

**DESCRIPTION OF H.R. 3864, THE
AMERICAN ENERGY AND INFRASTRUCTURE
JOBS FINANCING ACT OF 2012**

Scheduled for Markup
By the
HOUSE COMMITTEE ON WAYS AND MEANS
on February 3, 2012

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a markup on February 3, 2012, of H.R. 3864, the American Energy and Infrastructure Jobs Financing Act of 2012, a bill to amend the Internal Revenue Code of 1986 to provide for the extension of highway-related taxes and trust fund expenditures, to provide revenues for highway programs, and for other purposes.¹ This document,² prepared by the staff of the Joint Committee on Taxation, describes the provisions of the bill.

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

² This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3864, the American Energy and Infrastructure Jobs Financing Act of 2012* (JCX-7-12), February 2, 2012.

A. Extension of Highway Trust Fund Expenditure Authority and Related Taxes

Present-Law Highway Trust Fund Excise Taxes

In general

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. A substantial majority of the revenues produced by the Highway Trust Fund excise taxes are derived from the taxes on motor fuels. The annual use tax on heavy vehicles expires October 1, 2012. Except for 4.3 cents per gallon of the Highway Trust Fund fuels tax rates, the remaining taxes are scheduled to expire after March 31, 2012. The 4.3-cents-per-gallon portion of the fuels tax rates is permanent.³ The six taxes are summarized below.

Highway motor fuels taxes

The Highway Trust Fund motor fuels tax rates are as follows:⁴

Gasoline	18.3 cents per gallon
Diesel fuel and kerosene	24.3 cents per gallon
Special motor fuels	18.3 cents per gallon generally ⁵

Non-fuel Highway Trust Fund excise taxes

In addition to the highway motor fuels excise tax revenues, the Highway Trust Fund receives revenues produced by three excise taxes imposed exclusively on heavy highway vehicles or tires. These taxes are:

1. A 12-percent excise tax 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);⁶
2. An excise tax imposed on highway tires with a rated load capacity exceeding 3,500 pounds, generally at a rate of 0.945 cents per pound of excess;⁷ and

³ This portion of the tax rates was enacted as a deficit reduction measure in 1993. Receipts from it were retained in the General Fund until 1997 legislation provided for their transfer to the Highway Trust Fund.

⁴ Secs. 4081(a)(2)(A)(i), 4081(a)(2)(A)(iii), 4041(a)(2), 4041(a)(3), and 4041(m). Some of these fuels also are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank ("LUST") Trust Fund (secs. 4041(d) and 4081(a)(2)(B)).

⁵ See secs. 4041(a)(2), 4041(a)(3), and 4041(m).

⁶ Sec. 4051.

⁷ Sec. 4071.

3. An annual use tax imposed on highway vehicles having a taxable gross weight of 55,000 pounds or more.⁸ (The maximum rate for this tax is \$550 per year, imposed on vehicles having a taxable gross weight over 75,000 pounds.)

The taxable year for the annual use tax is from July 1st through June 30th of the following year. For the period July 1, 2012, through September 30, 2012, the amount of the annual use tax is reduced by 75 percent.

Present-Law Highway Trust Fund Expenditure Provisions

In general

Under present law, revenues from the highway excise taxes, as imposed through March 31, 2012, generally are dedicated to the Highway Trust Fund. Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by the Code.⁹ The Code authorizes expenditures (subject to appropriations) from the Highway Trust Fund through March 31, 2012, for the purposes provided in authorizing legislation, as in effect on the date of enactment of the Surface Transportation Extension Act of 2011, Part II.

Highway Trust Fund expenditure purposes

The Highway Trust Fund has a separate account for mass transit, the Mass Transit Account.¹⁰ The Highway Trust Fund and the Mass Transit Account are funding sources for specific programs.

Highway Trust Fund expenditure purposes have been revised with each authorization Act enacted since establishment of the Highway Trust Fund in 1956. In general, expenditures authorized under those Acts (as the Acts were in effect on the date of enactment of the most recent such authorizing Act) are specified by the Code as Highway Trust Fund expenditure purposes.¹¹ The Code provides that the authority to make expenditures from the Highway Trust

⁸ Sec. 4481.

⁹ Sec. 9503. The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

¹⁰ Sec. 9503(e)(1).

¹¹ The authorizing Acts that currently are referenced in the Highway Trust Fund provisions of the Code are: the Highway Revenue Act of 1956; Titles I and II of the Surface Transportation Assistance Act of 1982; the Surface Transportation and Uniform Relocation Act of 1987; the Intermodal Surface Transportation Efficiency Act of 1991; the Transportation Equity Act for the 21st Century; the Surface Transportation Extension Act of 2003; the Surface Transportation Extension Act of 2004; the Surface Transportation Extension Act of 2004, Part II; the Surface Transportation Extension Act of 2004, Part III; the Surface Transportation Extension Act of 2004, Part IV; the Surface Transportation Extension Act of 2004, Part V; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; the SAFETEA-LU Technical Corrections Act of 2008; the Surface Transportation Extension Act of 2010; the Surface Transportation Extension Act of 2010, Part II; the Surface Transportation Extension Act of 2011; and the Surface Transportation Extension Act of 2011, Part II.

Fund expires after March 31, 2012. Thus, no Highway Trust Fund expenditures may occur after March 31, 2012, without an amendment to the Code.

The American Energy and Infrastructure Jobs Act of 2012

On January 31, 2012, Representative Mica introduced H.R. 7, the American Energy and Infrastructure Jobs Act of 2012. Among other purposes, the bill reauthorizes the Federal highway, public transportation, highway safety, and motor carrier safety programs for fiscal year 2012 through fiscal year 2016.

Description of Proposal

Under H.R. 3864, the expenditure authority for the Highway Trust Fund is extended through September 30, 2016. The Code provisions governing the purposes for which monies in the Highway Trust Fund may be spent are updated to include the reauthorization bill, the American Energy and Infrastructure Jobs Act of 2012.¹²

The proposal extends the motor fuel taxes, and all three non-fuel excise taxes at their current rates through September 30, 2018. Effective October 1, 2012, the proposal conforms the annual use tax to a fiscal year, ending on September 30, rather than June 30.¹³

Effective Date

The proposal is generally effective on April 1, 2012. The proposal changing the taxable period for the annual use tax is effective for periods beginning after September 30, 2012.

¹² The proposal also replaces cross-references to the Surface Transportation Extension Act of 2011, Part II, with the American Energy and Infrastructure Jobs Act of 2012, and replaces April 1, 2012 references with October 1, 2016 in the Code provisions governing the Leaking Underground Storage Tank Trust Fund, and the Sport Fish Restoration and Boating Trust Fund.

¹³ The Leaking Underground Storage Tank Trust Fund financing rate of 0.1 cent per gallon is also extended through September 30, 2018.

B. Revenues From Certain Domestic Energy Leases Appropriated to the Highway Trust Fund

Present Law

Section 9503 appropriates to the Highway Trust Fund amounts equivalent to the taxes received from the following: the taxes on diesel, gasoline, kerosene and special motor fuel, the tax on tires, the annual heavy vehicle use tax, and the tax on the retail sale of heavy trucks and trailers.¹⁴ Section 9601 provides that amounts appropriated to a trust fund pursuant to sections 9501 through 9511, are to be transferred at least monthly from the General Fund of the Treasury to such trust fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in the Code section appropriating the amounts to such trust fund. The Code requires that proper adjustments be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

Description of Proposal

H.R. 3864 provides that the net increase in Federal revenues from certain onshore and offshore domestic energy leasing and production, as generated by certain bills,¹⁵ be appropriated to the Highway Trust Fund.

Effective Date

The proposal is effective on the date of enactment.

¹⁴ Sec. 9503(b)(1).

¹⁵ H.R. 3407, the Alaskan Energy for American Jobs Act, is a bill to direct the Secretary of the Interior to establish and implement a competitive oil and gas leasing program for the exploration, development, and production of the oil and gas resources of the Coastal Plain of Alaska, to ensure secure energy supplies for the continental Pacific Coast of the United States, to lower prices, to reduce imports, and for other purposes. H.R. 3408, the Protecting Investment in Oil Shale the Next Generation of Environmental, Energy, and Resource Security Act (the PIONEERS Act), is a bill to set clear rules for the development of the United States oil shale resources, to promote shale technology research and development, and for other purposes. H.R. 3410, the Energy Security and Transportation Jobs Act, is a bill to require the Secretary of the Interior to conduct certain offshore oil and gas lease sales, to provide fair and equitable revenue sharing for all coastal States, to formulate future offshore energy development plans in areas with the most potential, to generate revenue for American infrastructure, and for other purposes.

C. Mass Transit Account Funding

Present Law

The Mass Transit Account is funded by a portion of the motor fuel taxes as follows: 2.86 cents per gallon of the taxes imposed on gasoline, diesel fuel, and kerosene; 1.43 cents per gallon in the case of any partially exempt methanol or ethanol fuel; 1.86 cents per gallon in the case of liquefied natural gas; 2.13 cents per gallon in the case of liquefied petroleum gas; and 9.71 cents per MCF (thousand cubic feet) in the case of compressed natural gas.

Description of Proposal

H.R. 3864 ends the transfer of all motor fuel tax amounts to the Mass Transit Account, and instead funds the account with a one-time appropriation of \$40 billion. To the extent fuel tax receipts for FY 2012 were credited to the Mass Transit Account, the proposal requires such amounts to be transferred from the Mass Transit Account to the Highway Account of the Highway Trust Fund. The proposal also renames the Mass Transit Account, the “Alternative Transportation Account.”

Effective Date

The proposal is effective on the date of enactment.