004. The electronic reporting provision is effective on October 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
5. Information reporting for persons claiming alcohol fuel or biodiesel tax benefits (sec. 5245 of the Senate amendment)	The Code provides an income tax credit for each gallon of ethanol and methanol derived from renewable sources (e.g., biomass) used or sold as a fuel, or used to produce a qualified alcohol fuel mixture, such as gasohol. The amount of the credit is currently equal to 52 cents per gallon (ethanol) and 60 cents per gallon (methanol). This tax credit is provided to blenders of the alcohols with other taxable fuels, or to the retail sellers of unblended alcohol fuels. Part or all of the benefits of the income tax credit may be claimed through reduced excise taxes paid, either in reduced-tax sales or by expedited blender refunds on fully taxed sales of gasoline to obtain the benefit of the reduced rates. The amount of the income tax credit determined with respect to any alcohol is reduced to take into account any benefit provided by the reduced excise tax rates. There is no information reporting requirement for persons taking advantage of these benefits.	No provision.	Requires persons claiming the Code benefits related to alcohol fuels and biodiesel to provide information related to, and for the coordination of, such benefits as the Secretary may require to ensure the proper administration and use of such benefits. The Secretary may deny, revoke or suspend the registration of any person to enforce this requirement. Effective date.–October 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
E. Imports **1. Liability for tax on fuel imported by unregistered persons (sec. 9308 of the House bill and sec. 5251 of the Senate amendment)**	Tax is imposed on the entry into the United States of any taxable fuel for consumption, use, or warehousing. The "enterer" is liable for the tax. An enterer generally means the importer of record (under customs law) with respect to the taxable fuel. However, if the importer of record is acting as an agent (a broker for example), the person for whom the agent is acting is the enterer. If there is no importer of record for taxable fuel entered into the United States, the owner of the taxable fuel at the time it is brought into the United States is the enterer. An importer's liability for Customs duties includes a liability for any internal revenue taxes that attach upon the importation of merchandise unless otherwise provided by law or regulation. (19 CFR 141.3).	The importer of record is jointly and severally liable for the tax imposed upon entry of fuel into the United States if, under regulations, any other person that is not registered with the Secretary as a taxable fuel registrant is liable for such tax. If the importer of record is liable for the tax and such tax is not paid on or before the last date prescribed for payment, the Secretary may collect such tax from the Customs bond posted with respect to the importation of the taxable fuel to which the tax relates. Effective date.–Fuel entered after September 30, 2004.	For fuel entering the United States (other than transfers in bulk) for consumption, use, or warehousing, the proposal provides that the tax is immediately due and payable at the time of entry, if the enterer is not registered with the IRS. Upon the failure to pay tax or post bond, the Customs Service is authorized under the proposal to deny entry of the shipment into the United States. The Secretary also may seize the fuel on which the tax is due or detain the vehicle transporting such fuel until such tax is paid. If no tax has been paid or bond filed within five days of the seizure, the Secretary may sell the fuel. Effective date.–Date of enactment.
2. Reconciliation of on-loaded cargo to entered cargo (sec. 5252 of the Senate amendment)	Final Custom regulations were issued on October 31, 2002 pertaining to cargo destined for importation into the United States or exportation from the United States. The regulations require the	No provision.	Not later than one year after the date of enactment, the Secretary of Homeland Security, together with the Secretary, is to promulgate regulations providing for the transmission to the IRS of

Provision	Present Law	House Bill	Senate Amendment
	advance and accurate presentation of certain manifest information prior to lading at the foreign port and encourage the presentation of this information electronically. Customs must receive from the carrier the vessel's Cargo Declaration (Customs Form 1302) or the electronic equivalent within 24 hours before such cargo is laden aboard the vessel at the foreign port. Certain carriers of bulk cargo, however, are exempt from these filing requirements. Such bulk cargo includes that composed of free flowing articles such as oil, grain, coal, ore and the like, which can be pumped or run through a chute or handled by dumping. Thus, taxable fuels are not covered by the Cargo Declaration requirement.		information pertaining to cargo of taxable fuels destined for importation into the United States, prior to such importations. Effective date.–Date of enactment.

Provision	Present Law	House Bill	Senate Amendment
F. Miscellaneous Fuel Provisions **1. Tax on sale of diesel fuel whether suitable for use or not in a diesel-powered vehicle or train (sec. 5261 of the Senate amendment)**	Upon the occurrence of certain events, the Code imposes an excise tax on taxable fuel. Under section 4083(a), "taxable fuel" includes diesel fuel. Diesel fuel is defined as any liquid, other than gasoline, that without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or train. A liquid is suitable for this use if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train.	No provision.	Modifies the definition of diesel fuel to include any liquid sold or offered for sale as fuel for use as a fuel in a diesel-powered highway vehicle or train. The liquid does not have to be suitable for use in a diesel-powered engine or train. Effective date.–Date of enactment.
2. Modification of ultimate vendor refund claims with respect to farming (sec. 9310 of the House bill and sec. 5262 of the Senate amendment)	If diesel fuel, kerosene, or aviation fuel on which tax has been imposed is used by any person in a nontaxable use, the Secretary is to refund (without interest) the amount of tax imposed. The refund is made to the ultimate purchaser of the taxed fuel. However, in the case of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, refund payments are paid to the ultimate, registered vendors ("ultimate vendors") of such fuels.	In the case of diesel fuel or kerosene used on a farm for farming purposes, the provision limits ultimate vendor claims for refund to sales of such fuel in amounts less than 250 gallons per farmer per claim period. Effective date.–Fuels sold for nontaxable use after the date of enactment.	Identical to House bill except that limit on ultimate vendor claims for refund applies to amounts less than 500 gallons per farmer per claim period. Effective date.– Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
3. Taxable fuel refunds for certain ultimate vendors (sec. 9401 of the House bill and sec. 5263 of the Senate amendment)	In the case of gasoline on which tax has been paid and sold to a State or local government, to a nonprofit educational organization, for supplies for vessels or aircraft, for export, or for the production of special fuels, a wholesale distributor that sells the gasoline for such exempt purposes is treated as the person who paid the tax and thereby is the proper claimant for a credit or refund of the tax paid. In the case of undyed diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, a credit or payment is allowable only to the ultimate, registered vendors ("ultimate vendors") of such fuels. In general, refunds are paid without interest. In the case of overpayments of tax on gasoline, diesel fuel, or kerosene that is used to produce a qualified alcohol mixture and for refunds due ultimate vendors of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, the Secretary is required to pay interest on refunds of $200 or more ($100 or more in the case of kerosene) due to the	For sales of gasoline to a State or local government or to a nonprofit educational organization for its exclusive use on which tax has been imposed, the provision conforms the payment of refunds to that procedure established under present law in the case of diesel fuel or kerosene. That is, the ultimate vendor claims the refund. The provision modifies the payment of interest on refunds. For overpayments of tax on gasoline, diesel fuel, or kerosene that is used to produce a qualified alcohol mixture and for refunds due ultimate vendors of diesel fuel or kerosene used for farming purposes or by a State or local government, all refunds unpaid after 45 days must be paid with interest. If the taxpayer has filed for refund by electronic means, refunds unpaid after 20 days must be paid with interest. For claims for refund of tax paid on diesel fuel or kerosene sold to State and local governments and for claims for refund of tax paid on gasoline sold to State and local governments or to a nonprofit	Identical to House bill except provision imposes additional requirements of ultimate vendors who file for 20-day refunds on behalf of their customers. To qualify for 20-day refunds of highway exempt use, the ultimate vendor must certify that all of his claimants are registered and approved for highway exempt use. The ultimate vendor must register with the Secretary and, as part of his registration, the ultimate vendor must submit for pre-certification the highway exempt users on whose behalf the ultimate vendor will file claims for refunds.

Provision	Present Law	House Bill	Senate Amendment
	taxpayer arising from sales over any period of a week or more, if the Secretary does not make payment of the refund within 20 days.	educational organization and for which the ultimate purchaser utilized a credit card, the provision deems the person extending the credit to the ultimate purchaser to be the ultimate vendor. That is, the credit card company administers claims for refund and is responsible for supplying documentation required from ultimate vendors. Effective date.–October 1, 2004.	Effective date.–Same as House bill.
4. Two-party exchanges (sec. 9402 of the House bill and sec. 5264 of the Senate amendment)	Most fuel is taxed when it is removed from a registered terminal. The party liable for payment of this tax is the "position holder". The position holder is the person reflected on the records of the terminal operator as holding the inventory position in the fuel and has a contractual agreement with the terminal operator to store and provide services with respect to the fuel. It is common industry practice for oil companies to serve customers of other oil companies under exchange agreements, e.g., where Company A's terminal is more conveniently located for wholesale or retail customers of Company B.	The provision permits two registered parties to switch position holder status in fuel within a registered terminal if all of the following occur: (1) The transaction includes a transfer from the first position holder, i.e., the person who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator prior to the transaction. (2) The exchange transaction occurs at the same time as completion of removal across the rack from the terminal by the receiving person or its customer.	Same as the House bill.

Provision	Present Law	House Bill	Senate Amendment
	In such cases, the exchange agreement party (Company B in the example) owns the fuel when the motor fuel is removed from the terminal and sold to B's customer.	(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across a terminal rack for purposes of reporting the transaction to the IRS. (4) The transaction is the subject of a written contract. Effective date.–Date of enactment.	
5. Heavy highway vehicle use tax modifications (sec. 9309 of the House bill and sec. 5265 of the Senate amendment)	For vehicles over 55,000 pounds, an annual use tax is imposed at specified rates according to weight. The annual use tax is imposed for a taxable period of July 1 through June 30. Generally, the tax is paid by the person in whose name the vehicle is registered. In certain cases, taxpayers are allowed to pay the tax in installments. Present law permits proration of the tax if the vehicle is stolen, destroyed, or when the first use of the vehicle occurs after the first month of the taxable period. Any highway motor vehicle that is issued a base plate by Canada or Mexico and is operated on U.S. highways is subject to the use tax whether or	Eliminates the ability to pay the tax in installments. Eliminates the reduced rates for Canadian and Mexican vehicles. Requires taxpayers with 25 or more vehicles for any taxable period to file their returns electronically. Permits proration of tax for vehicles sold during the taxable period.	Includes all of the provisions of the House bill. In addition, requires that every person, agency, or instrumentality that pays the heavy highway vehicle use tax to receive and display on the vehicle either a decal or an electronic identification device prescribed by the Secretary. The decal or device is to be received and displayed not later than October 1 with respect to each taxable period. Eliminates the present-law ability to prorate tax when the first use of the vehicle occurs after the first month of the taxable period.

Provision	Present Law	House Bill	Senate Amendment
	not the vehicles are required to be registered in the United States. The tax rate for Canadian and Mexican vehicles is 75 percent of the rate that would otherwise be imposed.	Effective date.–Taxable periods beginning after the date of enactment.	Effective date.–Generally effective for taxable periods beginning after the date of enactment. The decal requirements are effective October 1, 2005.
6. Dedication of revenues from certain penalties to the Highway Trust Fund (sec. 9311 of the House bill and sec. 5266 of the Senate amendment)	Present law does not dedicate to the Highway Trust Fund any revenues from penalties assessed and collected by the Secretary.	The provision dedicates to the Highway Trust Fund amounts equivalent to the penalties assessed under the penalty provisions created by the bill as well as the existing penalties (as increased by the provision) for failing to register under section 4101 (dedicates penalties from secs. 6715, 6715A, 6717, 6718, 6725, 7232, and 7272). Effective date.–Penalties assessed after October 1, 2004.	Similar to the House bill. Because the Senate amendment creates penalties that are not included in the House bill, the text of the provision is slightly different (dedicates penalties from secs. 6715, 6715A, 6717, 6718, 6719, 6720, 6725, 7232, and 7272). Effective date.–Penalties assessed after October 1, 2004.
7. Nonapplication of export exemption to the delivery of fuel into the fuel tank of motor vehicles removed from United States (sec. 5267 of the Senate amendment)	Special provisions under the Code provide for a refund of tax to any person who sells gasoline to another for exportation. It is the long-standing administrative position of the IRS that the exemption from excise tax by reason of exportation does not apply to the sale of motor fuel pumped into a fuel tank of a vehicle that is to be driven, or shipped, directly out of the United	No provision.	Reaffirms the long-standing IRS position taken in Rev. Rul. 69-150 and restates present law by amending the Code definition of export to exclude the delivery of a taxable fuel into a fuel tank of a motor vehicle that is shipped or driven out of the United States. Imposes a tax on the sale of taxable fuel at a duty-free sales enterprise unless there was a prior taxable removal, or entry of such fuel.

Provision	Present Law	House Bill	Senate Amendment
	States. *See* Rev. Rul. 69-150.		Effective date.–Sales or deliveries made after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
G. Total Accountability (secs. 5271, 5272, and 5273 of the Senate amendment)	An excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal, (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not registered with the IRS to receive untaxed fuel, unless there was a prior taxable removal or entry. A "taxable fuel" is gasoline, diesel fuel (any liquid suitable for use other than gasoline suitable for use in a diesel-powered engine or train), and kerosene. Gasoline includes, to the extent provided in regulations, gasoline blendstocks and products commonly used as additives in gasoline. The term "gasoline blendstocks" does not include any product that cannot be blended into gasoline without further processing or fractionation ("off-spec gasoline"). The term taxable fuel also does not include any liquid that contains less than four percent normal paraffins, or any liquid that has a distillation range of 125 degrees Fahrenheit or less, sulfur content of 10 ppm or less and minimum color of +27 Saybolt (these are known as "excluded liquids")	No provision.	**Reportable liquids** Creates a new category of taxable liquids, "reportable liquids". A reportable liquid is any petroleum-based liquid other than a taxable fuel. For purposes of the imposition of tax, the provision treats "reportable liquids" in a manner similar to taxable fuels. Tax is imposed upon the removal, entry, or sale of such liquids, unless the removal, entry, or sale is (1) to a registered person who certifies that such liquid will not be used as a fuel or in the production of a fuel, or (2) the sale is to the ultimate purchaser of such liquid. Authorizes the Secretary to pay (without interest) an amount equal to the tax imposed, if a person establishes that the ultimate use of a gasoline blendstock, or additive, was not to produce gasoline. Similarly, if tax is imposed on a reportable liquid and the person establishes that the liquid was not used to produce a taxable fuel, the Secretary is authorized to pay (without interest) an amount equal to the tax imposed on such person with respect to the reportable

Provision	Present Law	House Bill	Senate Amendment
	If certain conditions are met, the removal, entry, or sale of gasoline blendstocks is not taxable. Diesel fuel and kerosene that is to be used for a nontaxable purpose will not be taxed upon removal from the terminal if it is dyed to indicate its nontaxable purpose. Undyed aviation-grade kerosene also is exempt from tax at the rack if it destined for use as a fuel in an aircraft. Feedstock kerosene that a registered industrial user receives by pipeline or vessel also is exempt from the dyeing requirement. The IRS collects data under the ExSTARS reporting system that tracks all removals across the terminal rack regardless of whether or not the product is technically excluded from the definition of gasoline, diesel, or blendstocks. ExSTARS reporting identifies the position holder at the time of removal. Below the rack, no information is gathered for exempt or excluded products or uses. Taxpayers file quarterly excise tax returns showing only net taxable gallons. Taxpayers do not account for gallons they claim to be exempt on such returns. Although the		liquid. Provides that dyed diesel (a taxable fuel) also is taxable unless removed by a person registered with the Secretary under section 4101. The Secretary is to require that all persons removing refined product, whether a taxable product or an untaxed product, over the terminal rack to report such products on a monthly excise tax return. Effective date.–Reportable liquids and fuel sold or used after September 30, 2004. **Information reporting** Requires information reporting with respect to taxable fuels removed, entered, or transferred from any refinery, pipeline or vessel which is registered with the Secretary. Effective date.–October 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
	return is a quarterly return, the excise taxes are paid in semimonthly deposits. If deposits are not made as required, a taxpayer may be required to file returns on a monthly or semimonthly basis instead of quarterly.		

Provision	Present Law	House Bill	Senate Amendment
IV. DEFINITION OF HIGHWAY VEHICLE **A. Exemption from Certain Excise Taxes for Mobile Machinery (sec. 9301 of the House bill and sec. 5301 of the Senate amendment)**	Under present law, the definition of a "highway vehicle" affects the application of the retail tax on heavy vehicles, the heavy vehicle use tax, the tax on tires, and fuel taxes. The Code does not define a "highway vehicle." For purposes of these taxes, among the vehicles excluded under Treasury regulations are certain specially designed mobile machinery vehicles for nontransportation functions (the "mobile machinery exception"). The mobile machinery exception applies if three tests are met: (1) the vehicle consists of a chassis to which jobsite machinery (unrelated to transportation) has been permanently mounted; (2) the chassis has been specially designed to serve only as a mobile carriage and mount for the particular machinery and (3) by reason of such special design, the chassis could not, without substantial structural modification, be used to transport a load other than the	The provision codifies the present-law mobile machinery exemption for purposes of three taxes: the retail tax on heavy vehicles, the heavy vehicle use tax, and the tax on tires. Thus, if a vehicle can satisfy the three-part test, it will not be treated as a highway vehicle and will be exempt from these taxes. Fuel taxes for mobile machinery vehicles must be paid and then a refund sought if a mileage requirement is met. Specifically, in addition to the three-part design test, the vehicle must not have traveled more than 7,500 miles on public highways during the owner's taxable year. Refunds of fuel taxes are permitted on an annual basis only. For purposes of this rule, a person's taxable year is his taxable year for income tax purposes. Effective date.–Generally effective after the date of enactment. As to the fuel taxes, the provision is effective for taxable years beginning after the date of	Similar to the House bill, except vehicles owned by an organization described in section 501(c), and exempt from tax under section 501(a), need only satisfy the three-part design test for purposes of the fuel taxes and the mileage test is 5,000 miles. Effective date.–Same as the House bill.

Provision	Present Law	House Bill	Senate Amendment
	particular machinery. On June 6, 2002, the Treasury Department put forth proposed regulations that would eliminate the mobile machinery exception.	enactment.	
B. Modify Definition of Offhighway Vehicle (sec. 5302 of the Senate amendment)	Under present law, the definition of a "highway vehicle" affects the application of the retail tax on heavy vehicles, the heavy vehicle use tax, the tax on tires, and fuel taxes. The Code does not define a "highway vehicle." For purposes of these taxes, Treasury regulations define a highway vehicle as any self-propelled vehicle or trailer or semitrailer designed to perform a function of transporting a load over the public highway, whether or not also designed to perform other functions. Excluded from the definition of highway vehicle are certain vehicles specially designed for off-highway transportation for which the special design substantially limits or impairs the use of such vehicle to transport loads over the highway (the "off-highway transportation vehicle" exception), and certain trailers and semi-trailers specially designed to function only as an enclosed	No provision.	Adopts the definition of an offhighway transportation vehicle and a nontransportation trailer and semitrailer described in the Proposed Treasury Regulations. For example, a vehicle that has considerable physical characteristics for transporting its load other than over the public highway, when compared with its physical characteristics for transporting its load over the public highway, may establish that it is specially designed for the primary function of transporting its load other than over the public highway. If the physical characteristics for transporting such vehicle's load other than over the public highway substantially limit its capability to transport a load over the public highway, then the vehicle is not treated as a highway vehicle. Effective date.–The provision generally is effective after the date

Provision	Present Law	House Bill	Senate Amendment
	stationary shelter for the performance of non-transportation functions off the public highways. On June 6, 2002, the Treasury Department put forth proposed regulations that would modify the off-highway transportation vehicle exception. Under the proposed regulations, a vehicle is not treated as a highway vehicle if it is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design its capability to transport a load over the public highway is substantially limited or impaired. A vehicle's design is determined solely on the basis of its physical characteristics. In determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether it is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether it can transport a load at a sustained speed of at least 25 miles per hour. Under the proposed regulation, it is not material that a vehicle can transport a greater load off the		of enactment. As to the fuel taxes, the provision is effective for taxable periods beginning after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
	public highway than it is permitted to transport over the public highway. The proposed regulation provides an exception to the definition of a highway vehicle for nontransportation trailers and semitrailers. Under the proposed regulation, a trailer or semitrailer is not treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an offhighway function at an offhighway site. For example, a trailer that is capable only of functioning as an office for an offhighway construction operation is not a highway vehicle.		

Provision	Present Law	House Bill	Senate Amendment
V. EXCISE TAX REFORM AND SIMPLIFICATION **A. Highway Excise Taxes** **1. Dedication of gas guzzler tax to Highway Trust Fund (sec. 5401 of the Senate amendment)**	The Code imposes a tax on the sale by the manufacturer of each automobile of a model type with a fuel economy of 22.5 miles per gallon or less. Automobiles subject to tax are those rated at 6,000 pounds unloaded gross vehicle weight or less. While certain vehicles are exempt, the tax applies to limousines without regard to the weight requirement.	No provision.	Requires that amounts equivalent to the gas guzzler taxes received in the Treasury be transferred to the Highway Trust Fund. Repeals the tax as it applies to limousines rated at greater than 6,000 pounds unloaded gross vehicle weight. Effective date.–Date of enactment.
2. Simplification of tax on tires (sec. 9403 of the House bill)	A graduated excise tax is imposed on the sale by a manufacturer (or importer) of tires designed for use on highway vehicles. There is no tax on tires weighing 40 pounds or less. For tires weighing greater than 40 pounds the tax rate increases from 15 to 50 cents per pound depending upon the weight of the tire. The tax expires after September 30, 2005.	The provision replaces the present-law tax rates with a tax rate based on the load capacity of the tire. In general, the tax is 9.4 cents for each 10 pounds of tire load capacity in excess of 3,500 pounds. In the case of a biasply tire, the tax rate is 4.7 cents for each 10 pounds of tire load capacity in excess of 3,500 pounds. A biasply tire is any tire manufactured primarily for use on piggyback trailers. Provision modifies the definition of a tire to conform to certain	No provision.

Provision	Present Law	House Bill	Senate Amendment
		regulations of the Department of Transportation. The provision also exempts from tax any tire sold for the exclusive use of the Department of Defense or the Coast Guard. Effective date.–Sales in calendar years beginning more than 30 days after the date of enactment.	
3. Repeal of certain excise taxes on railroad diesel fuel and inland waterway fuel (sec. 5402 of the Senate amendment)	Diesel fuel used in trains and fuels used in barges operating on the designated inland waterways system are subject to a 4.3-cents-per-gallon General Fund excise tax. In both cases, the 4.3-cents-per-gallon excise tax rates are permanent.	No provision.	The 4.3-cents-per-gallon General Fund excise tax on diesel fuel used in trains and fuels used in barges operating on the designated inland waterways system is repealed. Effective date.–October 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
B. Aquatic Excise Taxes			
1. Exempt LED devices from sonar devices suitable for finding fish (sec. 5412 of the Senate amendment)	In general, the Code imposes a 10-percent manufacturer's excise tax on the sale of specified sport fishing equipment. A three-percent rate, however, applies to the sale of electric outboard motors and sonar devices suitable for finding fish. The tax imposed on the sale of sonar devices is limited to $30. A sonar device suitable for finding fish does not include any device that is a graph recorder, a digital type, a meter readout, a combination graph recorder or combination meter readout.	No provision.	Provides that a sonar device suitable for finding fish does not include a sonar device with an LED (light emitting diode) display. Effective date.–Articles sold on and after October 1, 2004.
2. Repeal of harbor maintenance tax on exports (sec. 5413 of the Senate amendment)	The Code contains provisions imposing a 0.125-percent excise tax on the value of most commercial cargo loaded or unloaded at U.S. ports. The tax also applies to amounts paid for passenger transportation. Receipts from this tax are deposited in the Harbor Maintenance Trust Fund. The U.S. Supreme Court has held that the harbor maintenance excise tax, as applied to exported cargo, violates the "Export Clause" of the U.S. Constitution. The tax remains	No provision.	Conforms the Code to the Supreme Court decision and exempts exported commercial cargo from the Harbor Maintenance tax. Effective date.–Effective before, on, and after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
	in effect for imported cargo. Imposition of the tax on passenger transportation has been upheld.		
3. Cap on excise tax on certain fishing equipment (sec. 5414 of the Senate amendment)	In general, the Code imposes a 10-percent manufacturer's excise tax on the sale of specified sport fishing equipment. Sport fishing equipment subject to tax includes, among other equipment, fishing rods and poles.	No provision.	Provides that the tax applicable to a fishing rod or fishing pole is the lesser of 10 percent or $10.00. Effective date.–Articles sold on and after October 1, 2004.
4. Reduction in rate of tax on portable aerated bait containers (sec. 5415 of the Senate amendment)	A ten percent excise tax is imposed on the sale by the manufacturer, producer, or importer of specified sport fishing equipment, including portable bait containers. Parts or accessories that are sold on or in connection with taxable articles are also treated as taxable. The Internal Revenue Service has ruled that aeration systems designed to keep fish and marine life alive are taxable parts or accessories when sold on or in connection with portable bait containers. Fish tank aerators, however, are not taxable.	No provision.	Reduces the excise tax on portable aerated bait containers to three percent. Effective date.–Applies to articles sold on or after October 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
C. Aerial Excise Taxes **1. Exemptions for aerial applicators and fixed-wing aircraft engaged in forestry operations (sec. 5421 of the Senate amendment)**	Fuel used on a farm for farming purposes is a nontaxable use. Aerial applicators (crop dusters) are allowed to claim a refund instead of farm owners and operators in the case of aviation gasoline if the owners or operators give written consent to the aerial applicators. This provision applies only to fuel consumed in the airplane while operating over the farm, i.e., fuel consumed traveling to and from the farm is not exempt. Most air passenger transportation is subject to an excise tax equal to 7.5 percent of the amount paid plus $3.00 per domestic flight segment. The tax on transportation by air does not apply to air transportation by helicopter if the helicopter is used for (1) the exploration, or the development or removal of oil, gas, or hard minerals exploration, or (2) certain timber operations (planting, cultivating, cutting, transporting, or caring for trees, including logging operations). The exemption applies only when the helicopters are not using the Federally funded airport and airway services.	No provision.	With regard to the exemption for aerial applicators, written consent from the farm owner or operator is no longer needed for the aerial applicator to claim exemption for aviation gasoline. The exemption also is expanded to include fuels consumed when flying between the farms where chemicals are applied and the airport where the airplane takes off and lands. The present exemption for helicopters engaged in timber operations is expanded to include fixed-wing aircraft if such aircraft are not using the Federally funded airport and airway services. Effective date.–Fuel use or air transportation after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
2. Modification of rural airport definition (sec. 5422 of the Senate amendment)	Most air passenger transportation is subject to an excise tax equal to 7.5 percent of the amount paid plus $3.00 per domestic flight segment. The flight segment component of the tax does not apply to segments to or from qualified "rural airports." A rural airport is defined as an airport that (1) in the second preceding calendar year had fewer than 100,000 commercial passenger departures, and (2) either (a) is not located within 75 miles of another airport that had more than 100,000 such departures in that year, or (b) is eligible for payments under the Federal "essential air service" program.	No provision.	Expands the definition of qualified rural airport to include an airport that (1) is not connected by paved roads to another airport and (2) had fewer than 100,000 commercial passengers departing by air on flight segments of at least 100 miles during the second preceding calendar year. Effective date.–April 1, 2004.
3. Exemption from ticket taxes for transportation provided by seaplanes (sec. 5423 of the Senate amendment)	Air passenger transportation is subject to an excise tax equal to 7.5 percent of the amount paid plus $3.00 per domestic flight segment ("air passenger tax"). A 6.25-percent tax is imposed on amounts paid for transportation of property by air ("air cargo tax"). The air cargo tax applies only to amounts paid to persons engaged in the business of transporting property by air for hire. The air passenger tax and air cargo tax do not apply	No provision.	Provides that the air passenger tax and the air cargo tax do not apply to transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airway Trust Fund. Effective date.–Transportation beginning after March 31, 2004.

Provision	Present Law	House Bill	Senate Amendment
	to amounts paid for the transportation if furnished on an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less unless the aircraft is operated on an established line.		
4. Certain sightseeing flights exempt from taxes on air transportation (sec. 5424 of the Senate amendment)	Air passenger transportation is subject to an excise tax equal to 7.5 percent of the amount paid plus $3.00 per domestic flight segment ("air passenger tax"). The air passenger tax does not apply to amounts paid for the transportation if furnished on an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less unless the aircraft is operated on an established line. Under the Treasury regulations to be "operated on an established line" means to be operated with "some degree of regularity between definite points. The term implies that the air carrier maintains control over the direction, routes, time, number of passengers carried, etc." Treasury regulations provide that transportation need not be between two definite points to be taxable: a payment for continuous transportation beginning and	No provision.	For purposes of the exemption for small aircraft operated on nonestablished lines, an aircraft operated on a flight, the sole purpose of which is sightseeing, will not be considered as operated on an established line. Effective date.–Transportation beginning on or after the date of enactment but does not apply to any amount paid before the date of enactment for such transportation.

Provision	Present Law	House Bill	Senate Amendment
	ending at the same point is subject to the tax.		

Provision	Present Law	House Bill	Senate Amendment
D. Alcoholic Beverage Excise Taxes **1. Repeal special occupational taxes on producers and marketers of alcoholic beverages (sec. 5431 of the Senate amendment)**	As part of a broader Federal tax and regulatory structure governing the production and marketing of alcoholic beverages, special occupational taxes are imposed on producers and others engaged in the marketing of distilled spirits, wine, and beer. The special occupational taxes are payable annually, on July 1 of each year, and range from $250 per year for retail dealers to $1,000 per year per premise for producers. Every wholesale or retail dealer in liquors, wine or beer is required to keep records of their transactions. There are penalties for failing to comply with the recordkeeping requirements.	No provision.	Repeals the special occupational taxes on producers and marketers of alcoholic beverages. The recordkeeping and inspection rules applicable to wholesalers and retailers are retained. Existing criminal penalties relating to records and reports apply to wholesalers and retailers who fail to comply with these requirements. Effective date.–July 1, 2004, but does not affect liability for taxes imposed with respect to periods before July 1, 2004.
2. Suspension of limitation on rate of rum excise tax cover over to Puerto Rico and Virgin Islands (sec. 5432 of the Senate amendment)	The amount of excise tax imposed on rum imported (or brought) into the United States, without regard to the country of origin, is covered over (paid) to Puerto Rico and the Virgin Islands. The amount of the cover over is limited under Code section 7652(f) to $10.50 per proof	No provision.	The cover over amount of $13.25 per proof gallon is extended for rum brought into the United States after December 31, 2003 and before October 1, 2004. The amount of $13.50 per proof gallon will be covered over with respect to rum brought into the United

Provision	Present Law	House Bill	Senate Amendment
	gallon ($13.25 per proof gallon during the period July 1, 1999 through December 31, 2003). Amounts covered over to Puerto Rico and the Virgin Islands are deposited into the treasuries of the two possessions for use as those possessions determine.		States after September 30, 2004 and before January 1, 2006. After December 31, 2005, the cover over amount reverts to $10.50 per proof gallon. Puerto Rico is required to transfer 50 cents per proof gallon of the amount covered over to Puerto Rico, and attributable to rum imported into the United States that was produced neither in Puerto Rico nor the Virgin Islands, to the Puerto Rico Conservation Trust Fund (the "Fund"). The amounts are to be treated as principal for an endowment for Fund purposes. Effective date.–Cover over rate changes are effective for articles brought into the United States after December 31, 2003. The Fund provisions are effective October 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
E. Sport Excise Taxes			
1. Custom gunsmiths (sec. 5441 of the Senate amendment)	The Code imposes an excise tax upon the sale by the manufacturer, producer or importer of certain firearms and ammunition. Pistols and revolvers are taxable at 10 percent. Firearms (other than pistols and revolvers), shells, and cartridges are taxable at 11 percent. The excise tax for firearms imposed on manufacturers, producers, and importers does not apply to machine guns and short barreled firearms. Sales to the Defense Department of firearms, pistols, revolvers, shells and cartridges also are exempt from the tax.	No provision.	Exempts from the firearms excise tax articles manufactured, produced, or imported by a person who manufactures, produces, and imports less than 50 of such articles during the calendar year. Controlled groups are treated as a single person for determining the 50-article limit. Effective date.–Articles sold by the manufacturer, producer, or importer on or before the date the first day of the month beginning at least two weeks after the date of enactment. No inference is intended from the prospective effective date of this provision as to the proper treatment of pre-effective date sales.
2. Modified taxation of archery products (sec. 5442 of the Senate amendment)	The Code imposes an excise tax of 11 percent on the sale by a manufacturer, producer or importer of any bow with a draw weight of 10 pounds or more. An excise tax of 12.4 percent is imposed on the sale by a manufacturer or importer of any shaft, point, nock, or vane designed for use as part of an arrow	No provision.	Increases the draw weight for a taxable bow from 10 pounds or more to a peak draw weight of 30 pounds or more. Imposes an excise tax of 12 percent on arrows generally.

Provision	Present Law	House Bill	Senate Amendment
	which after its assembly (1) is over 18 inches long, or (2) is designed for use with a taxable bow (if shorter than 18 inches). No tax is imposed on finished arrows. An 11-percent excise tax also is imposed on any part of an accessory for taxable bows and on quivers for use with arrows (1) over 18 inches long or (2) designed for use with a taxable bow (if shorter than 18 inches).		Subjects certain broadheads (a type of arrow point) to an excise tax equal to 11 percent of the sales price instead of 12.4 percent. The present law 12.4-percent excise tax on certain arrow components (excluding broadheads) is unchanged by the bill. Effective date.–Articles sold by the manufacturer, producer, or importer after the date of enactment.
3. Repeal of Chapter 35 Federal wagering and occupational taxes and treatment of Indian tribes for such purposes (secs. 1308 and 5443 of the Senate amendment)	In Chapter 35 of the Code, two excise taxes generally apply to wagering activities: a wagering tax and an occupational tax. Certain wagering activities licensed or conducted by States are exempt from these excise taxes. The Indian Regulatory Gaming Act (Gaming Act) provides, in relevant part: "The provisions of [the Internal Revenue Code of 1986] (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such Code) concerning the reporting and withholding of taxes with respect	No provision.	Section 1308 repeals Chapter 35 of the Code in its entirety and makes conforming amendments. Section 5443 treats Indian tribal governments as States for purposes of Chapter 35 of the Code (relating to the taxes on wagering, including the tax on wagers and the occupational tax). Effective dates.–Section 1308 is effective for wagers placed after the date of enactment and for special occupational taxes is effective on July 1, 2004.

Provision	Present Law	House Bill	Senate Amendment
	to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations." The Supreme Court has held that the Indian Gaming Regulatory Act does not exempt tribes from these taxes. The Court noted that Chapter 35 imposes taxes from which it exempts certain State-controlled gambling activities, but says nothing about tax "reporting" or "withholding". The Court concluded that the mention of Chapter 35 in the parenthetical was a drafting error.		Section 5443 is effective July 1, 2004, but the provision does not apply to taxes imposed for periods before such date.

Provision	Present Law	House Bill	Senate Amendment
F. Other Excise Tax Reform Provisions			
1. Income tax credit for cost of carrying tax-paid distilled spirits in wholesale inventories and in control state bailment warehouses (sec. 5451 of the Senate amendment)	Excise taxes on distilled spirits are imposed at a point in the chain of distribution before the product reaches the retail (consumer) level. No tax credits are allowed under present law for business costs associated with having tax-paid products in inventory. Rather, excise tax that is included in the purchase price of a product is treated the same as the other components of the product cost, i.e., deductible as a cost of goods sold.	No provision.	Creates a new general business income tax credit for eligible wholesalers, distillers and importers of distilled spirits. The credit is calculated by multiplying the number of cases of bottled distilled spirits by the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year. A case is 12 80-proof 750-milliliter bottles. The average tax-financing cost per case is the amount of interest that would accrue at corporate overpayment rates during an assumed 60-day holding period on an assumed tax rate of $25.68 per case of 12 80-proof 750-milliliter bottles. The wholesaler credit only applies to domestically bottled distilled spirits purchased directly from the bottler of such spirits. An eligible wholesaler is any person that holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits that is not a State, or agency or political subdivision thereof.

Provision	Present Law	House Bill	Senate Amendment
			For distillers and importers that are not eligible wholesalers, the credit is limited to bottled inventory in a warehouse owned and operated by, or on behalf of, a State when title to such inventory has not passed unconditionally. The credit for distillers and importers applies to distilled spirits bottled both domestically and abroad. The credit is in addition to present-law rules allowing tax included in inventory costs to be deducted as a cost of goods sold. Effective date.–Taxable years beginning after the date of enactment, but the credit cannot be carried back to a taxable year beginning before the date of enactment.
2. Credit for taxpayers owning commercial power takeoff vehicles (sec. 5452 of the Senate amendment)	Fuel used in vehicles carrying equipment that is unrelated to the transportation function is subject to the Highway Trust Fund excise taxes without regard to whether the fuel is used for transportation or the unrelated equipment. An exception excepts fuel used by non-transportation equipment if the fuel is used by a separate motor, if	No provision.	Provides a $250 income tax credit per qualifying vehicle to business owners of qualifying highway vehicles that consume fuel for both transportation and in non-transportation-related equipment, using a single motor. Qualifying vehicles are: vehicles for the daily collection of refuse or recyclables; and vehicles that deliver ready-

Provision	Present Law	House Bill	Senate Amendment
	the vehicle owner can allocate fuel used in a manner acceptable to the IRS.		mixed concrete. The credit expires after 2006. Effective date.–Taxable years beginning after date of enactment.
3. Credit for auxiliary power units installed on diesel-powered trucks (sec. 5453 of the Senate amendment)	A 12-percent excise tax is imposed on the first retail sale of heavy highway vehicles, tractors, and trailers (generally, trucks having a gross vehicle weight in excess of 33,000 pounds and trailers having such a weight in excess of 26,000 pounds).	No provision.	Creates a $250 income tax credit for the purchase of certain auxiliary power units and installation on a heavy-duty highway vehicle. A heavy-duty highway vehicle is any highway vehicle weighing more than 12,500 pounds powered by a diesel engine. The credit expires after 2006. Effective date.–Auxiliary power units purchased and installed for taxable years beginning after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
VI. MISCELLANEOUS PROVISIONS			
A. Motor Fuel Tax Enforcement Advisory Commission (sec. 5501 of the Senate amendment)	Present law does not require that there be an advisory commission on motor tax fuel enforcement.	No provision.	Creates an advisory commission for motor fuel tax enforcement consisting of both Government and private sector members. The purpose of the Commission is to (1) review motor fuel revenue collections, historical and current, (2) review the progress of investigations (3) develop and review legislative proposals with respect to motor fuel taxes, (4) monitor the progress of administrative regulation projects relating to fuel taxes, (5) review the results Federal and State agency cooperative efforts regarding motor fuel taxes, and (6) review the results of Federal interagency cooperative efforts regarding motor fuel taxes. The Commission also is to evaluate and make recommendations regarding (1) the effectiveness of existing Federal enforcement programs regarding motor fuel taxes, (2) enforcement personnel allocation, and (3) proposals for regulatory projects, legislation, and funding.

Provision	Present Law	House Bill	Senate Amendment
			Effective date.–Date of enactment.
B. National Surface Transportation Infrastructure Financing Commission (sec. 5502 of the Senate amendment)	Present law does not provide for any advisory commissions related Federal highway or mass transit funding.	No provision.	Establishes a National Surface Transportation Infrastructure Financing Commission. The Commission will investigate and study revenues flowing into the Highway Trust Fund under present law and report to Congress within two years of its first meeting. The Commission will consider alternative approaches to generating revenues for the Highway Trust Fund. The Commission will consider the nation's highway and transit needs. The study will address the period from the present through 2015. Effective date.–Date of enactment.
C. Treasury Study of Fuel Tax Compliance and Interagency Cooperation (sec. 5503 of the Senate amendment)	Present law requires no specific studies related to fuels tax compliance.	No provision.	Requires the Department of Treasury to submit to the Senate Committee on Finance and the House Committee on Ways and Means a report regarding fuel tax enforcement, including statistics and other information relating to audits, enforcement activities, an assessment of the effectiveness of joint action and cooperation between Federal and State agencies

Provision	Present Law	House Bill	Senate Amendment
			for both civil and criminal Federal tax enforcement and enforcement of State laws or Federal laws relating to fuels. Effective date.–Date of enactment.
D. Expand Highway Trust Fund Expenditure Purposes to Include Funding for Studies of Supplemental or Alternative Financing for the Highway Trust Fund (sec. 5504 of the Senate amendment)	Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by provisions of the Code. The Highway Trust Fund and its Mass Transit subaccount are funding sources for specific programs. No Highway Trust Fund monies may be spent for a purpose not approved by the tax-writing committees of Congress.	No provision.	Expands the expenditure purposes of the Highway Trust Fund to permit funding of two comprehensive studies of supplemental or alternative funding sources for the Highway Trust Fund. One study, permitted to receive $1 million in funding, will examine and review highway funding mechanisms of other industrialized nations. The Western Transportation Institute of the College of Engineering at Montana State University will conduct the study, which is due no later than December 31, 2006. The other study, permitted to receive $16.5 million in funding, would report on a long-term field test of a new approach to assessing highway use taxes in which highway use taxes would be assessed based upon actual mileage

Provision	Present Law	House Bill	Senate Amendment
			driven by a specific vehicle and the amount of tax liability may vary by the type of road on which the vehicle is driven. The Public Policy Center of the University of Iowa will direct this field test and analyze the test results, which are due no later than December 31, 2011. Effective date.–Date of enactment.
E. Treasury Study of Highway Fuels Used by Trucks for Nontransportation Purposes (sec. 5505 of the Senate amendment)	Fuel used in vehicles carrying equipment that is unrelated to the transportation function of the vehicle is subject to the Highway Trust Fund excise taxes without regard to whether the fuel is used for transportation or the unrelated equipment. An exception exempts from tax fuel used by non-transportation equipment if the fuel is used by a separate motor, if the vehicle owner can allocate fuel used in a manner acceptable to the IRS.	No provision.	Directs the Secretary to study the use of highway motor fuel by trucks that is not used for the propulsion of the vehicle, both in the case of vehicles carrying equipment that is unrelated to the transportation function of the vehicle and in the case where non-transportation equipment is run by a separate motor. In addition, the Secretary is to estimate the amount of fuel consumed and pollutants emitted by trucks due to the long-term idling of diesel engines, and report on the cost of reducing long-term idling through various technologies.

Provision	Present Law	House Bill	Senate Amendment
			The study is due not later than January 1, 2006. Effective date.–Date of enactment.
F. Delta Regional Transportation Plan (sec. 5506 of the Senate amendment)	The Delta Regional Authority is a Federal-State partnership, serving a 240-county/parish area in an eight-State region (Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee). The duties of the authority are to: (1) produce a regional development plan; (2) set priorities for approval of grants in the region; (3) assess the region's needs and assets; (4) inform participating States about interstate cooperation; (5) work with States and local agencies to develop model legislation; (6) enhance the capacity of and support Local Development Districts, as well as the creation of Local Development Districts where none currently exist; (7) encourage private investment in economic development projects in the region; and (8) assist State governments with the States' economic development program.	No provision.	Directs the Delta Regional Authority to conduct a comprehensive study of transportation assets and needs in the eight states comprising the Delta region. Upon completion of the study, the Delta Regional Authority is to create a regional strategic plan to achieve efficient transportation systems in the Delta region. Authorizes the Delta Regional Authority to receive $1,000,000 to conduct a comprehensive study and plan. These funds are to remain available until spent. Effective date.–Date of enactment.

Provision	Present Law	House Bill	Senate Amendment
G. Treatment of Employer-Provided Transit and Van Pooling Benefits (sec. 5507 of the Senate amendment)	Qualified transportation benefits are excludable from gross income and wages for employment tax purposes. Qualified transportation benefits are: (1) transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment ("van pooling"); (2) transit passes; and (3) qualified parking. The maximum amount of transit passes and van pooling benefits that are excludable from income and wages per month is $100 (for 2004). These dollar amounts are indexed for inflation.	No provision.	Increases the maximum dollar amount of excludable van pooling and transit benefits to $120 per month in 2004, with indexing thereafter. Effective date.–Taxable years beginning after December 31, 2004.

Provision	Present Law	House Bill	Senate Amendment
VII. REVENUE OFFSETS **A. Expansion of Limitation on Expensing of Certain Passenger Automobiles (sec. 5601 of the Senate amendment)**	In lieu of depreciation, a taxpayer may expense the cost of qualifying property. For taxable years beginning in 2003 through 2005, the amount expensed is limited to $100,000. For taxable years beginning prior to 2003 and after 2005, the limit is $25,000. Present law limits the annual depreciation deduction for certain passenger automobiles. However, vehicles rated at higher than 6,000 pounds unloaded gross vehicle weight are not subject to this limitation.	No provision.	Limits the allowable qualifying property deduction to $25,000 for certain sport utility vehicles which are not subject to the present-law limitation for passenger vehicles and which are rated at 14,000 pounds gross vehicle weight or less. Certain vehicles with features generally inconsistent with sport utility vehicles are excluded from the provision. Effective date.–Property placed in service after February 2, 2004.
B. Provisions Designed To Curtail Tax Shelters **1. Clarification of economic substance doctrine (sec. 5611 of the Senate amendment)**	Courts have developed several common law doctrines that can be applied to deny the tax benefits of tax-motivated transactions, notwithstanding that the transaction may satisfy the literal requirements of a specific statutory tax provision. A common law doctrine applied with increasing frequency is the "economic substance"	No provision.	Codifies the economic substance doctrine. Provides that, in a case in which a court determines that the economic substance doctrine is relevant to a transaction, such transaction satisfies the economic substance doctrine only if the taxpayer establishes that (1) the transaction changes in a meaningful way (apart from

Provision	Present Law	House Bill	Senate Amendment
	doctrine. In general, this doctrine denies tax benefits arising from tax-motivated transactions that do not result in a meaningful change to the taxpayer's economic position other than a purported reduction in Federal income tax.		Federal income tax consequences) the taxpayer's economic position, and (2) the taxpayer has a substantial non-tax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose. Effective date.–Transactions entered into after February 2, 2004.
2. Penalty for failing to disclose reportable transaction (sec. 5612 of the Senate amendment)	Although Treasury regulations require a taxpayer to disclose with its tax return certain information with respect to each "reportable transaction" in which the taxpayer participates, there is no specific penalty for failing to disclose a reportable transaction.	No provision.	Creates a new $50,000 penalty for any person who fails to disclose a reportable transaction. The amount is increased to $100,000 if the failure is with respect to a listed transaction. For large entities and high net worth individuals, the penalty amount is doubled. The penalty cannot be waived with respect to a listed transaction. A publicly traded entity that is required to pay a penalty for failing to disclose a listed transaction must disclose the imposition of the penalty in reports to the SEC. Effective date.–Returns and statements the due date for which is after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
3. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose (sec. 5613 of the Senate amendment)	In general, a 20-percent accuracy-related penalty applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation misstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement.	No provision.	Modifies the present-law accuracy related penalty by replacing the rules applicable to tax shelters with a new accuracy-related penalty that applies to listed transactions and reportable transactions with a significant tax avoidance purpose ("reportable avoidance transactions"). The penalty rate and defenses available to avoid the penalty vary depending on whether the transaction was adequately disclosed. Effective date.–Taxable years ending after the date of enactment.
4. Penalty for understatements attributable to transactions lacking economic substance, etc. (sec. 5614 of the Senate amendment)	No penalties are specifically applicable to transactions solely by virtue of lacking economic substance.	No provision.	Imposes a penalty for an understatement attributable to any transaction that lacks economic substance. Effective date.–Transactions entered into after February 2, 2004.
5. Modifications of substantial understatement penalty for nonreportable transactions (sec. 5615 of the Senate amendment)	An accuracy-related penalty equal to 20 percent applies to any substantial understatement of tax.	No provision.	Modifies the definition of "substantial" for corporate taxpayers so that a corporate taxpayer has a substantial understatement if the amount of the understatement for the taxable year

Provision	Present Law	House Bill	Senate Amendment
			exceeds the lesser of (1) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or (2) $10 million. Effective date.–Taxable years beginning after date of enactment.
6. Tax shelter exception to confidentiality privileges relating to taxpayer communications (sec. 5616 of the Senate amendment)	With respect to tax advice, the same common law protections of confidentiality that apply to a communication between a taxpayer and an attorney also apply to a communication between a taxpayer and a Federally authorized tax practitioner, except for communications regarding corporate tax shelters.	No provision.	Expands the exception for corporate tax shelters to all tax shelters, whether entered into by corporations, individuals, partnerships, tax-exempt entities, or any other entity. Effective date.–Communications made on or after the date of enactment.
7. Disclosure of reportable transactions (secs. 5617 and 5618 of the Senate amendment)	An organizer of a tax shelter is required to register the shelter with the Treasury Secretary not later than the day on which the shelter is first offered for sale. The penalty for failing to timely register a tax shelter generally is the greater of one percent of the aggregate amount invested in the shelter or $500. However, if the tax shelter involves an arrangement offered to a corporation under conditions of confidentiality, the	No provision.	Repeals the rules with respect to registration of tax shelters and, instead, requires each material advisor with respect to any reportable transaction to timely file an information return with the Secretary. Also repeals the penalty for failure to register tax shelters and, instead, imposes a penalty on any material advisor who fails to file an information return with respect to a reportable transaction.

Provision	Present Law	House Bill	Senate Amendment
	penalty generally is the greater of $10,000 or 50 percent of the fees payable to any promoter with respect to offerings prior to the date of late registration.		Effective date.–The provision requiring disclosure of reportable transactions by material advisors applies to transactions with respect to which material aid, assistance or advice is provided after the date of enactment. The provision imposing a penalty for failing to disclose reportable transactions applies to returns the due date for which is after the date of enactment.
8. Investor lists and modification of penalty for failure to maintain lists of investors (secs. 5617 and 5619 of the Senate amendment)	Any organizer or seller of a potentially abusive tax shelter must maintain a list identifying each person who was sold an interest in any such tax shelter with respect to which registration was required. The penalty for failing to maintain a required list is $50 for each name omitted from the list (with a maximum penalty of $100,000 per year).	No provision.	Modifies the penalty for failing to maintain the required list by making it a time-sensitive penalty. Thus, a material advisor who is required to maintain an investor list and who fails to make the list available upon written request by the Secretary within 20 business days after the request will be subject to a $10,000 per day penalty. Clarifies that the identity of any person on an investor list is not privileged. Effective date.–With respect to the penalty for failing to maintain and make available an investor list,

Provision	Present Law	House Bill	Senate Amendment
			requests made after the date of enactment. With respect to the clarification that the identity of persons on investor lists are not privileged, as if included in the Deficit Reduction Act of 1984.
9. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions (sec. 5620 of the Senate amendment)	The Treasury Secretary may commence civil actions to enjoin any person from promoting abusive tax shelters or aiding or abetting the understatement of tax liability.	No provision.	Expands present-law authority so that injunctions also may be sought with respect to the requirements relating to the reporting of reportable transactions and the keeping of lists of investors by material advisors. Effective date.–Day after the date of enactment.
10. Understatement of taxpayer's liability by income tax return preparer (sec. 5621 of the Senate amendment)	An income tax return preparer who prepares a return with respect to which there is an understatement of tax that is due to an undisclosed position for which there was not a realistic possibility of being sustained on its merits or a frivolous position is liable for a penalty of $250, provided the preparer knew or reasonably should have known of the position. An income tax return preparer who prepares a return and engages in	No provision.	Alters the standards of conduct that must be met to avoid imposition of the first penalty by replacing the realistic possibility standard with a requirement that there be a reasonable belief that the tax treatment of the position was more likely than not the proper treatment. Also replaces the not frivolous standard with the requirement that there be a reasonable basis for the tax treatment of the position. Also

Provision	Present Law	House Bill	Senate Amendment
	specified willful or reckless conduct with respect to preparing such a return is liable for a penalty of $1,000.		increases the amount of these penalties. Effective date.–Documents prepared after the date of enactment.
11. Penalty on failure to report foreign financial accounts (sec. 5622 of the Senate amendment)	There is a civil penalty for persons who willfully fail to keep records and file reports when that person makes a transaction or maintains an account with a foreign financial entity. In addition, any person who willfully violates this reporting requirement is subject to a criminal penalty.	No provision.	Adds an additional civil penalty that may be imposed on any person who violates this reporting requirement (without regard to willfulness). Effective date.–Failures to report occurring after the date of enactment.
12. Frivolous tax submissions (sec. 5623 of the Senate amendment)	An individual who files a frivolous income tax return is subject to a penalty of $500. The Tax Court also may impose a penalty of up to $25,000 if a taxpayer has instituted or maintained proceedings primarily for delay or if the taxpayer's position in the proceeding is frivolous or groundless.	No provision.	Modifies the penalty by increasing the amount of the penalty and applying it to all taxpayers and to all types of Federal taxes. Also modifies present law with respect to certain submissions that raise frivolous arguments or that are intended to delay or impede tax administration. Effective date.–Submissions made and issues raised after the date on which the Secretary first prescribes the required list of frivolous positions.

Provision	Present Law	House Bill	Senate Amendment
13. Regulation of individuals practicing before the Department of the Treasury (sec. 5624 of the Senate amendment)	The Treasury Secretary is authorized to regulate the practice of representatives of persons before the Treasury Department. The Secretary also is authorized to suspend or disbar from practice before the Department a representative who is incompetent, disreputable, violates the rules regulating practice before the Department, or willfully and knowingly misleads or threatens the person being represented.	No provision.	Makes two modifications to expand the sanctions that the Treasury Secretary may impose pursuant to these statutory provisions. First, expressly permits censure as a sanction. Second, permits the imposition of a monetary penalty as a sanction. Effective date.–Actions taken after the date of enactment.
14. Penalty on promoters of tax shelters (sec. 5625 of the Senate amendment)	In general, a $1,000 penalty is imposed on any person who organizes, assists in the organization of, or participates in the sale of an interest in any entity or plan or arrangement, if in connection with such activity the person knowingly makes or furnishes a false or fraudulent statement or a gross valuation overstatement regarding the securing of any tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement.	No provision.	Modifies the penalty amount to equal 50 percent of the gross income derived by the person from the activity for which the penalty is imposed. The enhanced penalty does not apply to a gross valuation overstatement. Effective date.–Activities after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
15. Statute of limitations for taxable years for which required listed transactions not reported (sec. 5626 of the Senate amendment)	In general, the Code requires that taxes be assessed within three years after the date a return is filed. If there has been a substantial omission of items of gross income that totals more than 25 percent of the amount of gross income shown on the return, the period during which an assessment must be made is extended to six years. Tax may be assessed at any time if the taxpayer files a false or fraudulent return with the intent to evade tax or if the taxpayer does not file a tax return at all.	No provision.	Extends the statute of limitations with respect to a listed transaction if a taxpayer fails to include any information with respect to a listed transaction which is required to be included with a tax return. The statute of limitations with respect to such a transaction will not expire before the date which is one year after the earlier of (1) the date on which the Secretary is furnished the information so required, or (2) the date that a material advisor satisfies the list maintenance requirements with respect to a request by the Secretary. Effective date.–Taxable years with respect to which the period for assessing a deficiency did not expire before the date of enactment.
16. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions (sec. 5627 of the Senate amendment)	In general, corporations may deduct interest paid or accrued within a taxable year on indebtedness. Interest on indebtedness to the Federal government attributable to an underpayment of tax generally may be deducted pursuant to this	No provision.	Disallows any deduction for interest paid or accrued within a taxable year on any portion of an underpayment of tax that is attributable to an understatement arising from (1) an undisclosed reportable avoidance transaction, (2) an undisclosed listed

Provision	Present Law	House Bill	Senate Amendment
	provision.		transaction, or (3) a transaction that lacks economic substance. Effective date.–Underpayments attributable to transactions entered into in taxable years beginning after the date of enactment.
17. Authorization of appropriations for tax law enforcement (sec. 5628 of the Senate amendment)	There is no explicit authorization of appropriations to the Internal Revenue Service to be used to combat abusive tax avoidance transactions.	No provision.	Includes an authorization of an additional $300 million to the Internal Revenue Service to be used to combat abusive tax avoidance transactions. Effective date.–Date of enactment.

Provision	Present Law	House Bill	Senate Amendment
C. Other Corporate Governance Provisions **1. Affirmation of consolidated return authority (sec. 5631 of the Senate amendment)**	The Federal Circuit Court, in the case of *Rite Aid Corp. v. United States*, 255 F.3d 1357 (Fed. Cir. 2001), held that a provision of the Treasury Department's consolidated return regulations was invalid. The court's language suggested in part that the Treasury Department may not have the authority to issue regulations that produced a result different than the result that would have obtained if the corporations had filed separate returns rather than consolidated returns.	No provision.	Confirms that in exercising its authority under section 1502 to issue consolidated return regulations, the Treasury Department may provide rules treating corporations filing consolidated returns differently from corporations filing separate returns. Nevertheless, the result in *Rite-Aid Corp. v. United States* is allowed to stand with respect to the type of factual situation presented in the case. Effective date.–Taxable years beginning before, on, or after the date of enactment.
2. Declaration by chief executive officer relating to Federal annual corporate income tax return (sec. 5632 of the Senate amendment)	The income tax return of a corporation must be signed by either the president, the vice-president, the treasurer, the assistant treasurer, the chief accounting officer, or any other officer of the corporation authorized by the corporation to sign the return. A criminal penalty is imposed on any person who willfully signs any tax return under penalties of perjury that that person	No provision.	Requires the income tax return of a corporation (other than that of a regulated investment company) to also include a declaration signed, under penalties of perjury, by the chief executive officer of the corporation that the chief executive officer has established processes and procedures that ensure the return is compliant and that the chief executive officer was provided reasonable assurance of

Provision	Present Law	House Bill	Senate Amendment
	does not believe to be true and correct with respect to every material matter at the time of filing.		the accuracy of all material aspects of the return. Effective date.–Federal tax returns filed after the date of enactment.
3. Denial of deduction for certain fines, penalties, and other amounts (sec. 5633 of the Senate amendment)	No deduction is allowed as a trade or business expense under section 162(a) for the payment of a fine or similar penalty to a government for the violation of any law. There is a lack of clarity or consistency regarding when taxpayers may deduct payments in settlements and in cases where there has been a final determination of wrongdoing.	No provision.	Amounts paid or incurred, to or at the direction of a government in relation to the violation of any law or the governmental investigation or inquiry into the potential violation of any law are nondeductible under any income tax provision. An exception applies to payments that are for restitution or for remediation of property Effective date.–Amounts paid or incurred on or after April 28, 2003, unless paid under a binding order or agreement entered before that date. If court approval is required, an order or agreement is not be considered binding until such court approval is obtained.
4. Disallowance of deduction for punitive damages (sec. 5634 of the Senate amendment)	A deduction generally is allowed for all ordinary and necessary expenses that are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business, including the payment of punitive damages.	No provision.	Denies any deduction for punitive damages that are paid or incurred by the taxpayer as a result of a judgment or in settlement of a claim. If the liability for punitive damages is covered by insurance, any such punitive damages paid by

Provision	Present Law	House Bill	Senate Amendment
	In general, gross income does not include amounts received on account of personal physical injuries and physical sickness. However, this exclusion does not apply to punitive damages.		the insurer are included in gross income of the insured person and the insurer is required to report such amounts to both the insured person and the IRS. Effective date.–Punitive damages paid or incurred on or after the date of enactment.
5. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud (sec. 5635 of the Senate amendment)	Attempt to evade or defeat tax.–A criminal penalty generally is imposed on persons who willfully attempt to evade or defeat any tax imposed by the Code. Upon conviction, the Code provides that the penalty is up to $100,000 or imprisonment of not more than five years (or both). In the case of a corporation, the Code increases the monetary penalty to a maximum of $500,000. Willful failure to file return, supply information, or pay tax.–A criminal penalty generally is imposed on persons required to make estimated tax payments, pay taxes, keep records, or supply information under the Code who willfully fails to do so. Upon conviction, the Code provides that the penalty is up to $25,000 or imprisonment of not more than one year (or both).	No provision.	Attempt to evade or defeat tax.–Increases the criminal penalty under section 7201 of the Code for individuals to $250,000 and for corporations to $1,000,000. The provision increases the maximum prison sentence to ten years. Willful failure to file return, supply information, or pay tax.–Increases the criminal penalty under section 7203 of the Code from a misdemeanor to a felony and increases the maximum prison sentence to ten years.

Provision	Present Law	House Bill	Senate Amendment
	In the case of a corporation, the Code increases the monetary penalty to a maximum of $100,000. Fraud and false statements.–A criminal penalty generally is imposed on persons who make fraudulent or false statements under the Code. Upon conviction, the Code provides that the penalty is up to $100,000 or imprisonment of not more than three years (or both). In the case of a corporation, the Code increases the monetary penalty to a maximum of $500,000. Uniform sentencing guidelines.–The uniform sentencing guidelines can provide for substantial increases in the levels of monetary penalties and are applicable to all criminal provisions in the United States Code, including those in the Code.		Fraud and false statements.–Increases the criminal penalty under section 7206 of the Code for individuals to $250,000 and for corporations to $1,000,000. Increases the maximum prison sentence to five years. Provides that in no event shall the amount of the monetary penalty under this provision be less than the amount of the underpayment or overpayment attributable to fraud. Effective date.–Underpayments and overpayments attributable to actions occurring after the date of enactment.
6. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements (sec. 5636 of the Senate amendment)	The Code contains numerous civil penalties, such as the delinquency, accuracy-related and fraud penalties. These civil penalties are in addition to any interest that may be due.	No provision.	Increases by a factor of two the total amount of civil penalties, interest and fines applicable for taxpayers who would have been eligible to participate in either the OVCI or the Treasury Department's voluntary disclosure initiative but did not participate in

Provision	Present Law	House Bill	Senate Amendment
	In January 2003, Treasury announced the Offshore Voluntary Compliance Initiative ("OVCI") running through April 15, 2003, to encourage the voluntary disclosure of previously unreported income placed by taxpayers in offshore accounts and accessed through credit card or other financial arrangements. The taxpayer will pay back taxes, interest and certain accuracy-related and delinquency penalties. A taxpayer's timely, voluntary disclosure of a substantial unreported tax liability has long been an important factor in deciding whether the taxpayer's case should ultimately be referred for criminal prosecution. The voluntary disclosure must be truthful, timely, and complete. A voluntary disclosure does not guarantee immunity from prosecution.		either program. Effective date.–Taxpayers' open tax years on or after date of enactment.

Provision	Present Law	House Bill	Senate Amendment
D. Enron-Related Tax Shelter Provisions **1. Limitation on transfer or importation of built-in losses (sec. 5641 of the Senate amendment)**	Generally, no gain or loss is recognized when one or more persons transfer property to a corporation in exchange for stock and immediately after the exchange such person or persons control the corporation. The transferor's basis in the stock of the controlled corporation is the same as the basis of the property contributed to the controlled corporation, increased by the amount of any gain (or dividend) recognized by the transferor on the exchange, and reduced by the amount of any money or property received, and by the amount of any loss recognized by the transferor. The basis of property received by a corporation, whether from domestic or foreign transferors, in a tax-free incorporation, reorganization, or liquidation of a subsidiary corporation is the same as the adjusted basis in the hands of the transferor, adjusted for gain or loss recognized by the transferor.	No provision.	Importation of built-in losses.– Provides that if a net built-in loss is imported into the U.S in a tax-free organization, reorganization or liquidation from persons not subject to U.S. tax, the basis of each property so transferred is its fair market value. Limitation on transfer of built-in-losses in section 351 transactions.– Provides that if the aggregate adjusted bases of property contributed by a transferor (or by a control group of which the transferor is a member) to a corporation exceed the aggregate fair market value of the property transferred in a tax-free incorporation, the transferee's aggregate bases of the property is limited to the aggregate fair market value of the transferred property. In the case of a transfer after which the transferor owns at least 80 percent of the vote and value of the stock of the transferee corporation, any required basis reduction is made to the stock received by the transferor and not to the assets

Provision	Present Law	House Bill	Senate Amendment
			transferred. Effective date.–Transactions after February 13, 2003.
2. No reduction of basis under section 734 in stock held by partnership in corporate partner (sec. 5642 of the Senate amendment)	When a partnership distributes partnership property, the basis of partnership property generally is not adjusted to reflect the effects of the distribution or transfer. However, the partnership is permitted to make an election (referred to as a 754 election) to adjust the basis of partnership property in the case of a distribution of partnership property. The effect of the 754 election is that the partnership adjusts the basis of its remaining property to reflect any change in basis of the distributed property in the hands of the distributee partner resulting from the distribution transaction.	No provision.	Provides that in applying the basis allocation rules to a distribution in liquidation of a partner's interest, a partnership is precluded from decreasing the basis of corporate stock of a partner or a related person. Any decrease in basis that, absent the provision, would have been allocated to the stock is allocated to other partnership assets. If the decrease in basis exceeds the basis of the other partnership assets, then gain is recognized by the partnership in the amount of the excess. Effective date.–Distributions after February 13, 2003.
3. Repeal of special rules for FASITs (sec. 5643 of the Senate amendment)	Financial asset securitization investment trusts (FASITs).–A FASIT is a non-taxable entity intended to facilitate the securitization of debt obligations such as credit card receivables, home equity loans, and auto loans.	No provision.	FASITs.–Repeals the special rules for FASITs, with a transition period for existing FASITs. REMICs.–Modifies the definitions of REMIC regular interests, qualified mortgages, and permitted investments so that reverse mortgage loans and government-

Provision	Present Law	House Bill	Senate Amendment
	Real estate mortgage investment conduits (REMICs).–A REMIC is a self-liquidating, non-taxable entity that holds a fixed pool of mortgages and issues multiple classes of investor interests. In order to qualify as a REMIC, substantially all of the assets of the entity must consist of qualified mortgages and permitted investments as of the close of the third month beginning after the startup day of the entity.		originated loan pools can be transferred to, or purchased by, a REMIC. Effective date.–After February 13, 2003, except as provided by the transition period for existing FASITs.
4. Expanded disallowance of deduction for interest on convertible debt (sec. 5644 of the Senate amendment)	No deduction is allowed for interest or OID on a debt instrument issued by a corporation (or issued by a partnership to the extent of its corporate partners) that is payable in equity of the issuer or a related party, including a debt instrument a substantial portion of which is mandatorily convertible or convertible at the issuer's option into equity of the issuer or a related party. In addition, a debt instrument is treated as payable in equity if a substantial portion of the principal or interest is required to be determined, or may be determined at the option of the issuer or related party, by reference	No provision.	Generally expands the present-law disallowance of interest deductions to include interest on corporate debt that is payable in, or by reference to the value of, any equity held by the issuer (or any related party) in any other person, without regard to whether such equity represents more than a 50-percent ownership interest in such person. The basis of such equity is increased by the amount of interest deductions that is disallowed by the provision. Effective date.–Debt instruments issued after February 13, 2003.

Provision	Present Law	House Bill	Senate Amendment
	to the value of equity of the issuer or related party.		
5. Expanded authority to disallow tax benefits under section 269 (sec. 5645 of the Senate amendment)	If a taxpayer acquires, directly or indirectly, control (defined as at least 50 percent of vote or value) of a corporation, and the principal purpose of the acquisition is the evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance that would not otherwise have been available, such tax benefits may be disallowed. Similarly, if a corporation acquires, directly or indirectly, property of another corporation (not controlled, directly or indirectly, by the acquiring corporation or its stockholders immediately before the acquisition), the basis of such property is determined by reference to the basis in the hands of the transferor corporation, and the principal purpose of the acquisition is the evasion or avoidance of Federal income tax by securing a tax benefit that would not otherwise have been available, such tax benefits may be disallowed.	No provision.	Repeals the requirement that the acquisition of property be from a corporation not controlled by the acquirer. Thus, disallows the tax benefits of (1) any acquisition of stock sufficient to obtain control of a corporation (as under present law), and (2) any acquisition by a corporation of property from a corporation in which the basis of such property is determined by reference to the basis in the hands of the transferor corporation, if the principal purpose of such acquisition is the evasion or avoidance of Federal income tax. Effective date.–Stock and property acquired after February 13, 2003.

Provision	Present Law	House Bill	Senate Amendment
6. Modification of interaction between subpart F and passive foreign investment company rules (sec. 5646 of the Senate amendment)	Under an anti-overlap rule, a controlled foreign corporation generally is not also treated as a passive foreign investment company with respect to a U.S. shareholder of the corporation, regardless of the likelihood that the U.S. shareholder would actually be taxed under subpart F in the event that the controlled foreign corporation earns subpart F income.	No provision.	Adds an exception to the anti-overlap rule for U.S. shareholders that face only a remote likelihood of incurring a subpart F inclusion in the event that a controlled foreign corporation earns subpart F income, thus preserving the potential application of the passive foreign investment company rules in such cases. Effective date.–Taxable years of controlled foreign corporations beginning after February 13, 2003, and taxable years of U.S. shareholders in which or with which such taxable years of controlled foreign corporations end.

Provision	Present Law	House Bill	Senate Amendment
E. Provisions to Discourage Expatriation			
1. Tax treatment of inversion transactions (sec. 5651 of the Senate amendment)	U.S. corporations may reincorporate in low-tax foreign jurisdictions and thereby replace the U.S. parent corporation of a multinational corporate group with a foreign parent corporation. This allows the corporate group to remove foreign operations from the U.S. taxing jurisdiction. The corporate group may derive further tax benefits from the inverted structure by reducing U.S. tax on U.S.-source income through various earnings stripping or other transactions. (*See, e.g.*, secs. 163(j) and 482).	No provision.	Defines two different types of corporate inversion transactions and establishes a different set of consequences for each type. The first type of inversion is a transaction in which: (1) a U.S. corporation becomes a subsidiary of a foreign-incorporated entity; (2) the former shareholders of the U.S. corporation hold 80 percent or more of the stock of the foreign-incorporated entity after the transaction; and (3) the foreign-incorporated entity, considered together with certain affiliates, does not have substantial business activities in the entity's country of incorporation, compared to the total worldwide business activities of the expanded affiliated group. The provision deems the top-tier foreign corporation to be a domestic corporation for all

Provision	Present Law	House Bill	Senate Amendment
			purposes of the Code. The second type of inversion is a transaction that would meet the definition of an inversion transaction described above, except that the 80-percent ownership threshold is not met. In such a case, the inversion transaction is respected (i.e., the foreign corporation is treated as foreign), but: (1) any applicable corporate-level "toll charges" for establishing the inverted structure may not be offset by tax attributes such as net operating losses or foreign tax credits; (2) the accuracy-related penalty is increased; and (3) section 163(j), relating to "earnings stripping" through related-party debt, is strengthened. These measures generally apply for a 10-year period following the inversion transaction. Effective date.–Regime applicable to transactions involving at least 80 percent identity of ownership

Provision	Present Law	House Bill	Senate Amendment
			applies to inversion transactions completed after March 20, 2002. Rules for inversion transactions involving greater-than-50-percent identity of ownership apply to inversion transactions completed after 1996 that meet the 50-percent test and to inversion transactions completed after 1996 that would have met the 80-percent test but for the March 20, 2002, date.
2. Impose mark-to-market tax on individuals who expatriate (sec. 5652 of the Senate amendment)	In general, an individual who relinquishes U.S. citizenship or terminates U.S. residency with a principal purpose of avoiding U.S. taxes is subject to an alternative tax regime for income tax purposes for the 10 taxable years ending after expatriation or residency termination. Special rules apply to such individuals for estate and gift tax purposes. A special immigration rule denies certain former citizens re-entry into the United States if the Attorney General determines that their expatriation was tax-motivated.	No provision.	The provision replaces the present-law income tax rules of the alternative tax regime with rules that generally: (1) subject certain U.S. citizens who relinquish their U.S. citizenship and certain long-term U.S. residents who terminate their U.S. residence to a mark-to-market regime with respect to all their property interests; (2) limit the net gain recognized on the deemed sale to the gain that exceeds $600,000 or $1.2 million (indexed) for a joint return; and (3) coordinate the present-law alternative tax regime and the mark-to-market regime such that

Provision	Present Law	House Bill	Senate Amendment
			the alternative tax regime generally does not apply to a former citizen or former long-term resident whose expatriation or residency termination occurs on or after February 2, 2004. A U.S. taxpayer who receives a gift or inheritance from an expatriate generally is required to include the value of such gift or inheritance in gross income and is subject to U.S. income tax on such amount. The provision denies former citizens reentry into the United States if the individual is determined not to be in compliance with his or her tax obligations under the provision (regardless of the subjective motive for expatriating). Effective date.–Applies to individuals who relinquish citizenship or terminate long-term residency after February 2, 2004.
3. Excise tax on stock compensation of insiders of inverted corporations (sec. 5653 of the Senate amendment)	While shareholders are generally required to recognize gain upon stock inversion transactions, an inversion transaction is generally not a taxable event for holders of	No provision.	Upon certain inversion transactions, imposes an excise tax on specified holders of stock options and other stock-based compensation equal to 20 percent

Provision	Present Law	House Bill	Senate Amendment
	stock options and other stock-based compensation.		of the value of specified stock compensation. Effective date.–Generally effective July 11, 2002.
4. Reinsurance agreements (sec. 5654 of the Senate amendment)	In the case of a reinsurance agreement between two or more related persons, present law provides the Treasury Secretary with authority to allocate among the parties or recharacterize income (whether investment income, premium or otherwise), deductions, assets, reserves, credits and any other items related to the reinsurance agreement, or make any other adjustment, in order to reflect the proper source and character of the items for each party.	No provision.	Clarifies the rules giving Treasury the authority to allocate items among the parties to a reinsurance agreement, recharacterize items, or make any other adjustment, in order to reflect the proper source and character of the items for each party. Effective date.–Any risk reinsured after April 11, 2002.

Provision	Present Law	House Bill	Senate Amendment
VIII. ADDITIONAL REVENUE PROVISIONS **A. Administrative Provisions** **1. Extension of IRS user fees (sec. 5671 of the Senate amendment)**	The IRS generally charges a fee for requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. These user fees are authorized by statute through December 31, 2004.	No provision.	Extends the statutory authorization for these user fees through September 30, 2013. Effective date.–Requests made after the date of enactment.
2. Clarification of rules for payment of estimated tax for certain deemed asset sales (sec. 5672 of the Senate amendment)	In certain circumstances, taxpayers can make an election under section 338(h)(10) to treat a qualifying purchase of 80 percent of the stock of a target corporation by a corporation from a corporation that is a member of an affiliated group as a sale of the assets of the target corporation, rather than as a stock sale. The election must be made jointly by the buyer and seller of the stock .	No provision.	Clarifies that the exception for estimated tax purposes with respect to tax attributable to a deemed asset sale does not apply with respect to a qualified stock purchase for which an election is made under section 338(h)(10). If at the time of the sale there is an agreement of the parties to make an election, then estimated tax is computed based on an asset sale, computed from the date of the sale. If the agreement to make an election is concluded after the stock sale, such that the original computation was based on the stock sale, estimated tax is recomputed based on the asset sale

Provision	Present Law	House Bill	Senate Amendment
			election. Effective date.–Qualified stock purchase transactions that occur after the date of enactment.
3. Partial payment of tax liability in installment agreements (sec. 5673 of the Senate amendment)	The IRS is authorized to enter into installment agreements with any taxpayer if the IRS determines that doing so will facilitate collection of the amounts owed. An installment agreement does not reduce the amount of taxes, interest, or penalties owed.	No provision.	Clarifies that the IRS is authorized to enter into installment agreements with taxpayers which do not provide for full payment of the taxpayer's liability over the life of the agreement. Also requires the IRS to review partial payment installment agreements at least every two years. Effective date.–Installment agreements entered into on or after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
B. Financial Instruments **1. Treatment of stripped interests in bond and preferred stock funds, etc. (sec. 5675 of the Senate amendment)**	Special rules are provided with respect to debt instruments in which there has been a separation in ownership between the underlying debt instrument and any interest coupon that has not yet become payable. Similar rules apply to preferred stock in which there has been a separation in ownership between such stock and any dividend on such stock that has not become payable.	No provision.	Authorizes the Treasury Department to promulgate regulations that, in appropriate cases, apply rules that are similar to the present-law rules for stripped bonds and stripped preferred stock to direct or indirect interests in an entity or account substantially all of the assets of which consist of bonds, preferred stock, or any combination thereof. Effective date.–Purchases and dispositions occurring after the date of enactment.
2. Application of earnings stripping rules to partnerships and S corporations (sec. 5676 of the Senate amendment)	Special rules limit the ability of U.S. taxable subchapter C corporations to engage in earnings stripping transactions involving interest payments. The deductibility of interest paid to certain related parties is limited if the payor's debt-equity ratio exceeds 1.5 to 1 and the payor's net interest expense exceeds 50 percent of its adjusted taxable income. The present-law earnings stripping rules do not apply to partnerships or S corporations.	No provision.	Provides that the deduction for interest paid or accrued by partnerships and S corporations is subject to disallowance under the earnings stripping rules as if the partnership or S corporation was a C corporation. In addition, attributes partnership debt to a corporate partner for purposes of applying the earnings stripping rules to the corporation. Effective date.–Taxable years beginning on or after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
3. Recognition of cancellation of indebtedness income realized on satisfaction of debt with partnership interest (sec. 5677 of the Senate amendment)	A corporation that transfers shares of its stock in satisfaction of its debt must recognize cancellation of indebtedness income in the amount that would be realized if the debt were satisfied with money equal to the fair market value of the stock. In the case of a partnership that transfers to a creditor an interest in the partnership in satisfaction of its debt, it is unclear whether the partnership is required to recognize cancellation of indebtedness income. It also is unclear whether any requirement to recognize cancellation of indebtedness income is affected if the cancelled debt is nonrecourse indebtedness.	No provision.	Provides that when a partnership transfers an interest in the partnership to a creditor in satisfaction of partnership debt, the partnership generally recognizes cancellation of indebtedness income in the amount that would be recognized if the debt were satisfied with money equal to the fair market value of the partnership interest. The provision applies without regard to whether the cancelled debt is recourse or nonrecourse indebtedness. Effective date.–Cancellations of indebtedness occurring on or after the date of enactment.
4. Modification of straddle rules (sec. 5678 of the Senate amendment)	When a taxpayer realizes a loss with respect to a position in a straddle (i.e., offsetting positions with respect to actively traded personal property), the taxpayer may recognize that loss for any taxable year only to the extent that the loss exceeds any unrecognized gain with respect to offsetting positions in the straddle. Deferred losses are carried forward to the succeeding taxable year and are subject to the same limitation with	No provision.	Modifies the straddle rules in three respects: (1) permits taxpayers to identify offsetting positions of a straddle (including an unbalanced straddle) and provides for capitalization (rather than deferral) of losses attributable to such straddles; (2) clarifies the present-law treatment of certain physically settled positions of a straddle; and (3) repeals the stock and qualified covered call exceptions from the straddle rules.

Provision	Present Law	House Bill	Senate Amendment
	respect to unrecognized gain in offsetting positions. In limited cases, the straddle rules do not apply to positions in stock. Also, the straddle rules do not apply to offsetting positions that consist of stock and an option if the option is a "qualified covered call option" written by the taxpayer. The Treasury Secretary is directed to provide regulations concerning straddles in which one position offsets only a portion of one or more other positions ("unbalanced straddles"). To date, no such regulations have been promulgated.		Effective date.–Positions established on or after the date of enactment.
5. Denial of installment sale treatment for all readily tradeable debt (sec. 5679 of the Senate amendment)	The installment method of accounting for gain recognition on certain deferred payment sales of property is not available if the taxpayer sells property in exchange for readily tradeable corporate or governmental debt. No similar provision prohibits the use of the installment sale method where the taxpayer sells property in exchange for readily tradable debt issued by a partnership or an individual.	No provision.	Denies installment sale treatment with respect to all sales in which the taxpayer receives indebtedness that is readily tradeable, regardless of the nature of the issuer. Thus, for example, if the taxpayer receives readily tradeable debt of a partnership in a sale, the partnership debt is treated as payment on the installment note, and the installment sale method is unavailable to the taxpayer. Effective date.–Sales occurring on or after date of enactment.

Provision	Present Law	House Bill	Senate Amendment
C. Corporations and Partnerships **1. Modification of treatment of transfers to creditors in divisive reorganizations (sec. 5680 of the Senate amendment)**	In a tax free spin off under section 355 of the Code in which the distributing corporation contributes property to the distributed corporation, no gain or loss is recognized if the property is contributed solely in exchange for stock or securities of the transferee corporation which are distributed to the transferor's shareholders. The transferor corporation also will not recognize gain if it receives money or other property that is distributed to its shareholders or creditors. The amount that may be distributed to creditors is unlimited. In addition, for divisive transactions under section 355, and for certain acquisitive reorganizations, the transferor corporation recognizes gain to the extent the liabilities assumed by the transferee exceed the basis of assets transferred.	No provision.	Limits the amount of money plus the fair market value of property that a distributing corporation can distribute to creditors without gain recognition to the amount of the basis of assets contributed to the distributed corporation. Acquisitive reorganizations are exempted from the rule that gain is recognized if the amount of liabilities assumed exceeds the basis of assets transferred. Effective date.–Transactions on or after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
2. Clarification of definition of nonqualified preferred stock (sec. 5681 of the Senate amendment)	Stock that is "nonqualified preferred stock" is treated as taxable boot in transactions that otherwise allow nontaxable receipt of stock. For this purpose, preferred stock is stock that is "limited and preferred as to dividends and does not participate in corporate growth to any significant extent."	No provision.	Clarifies that stock for which there is not a real and meaningful likelihood of actually participating in the earnings and profits of the corporation is treated as preferred for purposes of the provision. Effective date.–Transactions after May 14, 2003.
3. Modification of definition of controlled group of corporations (sec. 5682 of the Senate amendment)	The members of a controlled group of corporations are limited to the benefits of one corporation for purposes of the graduated corporate rate brackets, the alternative minimum tax exemption, and the accumulated earnings credit. For this purpose, a brother-sister controlled group is defined as two or more corporations if five or fewer persons who are individuals, estates or trusts own (after application of attribution rules) (1) at least 80 percent of the combined voting power and value of all classes of stock, and (2) more than 50 percent of the total voting power or value of all stock, taking into account the stock ownership of each person only to the extent the	No provision.	Eliminates the 80-percent test from the brother-sister controlled group definition for purposes of determining the specified benefits. 80-percent test continues to apply to other Code provisions using the controlled group definition by reference. Effective date.–Taxable years beginning after date of enactment.

Provision	Present Law	House Bill	Senate Amendment
	stock ownership is identical with respect to each corporation.		
4. Mandatory basis adjustments in connection with partnership distributions and transfers of partnership interests (sec. 5683 of the Senate amendment)	A partnership does not adjust the basis of partnership property following the transfer of a partnership interest unless the partnership has elected to do so under section 754. The basis adjustments account for the difference between the transferee partner's share of the basis of partnership property and its basis in its partnership interest. Similarly, after a distribution, adjustments to the basis of the partnership's undistributed property are not required unless the partnership has made the section 754 election. The adjustments increase or decrease the basis of the remaining partnership assets to reflect any increase or decrease in the basis of the distributed property in the hands of the distributee partner.	No provision.	Adjustments to the basis of partnership property in the event of a partnership distribution or the transfer of a partnership interest are required, not elective as under present law, except in the case of a transfer of a partnership interest by reason of the partner's death. The provision repeals the special rule for determining a transferee's basis in partnership property that is later distributed if no section 754 election was in effect. Effective date.–Transfers and distributions after the date of enactment. The repeal of the special rule for subsequent distributions is effective generally for transfers after the date of enactment, except in the case of a transfer before the date of enactment it is effective for distributions made later than two years after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
5. Class lives for utility grading costs (sec. 5684 of the Senate amendment)	In general, the amount of the depreciation deduction is determined under the modified accelerated cost recovery system. The recovery period of an asset is determined by reference to its class life. If no class life is provided, the asset is allowed a 7-year recovery period. Assets used in the transmission and distribution of electricity for sale are provided a class life of 30 years and a recovery period of 20 years. The cost of initially clearing and grading land improvements are specifically excluded and no separate asset class is provided for such costs. A similar situation exists with regard to clearing and grading cost associated with gas utility trunk pipelines and related storage facilities.	No provision.	The provision assigns a class life to depreciable electric and gas utility clearing and grading costs incurred to locate transmission and distribution lines and pipelines. The provision includes these assets in the asset classes of the property to which the clearing and grading costs relate (giving these assets a recovery period of 20 years and 15 years, respectively). Effective date.–Electric and gas utility clearing and grading costs incurred after the date of enactment.
D. Consistent Amortization of Periods for Intangibles (sec. 5685 of the Senate amendment)	At the election of the taxpayer, start-up expenditures and organizational expenditures may be amortized over a period of not less than 60 months. Section 197 requires most acquired intangible assets (such as goodwill,	No provision.	The provision modifies the treatment of start-up and organizational expenditures. A taxpayer would be allowed to elect to deduct up to $5,000 each of start-up and organizational expenditures in the taxable year in

Provision	Present Law	House Bill	Senate Amendment
	trademarks, franchises, and patents) that are held in connection with the conduct of a trade or business or an activity for the production of income to be amortized over 15 years.		which the trade or business begins. However, each $5,000 amount is reduced (but not below zero) by the amount by which the cumulative cost of start-up or organizational expenditures exceeds $50,000, respectively. Start-up and organizational expenditures that are not deductible in the year in which the trade or business begins would be amortized over a 15-year period consistent with the amortization period for section 197 intangibles. Effective date.–The provision is effective for start-up and organizational expenditures incurred after the date of enactment.
E. Addition of Vaccines Against Hepatitis A to List of Taxable Vaccines (sec. 5692 of the Senate amendment)	A manufacturer's excise tax is imposed at the rate of 75 cents per dose on the following vaccines routinely recommended for administration to children: diphtheria, pertussis, tetanus, measles, mumps, rubella, polio, HIB, hepatitis B, varicella, rotavirus gastroenteritis, and streptococcus pneumoniae.	No provision.	Provides that any vaccine against hepatitis A is treated as a taxable vaccine. Effective date.–Sales and uses on or after the first day of the first month which begins more than four weeks after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
F. Addition of Vaccines Against Influenza to List of Taxable Vaccines (sec. 5693 of the Senate amendment)	A manufacturer's excise tax is imposed at the rate of 75 cents per dose on the following vaccines routinely recommended for administration to children: diphtheria, pertussis, tetanus, measles, mumps, rubella, polio, HIB, hepatitis B, varicella, rotavirus gastroenteritis, and streptococcus pneumoniae.	No provision.	Provides that any trivalent vaccine against influenza is treated as a taxable vaccine. Effective date.–Sales and uses on or after the later of the first day of the first month which begins more than four weeks after the date of enactment or the date on which the Secretary of HHS lists any vaccine against influenza for compensation for any vaccine-related injury or death.
G. Extension of Amortization of Intangibles to Sports Franchises (sec. 5694 of the Senate amendment)	Intangible assets acquired in connection with the acquisition of a trade or business generally are recovered over 15 years. An exception exists for intangibles acquired in connection with a pro sports franchise. With respect to a sports franchise acquisition, basis allocated to assets with determinable useful lives (such as player contracts) is recovered over the assets' respective useful lives. Basis allocated to the franchise or to other intangible assets acquired with the franchise may not be amortizable if these assets lack a determinable useful life.	No provision.	Extends the 15-year recovery period for intangible assets to sports franchises and any intangible asset acquired in connection with the acquisition of such a franchise (including player contracts). Thus, the same rules for amortization of intangibles that apply to other acquisitions under present law will apply to acquisitions of sports franchises. Effective date.–Property acquired after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
IX. TAX-EXEMPT FINANCING OF HIGHWAY PROJECTS AND RAIL-TRUCK TRANSFER FACILITIES			
A. Allow Tax-Exempt Financing for Private Highway Projects and Rail-Truck Transfer Facilities (sec. 5691 of the Senate amendment)	Interest on bonds issued by States or local governments to finance activities of those governmental units is excluded from tax (sec. 103). In addition, interest on certain bonds ("private activity bonds") issued by States or local governments acting as conduits to provide financing for private businesses or individuals is excluded from income if the purpose of the borrowing is specifically approved in the Code (sec. 141). The Code permits tax-exempt financing with respect to thirteen categories of "exempt facilities", including mass commuting facilities and high-speed intercity rail facilities.	No provision.	Creates new categories of exempt facility bonds: (1) qualified highway facilities; and (2) qualified surface freight transfer facilities. Also provides that issuance of these bonds are not subject to the general private activity bond volume cap. Rather such bonds will be subject to a separate volume limitation of $15 billion in the aggregate. The Secretary of Transportation will allocate the $15 billion of authority among eligible projects. Highway facilities eligible for financing under the program will consist of any surface transportation project that receives Federal assistance under title 23 of the United States Code (as in effect on the date of enactment), or any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible that receives Federal assistance under

Provision	Present Law	House Bill	Senate Amendment
			title 23 of the United States Code (as in effect on the date of enactment). Surface freight transfer facilities will consist of facilities for the transfer of freight from truck to rail or rail to truck, including any temporary storage facilities directly related to those transfers that receives Federal assistance under either title 23 of the United States Code (as in effect on the date of enactment) or title 49 of the United States Code (as in effect on the date of enactment). Effective date.–Bonds issued after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
X. EXTENSION OF SMALL BUSINESS EXPENSING (sec. 9501 of the House bill)	In lieu of depreciation, a taxpayer may expense the cost of qualifying property. For taxable years beginning prior to 2003 and after 2005, the amount expensed is limited to $25,000. For taxable years beginning in 2003 through 2005, the limit is $100,000.	Extends the applicability of the $100,000 limit and $400,000 threshold to tax years beginning in 2006 and 2007. Effective date.–Date of enactment.	No provision.
XI. ALTERNATIVE MIMINUM TAX RELIEF **A. NOL Deduction (sec. 9601(a) of the House bill)**	AMT net operating loss (NOL) deduction may not exceed 90 percent of alternative minimum taxable income. 90-percent limit does not apply to NOLs carried back from, and carried forward to, 2001 and 2002.	Increases 90 percent limitation to 92 percent for 2006, 2007, and 2008; 94 percent for 2009 and 2010; 96 percent for 2011; 98 percent for 2012; and 100 percent thereafter. Effective date.–Taxable years beginning after 2005.	No provision.
B. Foreign Tax Credit (sec. 9601(b) of the House bill)	AMT foreign tax credit generally is limited to 90 percent of tentative minimum tax.	Repeals 90 percent limitation. Effective date.–Taxable years beginning after 2005.	No provision.
C. Small Corporation Exemption (sec. 9602 of the House bill)	AMT does not apply to a corporation with average annual gross receipts for the prior three years of not more than $7.5 million	Increases $7.5 million amount to $20 million. Effective date.–Taxable years beginning after 2005.	No provision.

Provision	Present Law	House Bill	Senate Amendment
	($5 million for its first three-year period).		
D. Farmer Income Averaging (sec. 9603 of the House bill)	Tax benefits of farmer income averaging do not apply in computing AMT.	Allows tax benefits of farmer income averaging in computing AMT. Effective date.–Taxable years beginning after 2003.	No provision.