

**DESCRIPTION OF THE “HIGHWAY REAUTHORIZATION
AND EXCISE TAX SIMPLIFICATION ACT OF 2005”**

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CONTENTS

	<u>Page</u>
INTRODUCTION	1
I. TRUST FUND REAUTHORIZATION	2
A. Extension of Highway Trust Fund and Aquatic Resources Trust Fund Expenditure Authority and Related Taxes	2
II. EXCISE TAX REFORM AND SIMPLIFICATION	8
A. Fuel Excise Taxes	8
1. Modify gas guzzler tax.....	8
B. Aquatic Excise Taxes.....	9
1. Eliminate Aquatic Resources Trust Fund and Transform Sport Fish Restoration Account.....	9
2. Repeal of Harbor Maintenance tax on exports	11
3. Cap excise tax on certain fishing equipment	12
C. Aerial Excise Taxes	13
1. Clarify excise tax exemptions for agricultural aerial applicators and exempt certain fixed-wing aircraft engaged in forestry operations	13
2. Modify the definition of rural airport.....	14
3. Exempt from ticket taxes transportation provided by seaplanes	14
4. Exempt certain sightseeing flights from taxes on air transportation.....	15
D. Taxes Relating to Alcohol	16
1. Repeal special occupational taxes on producers and marketers of alcoholic beverages.....	16
2. Modify limitation on rate of rum excise tax cover over to Puerto Rico and Virgin Islands.....	18
3. Provide an income tax credit for cost of carrying tax-paid distilled spirits in wholesale inventories and in control State bailment warehouses.....	20
E. Sport Excise Taxes.....	22
1. Provide exemption for certain custom gunsmiths.....	22
III. MISCELLANEOUS	23
A. Establish a Motor Fuel Tax Enforcement Advisory Commission	23
B. Establish a National Surface Transportation Infrastructure Financing Commission	25
C. Expand Highway Trust Fund Expenditure Purposes to Include Funding for Studies of Supplemental or Alternative Financing for the Highway Trust Fund	27

	<u>Page</u>
IV. FUELS-RELATED TECHNICAL CORRECTIONS	30
A. Fuels-Related Technical Corrections to American Jobs Creation Act of 2004 ("AJCA")	30
1. Volumetric ethanol excise tax credit (sec. 301 of AJCA)	30
2. Aviation fuel (sec. 853 of AJCA)	30
B. Fuels-Related Technical Corrections to Transportation Equity Act for the 21 st Century ("TEA 21").....	30
1. Coastal Wetlands sub-account (sec. 9005 of TEA 21)	30

INTRODUCTION

The Senate Committee on Finance has scheduled a markup on April 19, 2005, of the “Highway Reauthorization and Excise Tax Simplification Act of 2005.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the “Highway Reauthorization and Excise Tax Simplification Act of 2005.”

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of the “Highway Reauthorization and Excise Tax Simplification Act of 2005”* (JCX-22-05), April 15, 2005.

I. TRUST FUND REAUTHORIZATION

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. Historically, fuel taxes have accounted for 90 percent of Highway Trust Fund receipts. 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. The six taxes are summarized below. 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.² The six taxes are summarized below.

Highway motor fuels taxes

The Highway Trust Fund motor fuels tax rates are as follows:³

Gasoline	18.3 cents per gallon
Diesel fuel (including transmix) and kerosene	24.3 cents per gallon
Special motor fuels	18.3 cents per gallon generally ⁴

² 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.

³ 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)).

⁴ 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 September 30, 2005)
Liquefied natural gas	11.9 cents per gallon (2.8 cents after September 30, 2005)
Methanol derived from natural gas	9.15 cents per gallon (2.15 cents after September 30, 2005)
Compressed natural gas	48.54 cents per MCF

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

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

Exemptions

Present law includes numerous exemptions (including partial exemptions) for specified uses of taxable fuels or for specified fuels. Because the gasoline and diesel fuel taxes generally are imposed before the end use of the fuel is known, many exemptions are realized through refunds to end users of tax paid by a taxpayer earlier in the distribution chain. Exempt uses and fuels include:

- use in State and local government and nonprofit educational organization highway vehicles;
- use in buses engaged in transporting students and employees of schools;
- use in local mass transit buses having a seating capacity of at least 20 adults (not including the driver) when the buses operate under contract with (or are subsidized by) a State or local governmental unit to furnish the transportation; and
- use in intercity buses serving the general public along scheduled routes. (Such use is totally exempt from the gasoline excise tax and is exempt from 17 cents per gallon of the diesel fuel tax.)

In addition, fuels used in off-highway business use or on a farm for farming purposes generally are exempt from these motor fuels taxes.⁵ The Highway Trust Fund does not receive excise taxes imposed on fuel used in off-highway activities. Rather, when tax is imposed on off-highway use fuel consumption, it is used to finance other Trust Funds (*e.g.*, motorboat gasoline and special motor fuel taxes from non-business off-highway use dedicated to the Aquatic Resources Trust Fund) or is retained in the General Fund (*e.g.*, tax on diesel fuel used in trains).

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:

- 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);
- An excise tax imposed on highway tires with a rated load capacity exceeding 3,500 pounds, generally at a rate of 9.45 cents per 10 pounds of excess (sec. 4071(a)); and

the other special motor fuels is equivalent to the full 18.3-cents-per-gallon gasoline and special motor fuels tax rate.

⁵ Diesel fuel is the same fuel (#2 fuel oil) as that commonly used as home heating oil. Fuel oil used as heating oil is not subject to the Federal excise tax.

- 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 provisions of the Code.⁶ 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. However, under section 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.

Highway Trust Fund expenditure purposes

The Highway Trust Fund has a subaccount for Mass Transit. Both the Trust Fund and its sub-account are funding sources for specific programs. Neither the Highway Trust Fund nor its Mass Transit sub-account receive interest on unexpended balances. The Highway Fund's Mass Transit sub-account receives 2.86 cents per gallon of highway motor fuels excise taxes.

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 approved by the Code as Highway Trust Fund expenditure purposes.⁷ Thus, no Highway Trust Fund monies may be spent for a purpose not approved by the tax-writing committees of Congress. The Code provides that authority to make expenditures

⁶ Sec. 9503. The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

⁷ The authorizing Acts which 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 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; and the Surface Transportation Extension Act of 2004, Part V.

from the Highway Trust Fund expires after May, 31, 2005. Thus, no Highway Trust Fund expenditures may occur after May 31, 2005.

Anti-deficit provisions (the “Harry Byrd rule”)

Highway projects can take multiple years to complete. As a result, the Highway Trust Fund carries positive unexpended balances, a large portion of which are reserved to cover existing obligations.⁸ Highway Trust Fund spending is limited by anti-deficit provisions internal to the Highway Trust Fund, the so-called “Harry Byrd rule”. Generally, the Harry Byrd rule prevents the further obligation of Federal highway funds if the current and expected balances of the Highway Trust Fund fall below a certain level. The rule requires the Treasury Department to determine, on a quarterly basis, the amount (if any) by which unfunded highway authorizations exceed projected net Highway Trust Fund tax receipts for the 24-month period beginning at the close of each fiscal year.⁹ 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. Because of the Harry Byrd rule, taxes dedicated to the Highway Trust Fund typically are scheduled to expire at least 24-months after current authorizing Acts.

The Surface Transportation Extension Act of 2003, created a temporary rule (through February 29, 2004) for purposes of the anti-deficit provisions of the Highway Trust Fund. 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. The temporary rule has been continuously extended since February 29, 2004. The last extension, enacted as part of the Surface Transportation Extension Act of 2004, Part V, extended the rule through May 31, 2005.

Limitations on transfers to the Highway Trust Fund

The Code also contains a special enforcement provision to prevent expenditure of Highway Trust Fund monies for purposes not authorized in section 9503.¹⁰ Should such unapproved expenditures occur, no further excise tax receipts will be transferred to the Highway Trust Fund. Rather, the taxes will continue to be imposed with receipts being retained in the General Fund. This enforcement provision provides specifically that it applies not only to unauthorized expenditures under the current Code provisions, but also to expenditures pursuant to future legislation that does not amend section 9503's expenditure authorization provisions or otherwise authorize the expenditure as part of a revenue Act.

⁸ Congressional Research Service, RL 32226, *Highway and Transit Program Reauthorization Legislation in the 2nd Session, 108th Congress* (December 15, 2004) at CRS-12.

⁹ Sec. 9503(d).

¹⁰ Sec. 9503(b)(5).

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.¹¹

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 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.

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 and Aquatic Resources Trust Fund may be spent is updated to

¹¹ Secs. 9503(c)(4) and 9503(c)(5).

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

The Harry Byrd rule is changed from a 24-month to a 48-month receipt rule. Under the proposal, the Harry Byrd rule is not triggered unless unfunded highway authorizations exceed projected net Highway Trust Fund tax receipts for the 48-month period beginning at the close of each fiscal year. This potentially allows a greater obligation of funds than permitted under present law. For purposes of the 48-month rule, taxes are assumed extended beyond their expiration date.

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. EXCISE TAX REFORM AND SIMPLIFICATION

A. Fuel Excise Taxes

1. Modify gas guzzler tax

Present Law

Under present law, the Code imposes a tax (“the gas guzzler tax”) on automobiles that are manufactured primarily for use on public streets, roads, and highways that and are rated at 6,000 pounds unloaded gross vehicle weight or less.¹² The tax applies to limousines without regard to the weight requirement. The tax is imposed 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. The tax range begins at \$1,000 and increases to \$7,700 for models with a fuel economy less than 12.5 miles per gallon.

Emergency vehicles and non-passenger automobiles are exempt from the tax. The tax also does not apply to non-passenger automobiles. The Secretary of Transportation to determines which vehicles are “non-passenger” automobiles, thereby exempting these vehicles from the gas guzzler tax based on regulations in effect on the date of enactment of the gas guzzler tax.¹³ Hence, vehicles defined in Title 49 C.F.R. sec. 523.5 (relating to light trucks) are exempt. These vehicles include those designed to transport property on an open bed (e.g., pick-up trucks) or provide greater cargo-carrying than passenger carrying volume including the expanded cargo-carrying space created through the removal of readily detachable seats (e.g., pick-up trucks, vans, and most minivans, sports utility vehicles and station wagons). Additional vehicles that meet the “non-passenger” requirements are those with at least four of the following characteristics: (1) an angle of approach of not less than 28 degrees; (2) a breakover angle of not less than 14 degrees; (3) a departure angle of not less than 20 degrees; (4) a running clearance of not less than 20 centimeters; and (5) front and rear axle clearances of not less than 18 centimeters each. These vehicles would include many sports utility vehicles.

Description of Proposal

The proposal repeals the tax as it applies to limousines rated at greater than 6,000 pounds unloaded gross vehicle weight.

Effective Date

The proposal is effective on October 1, 2005.

¹² Sec. 4064.

¹³ Sec. 4064(b)(1)(B).

B. Aquatic Excise Taxes

1. Eliminate Aquatic Resources Trust Fund and Transform Sport Fish Restoration Account

Present Law

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.¹⁴ 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, tax collected in excess of 13.5 cents per gallon (i.e., 4.8 cents per gallon) is retained in the General Fund of the Treasury.¹⁵ The balance is transferred to the Highway Trust Fund, and retransferred (except with respect to amounts transferred to the fund for land and water conservation, as described below) to the Aquatic Resources Trust Fund.¹⁶ The taxes on gasoline and special motor fuels used in motorboats and the taxes on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment are collected under the same rules as apply to the Highway Trust Fund collections generally.

The Aquatic Resources Trust Fund is comprised of two accounts.¹⁷ First, the Boat Safety Account is funded by a portion of the receipts from the excise tax imposed on motorboat gasoline and special motor fuels. Transfers to the Boat Safety Account are limited to amounts not exceeding \$70 million per year. 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.¹⁸

Second, the Sport Fish Restoration Account receives the balance of the motorboat gasoline and special motor fuels receipts that are transferred to the Aquatic Resources Trust

¹⁴ Sec. 4081(a)(2).

¹⁵ The retention in the General Fund of the 4.8 cents a gallon of motorboat fuel taxes and taxes on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment expires after September 30, 2005.

¹⁶ See Sec. 9503(b)(4), (c)(4) & (5). The transfers from the Highway Trust Fund to the Aquatic Resources Trust Fund of amounts of taxes on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment expires after September 30, 2005. Between October 1, 2001 and September 30, 2003, the amount transferred to the Aquatic Resources Trust Fund was 13 cents per gallon. Prior to October 1, 2001, the amount transferred was 11.5 cents per gallon. Sec. 9503(b)(4)(D).

¹⁷ Sec. 9504(a).

¹⁸ Sec. 9503(c)(4)(A). Funding of the Boat Safety Account is scheduled to terminate after September 30, 2005.

Fund.¹⁹ The Sport Fish Restoration Account is also funded with receipts from an excise tax on sport fishing equipment sold by the manufacturer, producer or importer. The excise tax rate on sport fishing equipment is 10 percent of the sales price; the rate is reduced to 3 percent for electric outboard motors and fishing tackle boxes.²⁰ Examples of the items of sport fishing equipment subject to the 10-percent rate include fishing rods and poles, fishing reels, fly fishing lines and certain other fishing lines, fishing spears, spear guns, spear tips, items of terminal tackle, containers designed to hold fish, fishing vests, landing nets, and portable bait containers.²¹ In addition, import duties on certain fishing tackle, yachts and pleasure craft are transferred into the Sport Fish Restoration Account.

The amounts of taxes on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment that are transferred to the Highway Trust Fund and retransferred to the Aquatics Resources Trust Fund are directed to a separate sub-account of the Sport Fish Restoration Account, the Coastal Wetlands sub-account.

Expenditures from the Boat Safety Account are subject to annual appropriations. Expenditures from the Sport Fish Restoration Account (including the Coastal Wetlands sub-account) are made pursuant to a permanent appropriation.²²

Description of Proposal

The proposal 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 and Boating Trust Fund. After funding of the land and water conservation fund as under present law, the balance of the taxes on motorboat fuels is transferred from the Highway Trust Fund into the Sport Fish Restoration and Boating Trust Fund. In addition, the transfers from the Highway Trust Fund to the Sport Fish Restoration and Boating Trust Fund of amounts of taxes on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment are extended through September 30, 2011.

¹⁹ After funding of the Boat Safety Account, remaining motorboat fuel taxes, not exceeding \$1,000,000 during any fiscal year, are transferred from the Highway Trust Fund into the land and water conservation fund provided in title I of the Land and Water Conservation Fund Act of 1965. Sec. 9503(c)(4)(B). After the transfer to the land and water conservation fund, motorboat fuel taxes remaining in the Highway Trust Fund are transferred to the Sport Fish Restoration Account. Sec. 9503(c)(4)(C).

²⁰ Sec. 4161(a)(2) and (3).

²¹ Items of “sport fishing equipment” are enumerated in section 4162(a).

²² Act of August 9, 1950, 64 Stat. 430 (codified at 16 U.S.C. sec. 777 et seq.) (“An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes”).

Existing amounts in the Boat Safety Account, plus interest accrued on such interest-bearing obligations of such account, are made available as provided under the Sportfishing and Recreational Boating Safety Act of 2005.

The proposal does not change the use of amounts in the Sport Fish Restoration and Boating Trust Fund, including in the Coastal Wetlands sub-account.

Effective Date

The proposal is effective October 1, 2005.

2. Repeal of Harbor Maintenance tax on exports

Present Law

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 (other than ports included in the Inland Waterway Trust Fund system). The tax also applies to amounts paid for passenger transportation using these U.S. ports. Exemptions are provided for (1) cargo donated for overseas use, (2) cargo shipped between the U.S. mainland and Alaska (except for crude oil), Hawaii, and/or U.S. possessions and (3) cargo shipped between Alaska, Hawaii, and/or U.S. possessions. 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 is unconstitutional as applied to exported cargo because it violates the “Export Clause” of the U.S. Constitution.²³ The tax remains in effect for imported cargo. Imposition of the tax on passenger transportation with respect to passengers on cruises that originate, stop, or terminate, at U.S. ports has been upheld.

Description of Proposal

The proposal conforms the Code to the Supreme Court decision and exempts exported commercial cargo from the Harbor Maintenance tax.

Effective Date

The proposal is effective before, on, and after the date of enactment.

²³ *United States Shoe Corp. v. United States*, 523 U.S. 360, 118 S. Ct. 1290, 140 L. Ed. 2d 453 (1998).

3. Cap excise tax on certain fishing equipment

Present Law

In general, the Code imposes a 10-percent tax on the sale by the manufacturer, producer, or importer of specified sport fishing equipment.²⁴ A three percent rate, however, applies to the sale of electric outboard motors and fishing tackle boxes.²⁵ Sport fishing equipment subject to the 10-percent tax includes fishing rods and poles, fishing reels, fly fishing lines, and other fishing lines not over 130 pounds test, fishing spears, spear guns, and spear tips, and tackle items including leaders, artificial lures, artificial baits, artificial flies, fishing hooks, bobbers, sinkers, snaps, drayles, and swivels. In addition, the following fishing supplies and accessories are subject to the 10-percent tax: fish stringers; creels; bags, baskets, and other containers designed to hold fish; portable bait containers; fishing vests; landing nets; gaff hooks; fishing hook disgorgers; dressing for fishing lines and artificial flies; fishing tip-ups and tilts; fishing rod belts, fishing rodholders; fishing harnesses; fish fighting chairs; and fishing outriggers and downriggers.

Revenues from the excise tax on sport fishing equipment are deposited in the Sport Fish Restoration Account of the Aquatic Resources Trust Fund. Monies in the fund are spent, subject to an existing permanent appropriation, to support Federal-State sport fish enhancement and safety programs.

Description of Proposal

The proposal provides that the tax applicable to a fishing rod or fishing pole is the lesser of 10 percent or \$10.00.

Effective Date

The proposal is effective for articles sold by the manufacturer, producer, or importer after September 30, 2005.

²⁴ Sec. 4161(a)(1)

²⁵ Sec. 4161(a)(2) and (3).

C. Aerial Excise Taxes

1. Clarify excise tax exemptions for agricultural aerial applicators and exempt certain fixed-wing aircraft engaged in forestry operations

Present Law

Excise taxes are imposed on aviation gasoline (19.4 cents per gallon) and jet fuel (21.9 cents per gallon).²⁶ All but 0.1 cent per gallon of the revenues from these taxes are dedicated to the Airport and Airway Trust Fund. The remaining 0.1 cent per gallon rate is imposed for the Leaking Underground Storage Tank Trust Fund.

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.²⁷ 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.

Air passenger transportation is subject to an excise tax equal to 7.5 percent of the amount paid plus \$3.20 per domestic flight segment.²⁸ 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).²⁹ The exemption applies only when the helicopters are not using the Federally funded airport and airway services. Helicopters and fixed-wing aircraft providing emergency medical services also are exempt from the air passenger tax regardless of the type of airport and airway services used.³⁰

Description of Proposal

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.

²⁶ Sec. 4081.

²⁷ Sec. 6420(c)(4).

²⁸ Sec. 4261(a) and (b).

²⁹ Sec. 4261(f).

³⁰ Sec. 4261(g).

Effective Date

The proposal is effective for fuel use or air transportation after September 30, 2005.

2. Modify the definition of rural airport

Present Law

Air passenger transportation is subject to an excise tax equal to 7.5 percent of the amount paid plus \$3.20 per domestic flight segment.³¹ The tax on domestic flight segments does not apply to a domestic segment beginning or ending at a rural airport.

With respect to any calendar year, a rural airport is an airport that had fewer than 100,000 passengers departing by air during the second preceding calendar year for such airport and such airport either (1) is not located within 75 miles of a larger airport (one that had at least 100,000 passengers departing in the second preceding calendar year), or (2) was receiving essential air service subsidy payments as of August 5, 1997.

Description of Proposal

The proposal 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

The proposal is effective on October 1, 2005.

3. Exempt from ticket taxes transportation provided by seaplanes

Present Law

Air passenger transportation is subject to an excise tax equal to 7.5 percent of the amount paid plus \$3.20 per domestic flight segment (“air passenger tax”).³² A 6.25-percent tax is imposed on amounts paid for transportation of property by air (“air cargo tax”).³³ 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 does not apply to amounts paid for the

³¹ Sec. 4261(a) and (b).

³² Sec. 4261(a) and (b).

³³ Sec. 4271.

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.³⁴

Description of Proposal

The proposal 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

The proposal is effective for transportation after September 30, 2005.

4. Exempt certain sightseeing flights from taxes on air transportation

Present Law

Under present law, taxable aviation transportation is subject to a 7.5-percent excise tax on the price of an airline ticket and a \$3.20 segment tax. An exception to these taxes is provided for transportation by an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less except when 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 ending at the same point is subject to the tax.³⁵ The IRS position is that the words “between definite points” do not require two separate points for purposes of determining whether an aircraft is operated on an established line. At least one court has agreed.³⁶

Description of Proposal

For purposes of the proposal 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

The proposal is effective with respect to transportation after September 30, 2005, but does not apply to any amount paid before that date for such transportation.

³⁴ Sec. 4281.

³⁵ Treas. Reg. sec. 49.4261-1(c).

³⁶ *Lake Mead Air Inc. v. United States*, 991 F. Supp. 1209 (D. Nev. 1997).

D. Taxes Relating to Alcohol

1. Repeal special occupational taxes on producers and marketers of alcoholic beverages

Present Law

Under the law in effect prior to July 1, 2005, special occupational taxes are imposed on producers and others engaged in the marketing of distilled spirits, wine, and beer. These excise taxes are imposed as part of a broader Federal tax and regulatory structure governing the production and marketing of alcoholic beverages. The special occupational taxes are payable annually, on July 1 of each year. The tax rates in effect prior to July 1, 2005 are as follows:

Producers³⁷:

Distilled spirits and wines (sec. 5081) ³⁸	\$1,000 per year, per premise
Brewers (sec. 5091)	\$1,000 per year, per premise

Wholesale dealers (sec. 5111):

Liquors, wines, or beer	\$500 per year
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Retail dealers (sec. 5121):

Liquors, wines, or beer	\$250 per year
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Nonbeverage use of distilled spirits (sec. 5131): \$500 per year

Industrial use of distilled spirits (sec. 5276): \$250 per year

Section 246(a) of the American Jobs Creation Act of 2004 suspends the special occupational tax for the period beginning July 1, 2005 and ending June 30, 2008.³⁹

Every person engaged in a trade or business on which a special occupational tax is imposed is required to register with the Secretary.⁴⁰ In addition, every dealer in liquors, wine or beer is required to keep records of their transactions.⁴¹ A dealer is any person who sells, or

³⁷ A reduced rate of tax in the amount of \$500.00 is imposed on small proprietors (as defined in the Code) (secs. 5081(b) and 5091(b)).

³⁸ Proprietors of plants producing distilled spirits exclusively for fuel use, with annual production not exceeding 10,000 proof gallons, are exempt. Secs. 5081(c), 5181(c)(4).

³⁹ See sec. 5148.

⁴⁰ Secs. 5141 and 7011. The registration is of such person's name or style, place of residence, trade or business, and the place where such trade or business is to be carried on.

⁴¹ Secs. 5114 and 5124.

offers for sale, distilled spirits, wine, or beer.⁴² A delegate of the Secretary of the Treasury is authorized to inspect the records of any dealer during business hours.⁴³ There are penalties for failing to comply with the recordkeeping requirements.⁴⁴ There are also registration and regulation requirements for the nonbeverage use of distilled spirits, and permit and recordkeeping requirements for the industrial use of distilled spirits.⁴⁵

The Code limits the persons from whom dealers may purchase their liquor stock intended for resale. A dealer may only purchase from:

1. a wholesale dealer in liquors who has paid the special occupational tax as such dealer to cover the place where such purchase is made; or
2. a wholesale dealer in liquors who is exempt, at the place where such purchase is made, from payment of such tax under any provision chapter 51 of the Code; or
3. a person who is not required to pay special occupational tax as a wholesale dealer in liquors.⁴⁶

Violation of this restriction is punishable by \$1,000 fine, imprisonment of one year, or both.⁴⁷ A violation also makes the alcohol subject to seizure and forfeiture.⁴⁸

Description of Proposal

The proposal repeals the special occupational taxes on producers and marketers of alcoholic beverages and on the nonbeverage or industrial use of distilled spirits. The registration, recordkeeping and inspection rules applicable to wholesale and retail dealers are retained.⁴⁹ For

⁴² Sec. 5112(a). Such definition includes producers and, in general, proprietors of warehouses.

⁴³ Sec. 5146.

⁴⁴ Sec. 5603.

⁴⁵ Secs. 5132 and 5275.

⁴⁶ Sec. 5117. For example, purchases from a proprietor of a distilled spirits plant at his principal business office would be covered under item (2) since such a proprietor is not subject to the special occupational tax on account of sales at his principal business office (sec. 5113(a)). Purchases from a State-operated liquor store would be covered under item (3) (sec. 5113(b)).

⁴⁷ Sec. 5687.

⁴⁸ Sec. 7302.

⁴⁹ The proposal also retains the present-law registration and regulation requirements for the nonbeverage use of distilled spirits, and the permit and recordkeeping requirements for the industrial use of distilled spirits.

purposes of the recordkeeping requirements for wholesale and retail liquor dealers, the proposal provides a rebuttable presumption that a person who sells, or offers for sale, distilled spirits, wine, or beer, in quantities of 20 wine gallons or more to the same person at the same time is engaged in the business of a wholesale dealer in liquors or a wholesale dealer in beer. In addition, the proposal retains the present-law rules that make it unlawful for any liquor dealer to purchase distilled spirits for resale from any person other than a wholesale liquor dealer subject to the recordkeeping requirements, or a proprietor of a distilled spirits plant subject to recordkeeping requirements.⁵⁰ Existing general criminal penalties relating to records and reports apply to wholesalers and retailers who fail to comply with these requirements.

Effective Date

The proposal is effective on July 1, 2008. The proposal does not affect liability for taxes imposed with respect to periods before July 1, 2008.

2. Modify limitation on rate of rum excise tax cover over to Puerto Rico and Virgin Islands

Present Law

A \$13.50 per proof gallon⁵¹ excise tax is imposed on distilled spirits produced in or imported (or brought) into the United States.⁵² The excise tax does not apply to distilled spirits that are exported from the United States, including exports to U.S. possessions (e.g., Puerto Rico and the Virgin Islands).⁵³

The Code provides for cover over (payment) to Puerto Rico and the Virgin Islands of the excise tax imposed on rum imported (or brought) into the United States, without regard to the country of origin.⁵⁴ The amount of the cover over is limited under Code section 7652(f) to \$10.50 per proof gallon (\$13.25 per proof gallon during the period July 1, 1999 through December 31, 2005).

⁵⁰ Proprietors of distilled spirits plants remain subject to present law recordkeeping requirements under section 5207. Under present law, a limited retail dealer in liquors (such as a charitable organization selling liquor at a picnic) may lawfully purchase distilled spirits for resale from a retail dealer in distilled spirits. The proposal retains this rule.

⁵¹ A proof gallon is a liquid gallon consisting of 50 percent alcohol. See sec. 5002(a)(10) and (11).

⁵² Sec. 5001(a)(1).

⁵³ Secs. 5062(b), 7653(b) and (c).

⁵⁴ Secs. 7652(a)(3), (b)(3), and (e)(1). One percent of the amount of excise tax collected from imports into the United States of articles produced in the Virgin Islands is retained by the United States under section 7652(b)(3).

Tax amounts attributable to shipments to the United States of rum produced in Puerto Rico are covered over to Puerto Rico. Tax amounts attributable to shipments to the United States of rum produced in the Virgin Islands are covered over to the Virgin Islands. Tax amounts attributable to shipments to the United States of rum produced in neither Puerto Rico nor the Virgin Islands are divided and covered over to the two possessions under a formula.⁵⁵ 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.⁵⁶ All of the amounts covered over are subject to the limitation.

Description of Proposal

Under the proposal, the cover over amount of \$13.25 per proof gallon is modified to \$13.50 for rum brought into the United States after December 31, 2005 and before January 1, 2007. After December 31, 2006, the cover over amount reverts to \$10.50 per proof gallon.

The proposal additionally requires that Puerto Rico transfers a portion of the amount covered over to Puerto Rico to the Puerto Rico Conservation Trust Fund (the "Fund").⁵⁷ The treasury of Puerto Rico is required to make a transfer to the Fund in an amount equal to 50 cents per proof gallon of the taxes 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. The transfer is required to be made within 30 days of each such cover over payment to Puerto Rico. Each transfer payment is to be treated as principal for an endowment, the income from which is to be used by the Fund for the purposes for which the Fund was established. If Puerto Rico fails to make a timely payment to the Trust Fund, the Secretary of the Treasury shall deduct and withhold such unpaid amount from the next cover over payment, plus interest, and shall transfer such amounts directly to the Fund. Such deduction, withholding, and direct payment will not be made if the Secretary of the Interior, after consultation with the Governor of Puerto Rico, finds that the failure of the treasury of Puerto Rico to make the transfer payment was for good cause. The transfer requirement expires after December 31, 2006.

⁵⁵ Sec. 7652(e)(2).

⁵⁶ Secs. 7652(a)(3), (b)(3), and (e)(1).

⁵⁷ The Puerto Rico Conservation Trust Fund was established pursuant to a Memorandum of Understanding, dated December 24, 1968, between the United States Department of the Interior and the Commonwealth of Puerto Rico.

Effective Date

The changes in the cover over rate are effective for articles brought into the United States after December 31, 2005. The provisions regarding the Puerto Rico Conservation Trust Fund are effective January 1, 2006.

3. Provide an income tax credit for cost of carrying tax-paid distilled spirits in wholesale inventories and in control State bailment warehouses

Present Law

As is true of most major Federal excise taxes, the excise tax on distilled spirits is imposed at a point in the chain of distribution before the product reaches the retail (consumer) level. The excise tax on distilled spirits produced in the United States is imposed when the distilled spirits are removed from the distilled spirits plant where they are produced. Distilled spirits that are bottled before importation into the United States are taxed on removal from the first U.S. custom bonded warehouse to which they are landed (including a warehouse located in a foreign trade zone). Distilled spirits imported in bulk containers from bottling in the United States may be transferred to a domestic distilled spirits plant without payment of tax; subsequently, these distilled spirits are taxed in the same way as domestically produced distilled spirits.

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.

Description of Proposal

The proposal creates a new 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 spirits⁵⁸ 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.

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

⁵⁸ Distilled spirits that are imported in bulk and then bottled domestically qualify as domestically bottled distilled spirits.

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.

The credit is treated as part of the general business credits.

Effective Date

The proposal is effective for taxable years beginning after September 30, 2005.

E. Sport Excise Taxes

1. Provide exemption for certain custom gunsmiths

Present Law

The Code imposes an excise tax upon the sale by the manufacturer, producer or importer of certain firearms and ammunition.⁵⁹ 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.

Description of Proposal

The proposal 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

The proposal is effective for articles sold by the manufacturer, producer, or importer after September 30, 2005. No inference is intended from the prospective effective date of this proposal as to the proper treatment of pre-effective date sales.

⁵⁹ Sec. 4181.

III. MISCELLANEOUS

A. Establish a Motor Fuel Tax Enforcement Advisory Commission

Present Law

The Code does not provide for an advisory commission on motor fuel tax enforcement.

Description of Proposal

The proposal establishes a “Motor Fuel Tax Enforcement Advisory Commission” (the “Commission”). 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.

The Commission is to be composed of the following:

1. At least one representative from each of the following Federal entities: the Department of Homeland Security, the Department of Transportation - Office of Inspector General, the Federal Highway Administration, the Department of Defense, and the Department of Justice.
2. At least one representative from the Federation of State Tax Administrators,
3. At least one representative from any State Department of Transportation,
4. Two representatives from the highway construction industry,
5. Five representatives from industries relating to fuel distribution: refiners (2 representatives), distributors (1 representative), pipelines (1 representative), terminal operators (2 representatives),
6. One representative from the retail fuel industry, and
7. Two representatives each from the staff of the Senate Committee on Finance and the House Committee on Ways and Means.

Members of the Commission are to be appointed by the Senate Committee on Finance and the House Committee on Ways and Means. Representatives from the Department of Treasury and the IRS shall be available to consult with the Commission upon request. The Commission is to terminate after September 30, 2009.

Effective Date

The proposal is effective on the date of enactment.

B. Establish a National Surface Transportation Infrastructure Financing Commission

Present Law

Present law does not provide for any advisory commissions related Federal highway or mass transit funding.

Description of Proposal

The proposal establishes a “National Surface Transportation Infrastructure Financing Commission” (the “Financing Commission”). The Financing Commission is to be composed of 15 members drawn from among individuals knowledgeable in the fields of public transportation finance or highway and transit programs, policy, and needs. Financing Commission members may include representatives of State and local governments or other public transportation agencies, representatives of the transportation construction industry, providers of transportation, persons knowledgeable in finance, and users of highway and transit systems. The 15 members will be appointed as follows:

1. The Secretary of Transportation, in consultation with the Secretary of the Treasury, will appoint seven members;
2. The chairman of the House Committee on Ways and Means will appoint two members;
3. The ranking minority member of the House Committee on Ways and Means will appoint two members;
4. The chairman of the Senate Committee on Finance will appoint two members; and,
5. The ranking minority member of the Senate Committee on Finance will appoint two members.

The Financing Commission will make an investigation and study of revenues flowing into the Highway Trust Fund under present law, including the individual components of the flow of such revenues. The Financing Commission will consider whether the amount of such revenues is likely to increase, decline or remain unchanged absent changes in the law, particularly by taking into account the impact of possible changes in consumers’ vehicle choice, fuel use or travel alternatives that could be expected to reduce or increase revenues in to the Highway Trust Fund. The Financing Commission will consider alternative approaches to generating revenues for the Highway Trust Fund, and the level of revenues that such alternatives would yield. The Financing Commission will consider highway and transit needs and whether additional revenues into the Highway Trust Fund, or other Federal revenues dedicated to highway and transit infrastructure, would be required in order to meet such needs. The Financing Commission’s study should address the period between the present and through the year 2015.

Based on such investigation and study, the Financing Commission will develop a final report, with recommendations and the bases for those recommendations, indicating policies that the Congress may consider to achieve various levels of annual revenue for the Highway Trust Fund and to enable the Highway Trust Fund to receive revenues sufficient to meet highway and transit needs. The Financing Commission's recommendations will address: (1) what levels of revenue are required by the Highway Trust Fund in order for it to meet needs to maintain and improve the condition and performance of the nation's highway and transit systems; (2) what levels of revenue are required by the Highway Trust Fund in order to ensure that Federal levels of investment in highways and transit do not decline in real terms; and (3) the extent, if any, to which the Highway Trust Fund should be augmented by other mechanisms or funds as a Federal means of financing highway and transit infrastructure investments.

The Financing Commission will submit its report and recommendations within two years of the date of its first meeting to the Secretary of Transportation, the Secretary of the Treasury, the House Committee on Ways and Means, Senate Committee on Finance, the House Committee on Transportation and Infrastructure, the Senate Committee on Environment and Public Works, and Senate Committee on Banking, Housing, and Urban Affairs. The Financing Commission will hold its first meeting within 90 days of the appointment of the eighth individual to the Financing Commission and the Financing Commission will terminate on the 180th day following the transmittal of its report and recommendations.

Effective Date

The proposal is effective on the date of enactment.

**C. Expand Highway Trust Fund Expenditure Purposes to Include
Funding for Studies of Supplemental or Alternative
Financing for the Highway Trust Fund**

Present Law

In general

Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by provisions of the Code (sec. 9503).⁶⁰ 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.

The Highway Trust Fund has a sub-account for Mass Transit. Both the Trust Fund and its sub-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 approved by the Code as Highway Trust Fund expenditure purposes.⁶¹

Highway Trust Fund expenditure purposes

Highway Trust Fund expenditure purposes

The Highway Trust Fund receives revenues from all non-fuel highway transportation excise taxes and revenues from all but 2.86 cents per gallon of the highway motor fuels excise taxes transferred to the Highway Trust Fund. Programs financed from the Highway Trust Fund (excluding the Mass Transit account) include:

1. Interstate maintenance program;
2. National Highway System;

⁶⁰ The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

⁶¹ The authorizing Acts which 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 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; and the Surface Transportation Extension Act of 2004, Part V.

3. The bridge program (bridge replacement and repair);
4. Surface transportation programs;
5. Congestion mitigation and air quality improvement program;
6. Highway safety programs and research and development, including a share of the cost of National Highway Traffic Safety Administration (“NHTSA”) programs and university research centers;
7. Appalachian development highway system program;
8. Recreational trails program;
9. Federal lands highways program;
10. National corridor planning and development and coordinated border infrastructure programs;
11. Construction of ferry boats and ferry terminal facilities;
12. National scenic byways program;
13. Value pricing pilot program;
14. High priority projects program;
15. Highway use tax evasion projects;
16. Commonwealth of Puerto Rico highway program.

Certain administrative costs of the Federal Highway Administration and NHTSA are also funded from the Highway Trust Fund.

Mass Transit Account expenditure purposes

The Highway Fund’s Mass Transit Account receives revenues equivalent to 2.86 cents per gallon of the highway motor fuels excise taxes. Mass Transit Account monies are available through May 31, 2005, for capital and capital-related expenditures under sections 5338(a)(1) and (b)(1) of Title 49, United States Code, 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; and the Surface Transportation Extension Act of 2004, Part V; as those provisions were in effect on the date of enactment of the Surface Transportation Extension Act of 2004, Part V.

Description of Proposal

The proposal expands the expenditure authority and authorizes the expenditure of monies from the Highway Trust Fund to fund two comprehensive studies of supplemental or alternative funding sources for the Highway Trust Fund. One study, to receive \$1 million in funding, will review funding mechanisms of other industrialized nations and examine the viability of proposals such as congestion pricing, greater reliance on tolls, privatization of facilities, and other funding proposals. This study would be due no later than December 31, 2006. The other study, to receive \$16.5 million in funding, would report on a long-term field test of a new approach to assessing highway use taxes by use of an on-board computer that links to satellites to calculate road mileage traversed and compute the appropriate highway use tax for each of the Federal, State, and local government as the vehicle makes use of the roads. The vehicle owner would periodically download the data from the on-board computer to a collection center and the collection center would assess highway use taxes due in each jurisdiction traversed. The results of this study would be due no later than December 31, 2011. Each study would be delivered to the Secretary of the Treasury and the Secretary of Transportation.

Effective Date

The proposal is effective upon date of enactment.

IV. FUELS-RELATED TECHNICAL CORRECTIONS

A. Fuels-Related Technical Corrections to American Jobs Creation Act of 2004 (“AJCA”)

The proposal includes technical corrections to AJCA. Such technical corrections take effect as if included in the section of AJCA to which the correction relates.

1. 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 (secs. 6427(f) and 6427(o)).

2. Aviation fuel (sec. 853 of AJCA)

Section 853 of the 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 cent 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).

B. Fuels-Related Technical Corrections to Transportation Equity Act for the 21st Century (“TEA 21”)

The proposal includes a technical correction to TEA 21. The amendment made by the technical correction takes effect as if included in the section of TEA 21 to which it relates.

1. Coastal Wetlands sub-account (sec. 9005 of TEA 21)

Section 9005(b)(3) of TEA 21 redesignated Code section 9504(b)(2)(B), referring to the purposes of the Coastal Wetlands Planning, Protection and Restoration Act, as 9504(b)(2)(C), but did not cross reference the limitation for such purposes of taxes on gasoline used in the nonbusiness use of small-engine outdoor power equipment. The technical correction makes a conforming cross-reference amendment (sec. 9504(b)(2)).