

Joint Committee on Taxation
August 5, 1994
JCX-15-94

**REVENUE-RELATED PROVISIONS OF H.R. 3800
(SUPERFUND REFORM ACT OF 1994)**

**Scheduled for Markup by the Committee on Ways and Means
on August 9, 1994**

I. LEGISLATIVE BACKGROUND

H.R. 3800 ("Superfund Reform Act of 1994"), the Administration's Superfund reauthorization proposal, was introduced (by request) by Messrs. Swift, Dingell, Mineta, Rostenkowski, and Applegate on February 3, 1994. Titles I-VIII of the bill were referred jointly to the Committee on Energy and Commerce and the Committee on Public Works and Transportation. Title IX ("Taxes") was referred to the Committee on Ways and Means.

H.R. 3800 was ordered favorably reported, with an amendment, by Energy and Commerce on May 18, 1994, and the report was filed on June 30, 1994 (H. Rept. 103-582, Part I). Public Works and Transportation marked up H.R. 3800 on July 28, 1994, and ordered the bill favorably reported with amendments.

On May 20, 1994, the Administration separately submitted a proposal for the imposition of two new insurance-related "fees" (drafted to be excise taxes in the Internal Revenue Code -- hereinafter, referred to as excise taxes) on persons issuing or bearing risks under certain commercial insurance policies. This proposal subsequently was modified in a separate transmittal to the Senate Committee on Environment and Public Works. The Administration intended that these new excise taxes, as modified, be incorporated in Title IX of H.R. 3800 as the financing source for a new environmental insurance resolution program created by the bill.

The Committee on Ways and Means held a public hearing on the Superfund revenue proposals on July 25, 1994.¹

¹ For a more complete description of the Administration proposal, see Joint Committee on Taxation, "Revenue Related Provisions of H.R.3800", July 22, 1994, JCX-9-94.

II. DESCRIPTION OF PRESENT LAW

1. Current Superfund Taxes and Trust Fund

Four different taxes are imposed under present law to fund the Hazardous Substance Superfund (the "Superfund") program --

(1) A 9.7-cents-per-barrel excise tax on domestic or imported crude oil or refined products;

(2) An excise tax on certain hazardous chemicals, imposed at rates of from \$0.22 to \$4.87 per ton;

(3) An excise tax on imported substances for which one or more of the hazardous chemicals subject to tax in (2), above have been used as materials in their manufacture or production;² and

(4) A corporate environmental income tax equal to 0.12 percent of the amount of modified alternative minimum taxable income in excess of \$2 million.

Amounts equivalent to the revenues from these taxes are dedicated to the Superfund Trust Fund, established in the Trust Fund Code of the Internal Revenue Code. Amounts in the Superfund Trust Fund are available for expenditure for the purposes provided in present-law authorizing legislation, as that legislation was enacted in 1986.

These Superfund taxes are scheduled to expire generally after December 31, 1995. Present law provides for an earlier expiration, however, if either of two "dollar caps" is exceeded: (1) if the unobligated balance in the Superfund exceeds \$3.5 billion on December 31, 1994, or (2) if the Treasury Department estimates that more than \$11.97 billion of revenues from these taxes will be credited to the Superfund before January 1, 1996.

2. Environmental Insurance Resolution Fund and Excise Taxes

Present law does not include any provisions for Federal resolution or funding of claims against insurers by parties potentially responsible for Superfund site cleanup.

² For a complete list of the chemicals and imported substances subject to the taxes described in items (2) and (3), see JCX-9-94.

III. ADMINISTRATION PROPOSALS AND POSSIBLE JURISDICTIONAL AND TECHNICAL MODIFICATIONS

A. Written Transmittals from the Administration

1. Current Superfund Taxes and Trust Fund

The Administration proposal would extend the present-law Superfund excise taxes through December 31, 2000, and the corporate environmental income tax through taxable years beginning before January 1, 2001. Conforming amendments would be made to the present-law "dollar caps" to permit collection of these taxes at projected levels during the five-year extension period.

The Administration proposal does not include conforming amendments to the Superfund Trust Fund expenditure authority provisions to reflect proposed authorizing legislation.

2. Environmental Insurance Resolution Fund and Excise Taxes

The Administration proposal would establish a new Environmental Insurance Resolution Fund (the "EIRF") to resolve private litigation about insurance coverage related to cleanup of Superfund sites. The EIRF would process claims against private insurance companies by parties that are potentially liable for cleanup of these sites, and would pay monetary awards to the parties. Upon acceptance of an award, insurance claims would be extinguished. EIRF awards would equal statutory percentages (determined generally by reference to the State in which the sites giving rise to liability are located) of potential claims against insurers.

Awards to parties potentially responsible for cleanup of Superfund sites would cover all sites (past, present, and future) with respect to which the party was found liable. Past unreimbursed costs would be paid in 10 annual installments. Present and future costs would be paid by the EIRF as the costs were incurred.

The EIRF would be established as a new tax-exempt organization, whose members would be appointed by the President. As originally proposed by the Administration, the EIRF would review and process awards for a five-year period, beginning on the date of the bill's enactment. (This five-year period was extended to 10 years in H.R. 3800, as reported by the Committees on Energy and Commerce and Public Works and Transportation.)

The EIRF would be funded with two new Federal excise taxes. These taxes would be imposed on persons having certain commercial

insurance risks. Seventy percent of the revenues would be raised by a "retrospective tax", imposed as an ongoing "doing business" tax, but calculated with respect to certain commercial insurance policies (including reinsurance policies) written during the period 1971-1985. Thirty percent of the revenues would be raised from a Federal excise tax on premiums for certain commercial insurance written during a five-year prospective period (the "prospective tax").

As originally proposed by the Administration, the rate for the retrospective tax would be .20 percent of the base as described below for the first two years of its imposition, after which time the rate would increase to .27 percent. The rate for the prospective tax would be .34 percent during the first two years of its imposition, after which time the rate would increase to .44 percent. After the fifth year, the taxes would terminate.

In its subsequent transmittal to the Senate Committee on Environment and Public Works, the Administration suggested that, if revenues in addition to those produced by its five-year tax proposal were needed, the EIRF taxes could be imposed until all funding needs of the EIRF were satisfied. In this transmittal, the following rates were suggested:

<u>Time Period</u>	<u>Retrospective Tax</u>	<u>Prospective Tax</u>
Years 1 and 2	0.20%	0.34%
Years 3 through 5	0.27%	0.44%
Years 6 through 10	0.38%	0.54%
Years 11 and thereafter	0.46%	0.59%

The Treasury Department would be authorized to adjust (upward or downward) the rates for both taxes to ensure (a) that the \$8.1 billion revenue target is met over the first 10 years of the tax; (b) that no more than \$1.2 billion per year is raised beginning in Year 11; and (c) that the relative shares of the retrospective and prospective taxes remain constant. The Treasury Department further would be authorized to reduce tax rates to meet any reduced revenue target that it determined sufficient to meet the funding requirements of the EIRF.

Retrospective tax. --The retrospective tax would be measured by reference to "adjusted base-period commercial premiums," generally defined as net written premiums from any commercial insurance (including reinsurance) policy (1) written during the period from 1971 to 1985 with respect to hazards within the United States and (2) the premiums for which were required to be reported in the National Association of Insurance Commissioners ("NAIC") annual statement under the "commercial multiple peril" or "other liability" lines of business. The retrospective tax

would be imposed on both domestic and foreign persons that insured U.S. insurance risks of the type subject to tax.

Foreign persons not otherwise subject to U.S. income tax would be subject to an alternative excise tax equal to 0.5 percent of their maximum limit of liability under a covered insurance policy unless that person entered into a closing agreement with the Treasury Department electing to be taxed in the same manner as a U.S. person.

Prospective tax.--The prospective tax generally would be imposed on direct premiums written for any commercial insurance policy (1) that covers hazards within the United States and (2) the premiums for which are required to be reported on the NAIC annual statement as relating to the "commercial multiple peril," "fire," "product liability," or "other liability" lines of business.

Effective dates.--The EIRF excise taxes would be effective on the date of the bill's enactment and generally would expire only after all funding needs of the EIRF have been satisfied.

The authorizing legislation accompanying this proposal would provide, however, that the EIRF would not become operative unless at least 85 percent of the parties potentially eligible for awards accepted the EIRF's determination of the percentage recoveries for which they potentially were eligible within 150 days of the bill's enactment. Otherwise, taxes collected (less administrative costs of the EIRF) would be refunded.

B. Possible Jurisdictional and Technical Modifications to Written Transmittals

1. Current Superfund Taxes and Trust Fund

Include amendments to the Superfund Trust Fund provisions authorizing expenditures from the Trust Fund for the purposes provided under the accompanying authorizing legislation (as that legislation becomes effective on the date of enactment of the bill).

2. Environmental Insurance Resolution Fund and Excise Taxes

Effective date.--To prevent initial collection of taxes followed by extensive refunds if the EIRF does not become operational, provide that the EIRF excise taxes will be imposed starting with the first calendar quarter that begins at least 45 days after the Chairperson of the EIRF certifies that the requisite 85 percent acceptance rate for the EIRF to commence has been satisfied.

Authorize the EIRF Board to assess fees on insurers to fund administrative costs of the EIRF incurred prior to the effective date of the excise taxes.

Treasury authority to adjust rates.--Delete the Treasury Department authority to increase or reduce tax rates.

Imposition as tax; establishment of trust fund.--Clarify in the statutory language that the EIRF excises are "taxes" rather than "fees."

Authorize deposit of amounts equal to net revenues from the excise taxes in a newly established trust fund in the Trust Fund Code of the Internal Revenue Code which would be administered by the Federal Agency represented by the EIRF Chairperson. Provide for management of these revenues in a manner similar to that provided for present-law Code trust funds, including expenditure authority provisions consistent with the accompanying authorizing legislation, as effective on the date of the bill's enactment. Also include a limitation on the Federal Government's liability to amounts equal to net revenues collected from the EIRF excise taxes and deposited in the Trust Fund.

Technical modifications to rules governing foreign taxpayers or transactions.-- Permit the Treasury Department to accept a preliminary agreement where a foreign person seeks to enter into a closing agreement under which it would be subject to the retrospective tax. Under such an agreement, in place of requiring immediate payment and withholding of the 0.5 percent of the maximum limit of liability under the policy, the Treasury could accept adequate security for the payment of that alternative excise tax liability pending completion of the closing agreement. Such a preliminary agreement would be effective only for a limited period, and if no closing agreement were executed before the end of the period, the Treasury would be entitled to collect the full amount of the alternative tax (including the retention of any security previously given).

Clarify that where premiums are paid for a policy that covers hazards, risks, losses, or liabilities that are only partly within the United States (defined to include Puerto Rico and possessions and territories), then only the portion of the premiums properly attributable to hazards, risks, losses, or liabilities within the United States is subject to the excise taxes.

Clarify that the \$50 million exemption amount under the retrospective tax is not applied on a per-"Name" basis.