

**DESCRIPTION OF A BILL TO AMEND THE INTERNAL REVENUE  
CODE OF 1986 TO PROVIDE FOR THE EXTENSION OF  
HIGHWAY-RELATED TAXES AND TRUST FUNDS,  
AND FOR OTHER PURPOSES**

Scheduled for Markup  
By the  
HOUSE COMMITTEE ON WAYS AND MEANS  
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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 March 3, 2005, of a bill to amend the Internal Revenue Code of 1986 to provide for the extension of highway-related taxes and trust funds, and for other purposes. This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, describes the provisions of the bill.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of a Bill to Amend the Internal Revenue Code of 1986 to Provide for the Extension of Highway-Related Taxes and Trust Funds, and for Other Purposes* (JCX-5-05), March 1, 2005.

## I. EXTENSION OF TAXES AND TRUST FUNDS

### A. Extension of Highway Trust Fund and Aquatic Resources 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. Except for 4.3 cents per gallon of the Highway Trust Fund fuels tax rates, and a portion of the tax on certain special motor fuels, 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.<sup>2</sup> The six taxes are summarized below.

##### Highway motor fuels taxes

The Highway Trust Fund motor fuels tax rates are as follows:<sup>3</sup>

Gasoline	18.3 cents per gallon
Diesel fuel and kerosene	24.3 cents per gallon
Special motor fuels	18.3 cents per gallon generally <sup>4</sup>

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<sup>2</sup> 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.

<sup>3</sup> 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)).

<sup>4</sup> The statutory rate for certain special motor fuels is determined on an energy equivalent basis, as follows:

Liquefied petroleum gas (propane)	13.6 cents per gallon (3.2 cents after Sept. 30, 2005)
Liquefied natural gas	11.9 cents per gallon (2.8 cents after Sept. 30, 2005)
Methanol derived from petroleum or natural gas	9.15 cents per gallon (2.5 cents after Sept. 30, 2005)
Compressed natural gas	48.54 cents per MCF

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

## **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) (sec. 4051);
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 (sec. 4071); and
3. An annual use tax imposed on highway vehicles having a taxable gross weight of 55,000 pounds or more (sec. 4481). (The maximum rate for this tax is \$550 per year, imposed on vehicles having a taxable gross weight over 75,000 pounds.)

## **Present-Law Highway Trust Fund Expenditure Provisions**

### **In general**

Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by the Code (sec. 9503).<sup>5</sup> The Code authorizes expenditures (subject to appropriations) from the Fund through May 31, 2005, for the purposes provided in authorizing legislation, as in effect on the date of enactment of the Surface Transportation Extension Act of 2004, Part V.

Under present law, revenues from the highway excise taxes, as imposed through September 30, 2005, generally are dedicated to the Highway Trust Fund. Under section 9503(c)(2), the Highway Trust Fund reimburses the General Fund for amounts paid in respect of gasoline used on farms, 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 exempt uses of fuels.

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The compressed natural gas tax rate is equivalent only to 4.3 cents per gallon of the rate imposed on gasoline and other special motor fuels rather than the full 18.3-cents-per-gallon rate. The tax rate for the other special motor fuels is equivalent to the full 18.3-cents-per-gallon gasoline and special motor fuels tax rate.

<sup>5</sup> The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

### **Highway Trust Fund expenditure purposes**

The Highway Trust Fund has a separate account for mass transit, the Mass Transit Account.<sup>6</sup> The Highway Trust Fund and the Mass Transit account are funding sources for specific programs. Neither the Highway Trust Fund nor the Mass Transit Account receives interest on its unexpended balances.<sup>7</sup>

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.<sup>8</sup> The Code provides that authority to make expenditures from the Highway Trust Fund expires after May 31, 2005. Thus, no Highway Trust Fund expenditures may occur after May 31, 2005, without an amendment to the Code.

### **Interrelationship of the Highway Trust Fund and the Aquatic Resources Trust Fund**

The Aquatic Resources Trust Fund is funded by a portion of the receipts from the excise taxes imposed on motorboat gasoline and special motor fuels and on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment. A portion of these taxes are transferred into the Highway Trust Fund and then retransferred into the Aquatic Resources Trust Fund. As a result, transfers to the Aquatic Resources Trust Fund are governed in part by Highway Trust Fund provisions (sec. 9503(c)(4) and 9503(c)(5)).

A total tax rate of 18.4 cents per gallon is imposed on gasoline and special motor fuels used in motorboats and on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment. Of this rate, 0.1 cent per gallon is dedicated to the Leaking Underground Storage Tank Trust Fund. Of the remaining 18.3 cents per gallon, 4.8 cents per gallon are retained in the General Fund. The balance of 13.5 cents per gallon is transferred to the Highway Trust Fund and then retransferred to the Aquatic Resources Trust Fund and the Land and Water Conservation Fund, as follows.

The Aquatic Resources Trust Fund is comprised of two accounts, the Boat Safety Account and the Sport Fish Restoration Account. Motorboat fuel taxes, not exceeding \$70

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<sup>6</sup> Sec. 9503(e)(1).

<sup>7</sup> Sec. 9503(f)(2).

<sup>8</sup> 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 and the Transportation Equity Act for the 21<sup>st</sup> 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; and the Surface Transportation Extension Act of 2004, Part V.

million per year, are transferred to the Boat Safety Account. In addition, these transfers are subject to an overall annual limit equal to an amount that will not cause the Boat Safety Account to have an unobligated balance in excess of \$70 million. To the extent there are excess motorboat fuel taxes, the next \$1 million per year of motorboat fuel taxes is transferred from the Highway Trust Fund to the Land and Water Conservation Fund provided for in Title I of the Land and Water Conservation Fund Act of 1965. The balance of the motorboat fuel taxes in the Highway Trust Fund is transferred to the Sport Fish Restoration Account.

The Sport Fish Restoration Account also receives 13.5 cents per gallon of the small-engine fuel taxes from the Highway Trust Fund. This Account is also funded with receipts from an *ad valorem* manufacturers' excise tax on sport fishing equipment.

The retention in the General Fund of 4.8 cents per gallon of taxes on fuel used in motorboats and in the nonbusiness use of small-engine outdoor power equipment expires with respect to taxes imposed after September 30, 2005.

The expenditure authority for the Aquatic Resources Trust Fund expires after May 31, 2005.

### **H.R. 3: Transportation Equity Act: A Legacy for Users**

On February 9, 2005, Representative Don Young, introduced H.R. 3, the Transportation Equity Act: A Legacy for Users. Among other purposes, the bill reauthorizes the Federal highway, public transportation, highway safety and motor carrier safety programs for fiscal year 2004 through fiscal year 2009.

#### **Description of Proposal**

The expenditure authority for the Highway Trust Fund and Aquatic Resources Trust Fund is extended through September 30, 2009. The Code provisions governing the purposes for which monies in the Highway Trust Fund may be spent are updated to include the reauthorization bill, H.R. 3, Transportation Equity Act: A Legacy for Users.

The proposal also extends the motor fuel taxes and all three non-fuel excises taxes at their current rates through September 30, 2011.

The proposal does not extend the retention in the General Fund of 4.8 cents per gallon of taxes on fuel used in motorboats and in the nonbusiness use of small-engine outdoor power equipment.

#### **Effective Date**

The proposal is effective on the date of enactment.

## **II. FUELS-RELATED TECHNICAL CORRECTIONS TO AMERICAN JOBS CREATION ACT OF 2004 (“AJCA”)**

### **A. Volumetric Ethanol Excise Tax Credit (sec. 301 of AJCA)**

AJCA repealed the reduced tax rates for alcohol fuels and taxable fuels to be blended with alcohol. The technical correction makes a conforming amendment to eliminate the refund provisions based on those reduced rates (sec. 6427(f) and 6427(o)).

Effective date.—The proposal is effective as if it were included in AJCA.

### **B. Aviation Fuel (sec. 853 of AJCA)**

Section 853 of AJCA moved the taxation of jet fuel (aviation-grade kerosene) from section 4091 to section 4081 of the Code and repealed section 4091. The termination date for the 21.8-cents-per-gallon rate for noncommercial aviation jet fuel was inadvertently omitted from the Act. The technical correction clarifies that after September 30, 2007, the rate for jet fuel used in noncommercial aviation will be 4.3 cents per gallon.

An additional technical correction clarifies that users of aviation fuel in commercial aviation are required to be registered with the IRS in order for the 4.3-cents-per-gallon rate to apply (including for purposes of the self-assessment of tax by commercial aircraft operators).

Effective date.—The proposal is effective as if it were included in AJCA.