EXTENSION OF HIGHWAY TRUST FUND EXCISE TAXES AND RELATED TRUST FUND PROVISIONS

Scheduled for a Markup

By the

SENATE COMMITTEE ON FINANCE

on October 1, 1997

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of the

JOINT COMMITTEE ON TAXATION

September 29, 1997

JCX-50-97

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INTRODUCTION

S. 1173, the "Intermodal Transportation Act of 1997," was ordered reported by the Senate Committee on Environment and Public Works on September 17, 1997. S. 1173 would extend expenditure authorizations for the Highway Trust Fund (the "Highway Fund") for six years, through September 30, 2003, and make various modifications to the highway programs financed through the Highway Fund. The Highway Fund is funded with amounts equivalent to revenues from certain excise taxes on motor fuels and on heavy trucks and tires. These excise taxes currently are scheduled to expire after September 30, 1999. The provisions dedicating revenues from these excise taxes to the Highway Fund, relevant expenditure provisions governing the purposes for which Highway Fund monies may be spent, and the period when those expenditures may occur are contained in the Internal Revenue Code (the "Code"). The Highway Fund expenditure authority currently expires after September 30, 1997.

The Senate Committee on Banking, Housing, and Urban Affairs and the Committee on Commerce, Science, and Transportation have been requested to approve Highway Fund-related authorization provisions within their respective jurisdictions. The Committee on Finance has been requested to provide a revenue title to accompany S. 1173. This revenue title is requested to include provisions extending the period when the highway excise taxes are imposed, when Highway Fund monies can be spent, and conforming the purposes for which monies can be spent to those authorized under S. 1173. Provisions adopted by these Committees are expected to be incorporated into S. 1173 when that bill is considered by the Senate.

The Committee on Finance has scheduled a markup on a possible revenue title to S. 1173 on October 1, 1997.

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the present-law Highway Fund excise taxes (Part I), the present-law Highway Fund expenditure purposes (Part II), a summary of S. 1173 authorizations (Part III), and a possible option for a revenue title (Part IV).

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[1] This document may be cited as follows: Joint Committee on Taxation, Extension of Highway Trust Fund Excise Taxes and Related Trust Fund Provisions (JCX-50-97), September 29, 1997.

I. PRESENT-LAW HIGHWAY TRUST FUND EXCISE TAXES

Overview

The current highway transportation excise taxes consist of:

(1) taxes on gasoline, diesel fuel, kerosene, and special motor fuels;

(2) a retail sales tax imposed on trucks and trailers having gross vehicle weights in excess of prescribed thresholds;

(3) a tax on manufacturers of tires designed for use on heavy highway vehicles; and

(4) an annual use tax imposed on trucks and tractors having taxable gross weights in excess of prescribed thresholds.

Special motor fuels include liquefied natural gas ("LNG"), benzol, naphtha, liquefied petroleum gas (e.g., propane), natural gasoline, and any other liquid (e.g., ethanol and methanol) other than gasoline or diesel fuel. Compressed natural gas ("CNG") also is subject to tax as a special motor fuel, but at a lower rate than other special motor fuels.

With the exception of 4.3 cents per gallon of the motor fuels excise tax rates, these taxes are scheduled to expire after September 30, 1999.

Highway motor fuels taxes

The current highway motor fuels excise tax rates are shown in Table 1.

Table 1. --Federal Highway Trust Fund Motor Fuels Excise Tax Rates, as of October 1, 1997[1]
(rates shown in cents per gallon)

Highway Fuel	Tax Rate[2]
Gasoline[3]	18.3
Diesel Fuel[4]	24.3
Special Motor Fuels Generally	18.3[5]
CNG	4.3[6]

[1] The rates shown include the 4.3-cents-per-gallon tax rate which is to be transferred to the Highway Fund beginning on October 1, 1997, pursuant to the Taxpayer Relief Act of 1997.

[2] Effective on October 1, 1997, an additional 0.1-cent-per-gallon rate will be imposed on these motor fuels to finance the Leaking Underground Storage Tank Trust Fund.

[3] Gasoline used in motorboats and in certain off-highway recreational vehicles and small engines is subject to tax in the same manner and at the same rates as gasoline used in highway vehicles. 6.8 cents per gallon of the revenues from the tax on gasoline used in these uses is retained in the General Fund; the remaining 11.5 cents per gallon is deposited in the Aquatic Resources Trust Fund (motorboat and small engine gasoline), the Land and Water Conservation Fund ($1 million of motorboat gasoline tax revenues), and the National Recreational Trails Trust Fund (the "Trails Trust Fund") (off-highway recreational vehicles). Transfers to these Trust Funds are scheduled to terminate after September 30, 1997. Transfers to the Trails Trust Fund are contingent on appropriations occurring from that Trust Fund; to date, no appropriations have been enacted.

[4] Kerosene is taxed at the same rate as diesel fuel.

[5] The rate is 13.6 cents per gallon for propane, 11.9 cents per gallon for liquefied natural gas, and 11.3 cents per gallon for methanol fuel from natural gas, in each case based on the relative energy equivalence of the fuel to gasoline.

[6] The statutory rate is 48.54 cents per thousand cubic feet ("MCF").

Present law includes numerous exemptions (including partial exemptions for specified uses of taxable fuels or for specified fuels) typically for governments or for uses not involving use of (and thereby change to) the highway system. Because the gasoline and diesel fuel taxes generally are imposed before the end use of the fuel is known, many of these exemptions are realized through refunds to end users of tax paid by a party that processed the fuel earlier in the distribution chain. These exempt uses and fuels include:

(1) use in State and local government and nonprofit educational organization vehicles;

(2) use in buses engaged in transporting students and employees of schools;

(3) use in private 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;

(4) use in private intercity buses serving the general public along scheduled routes (totally exempt from the gasoline tax and exempt from 17 cents per gallon of the diesel tax); and

(5) use in off-highway uses such as farming.

LNG, propane, CNG, and methanol derived from natural gas are subject to reduced tax rates based on the energy equivalence of these fuels to gasoline.

Ethanol and methanol derived from renewable sources (e.g., biomass) are eligible for income tax benefits (the "alcohol fuels credit") equal to 54 cents per gallon (ethanol) and 60 cents per gallon (methanol).[2] In addition, small ethanol producers are eligible for a separate 10-cents-per-gallon credit.[3] The 54-cents-per-gallon ethanol and 60-cents-per-gallon renewable source methanol tax credits may be claimed through reduced excise taxes paid on gasoline and special motor fuels as well as through credits against income tax.[4]

Non-fuel Highway Fund excise taxes

In addition to the highway motor fuels excise tax revenues, the Highway 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 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);

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[2] The alcohol fuels credit is scheduled to expire after December 31, 2000, or earlier, if the Highway Fund excise taxes actually expire before that date.

[3] The small ethanol producer credit is available on up to 15 million gallons of ethanol produced by persons whose annual production capacity does not exceed 30 million gallons.

[4] Authority to claim the ethanol and renewable source methanol tax benefits through excise tax reductions are scheduled to expire after September 30, 2000 (or earlier, if the underlying excise taxes actually expire before September 30, 2000).

(2) An excise tax imposed at graduated rates on highway tires weighing more than 40 pounds; and

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

II. HIGHWAY TRUST FUND EXPENDITURE PROVISIONS

In general

Dedication of excise tax revenues to the Highway Fund and expenditures from the Highway Fund are governed by provisions of the Code (sec. 9503).[5] Under present law, revenues from the highway excise taxes, as imposed through September 30, 1999, are dedicated to the Highway Fund. Also, the Highway Fund earns interest on its cash balances each year from investments in Treasury securities. Further, the Code authorizes expenditures (subject to appropriations) from the Fund through September 30, 1997, for the purposes provided in authorizing legislation, as in effect on the date of enactment of the Intermodal Surface Transportation Efficiency Act of 1991.

Highway Fund provisions also govern transfer of 11.5 cents per gallon of the revenues from the tax imposed on gasoline used in motorboats, small engines, and off-highway recreational vehicles. Those revenues are transferred from the Highway Fund (after being received from the General Fund) to the Aquatic Resources Trust Fund, the Land and Water Conservation Fund, and the National Recreational Trails Trust Fund, respectively, through September 30, 1997.

Present-law Highway Fund expenditure purposes

Overview

The Highway Fund is divided into two accounts, a Highway Account and a Mass Transit Account, each of which is the funding source for specific programs.

Highway and Mass Transit Account expenditure purposes have been revised with passage of 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 Highway Fund expenditure purposes.[6] Authority to make expenditures from the Highway Fund is scheduled to expire after September 30, 1997. Thus, no Highway Fund monies may be spent for a purpose not approved by the tax-writing committees of Congress. Further, no Highway Fund expenditures may occur after September 30, 1997, without such approval.

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[5] The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

[6] The authorizing Acts which currently are referenced in the Highway Trust Fund 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, and the Intermodal Surface Transportation Efficiency Act of 1991.

Highway Fund spending further is limited by two, internal to the Highway Fund, anti-deficit provisions. The first of these provisions limits the unfunded Highway Account authorizations at the end of any fiscal year to amounts not exceeding revenues projected to be collected for that Account by the dedicated excise taxes during the two following fiscal years. The second anti-deficit provision similarly limits unfunded Mass Transit Account authorizations to the dedicated excise taxes expected to be collected during the next fiscal year. Because of these two provisions, the highway transportation excise taxes typically are scheduled to expire at least two years after current authorizing Acts. If either of these provisions is violated, spending for specified programs funded by the relevant Trust Fund Account is to be reduced proportionately, in much the same manner as would occur under a general Budget Act sequester.

Highway Account

The Highway Fund's Highway Account receives revenues from all non-fuel highway transportation excise taxes and revenues from all but 2.85 cents per gallon (2.0 cents prior to October 1, 1997) of the highway motor fuels excise taxes. Programs financed from the Highway Account include expenditures for the following general purposes:

(1) Federal-aid highways, including the Interstate System, National Highway System, forest and public lands highways, scenic highways, and certain overseas highways (includes construction and planning);

(2) Interstate highway resurfacing and repair;

(3) Bridge replacement and repair;

(4) Surface transportation programs;

(5) Congestion mitigation and air quality improvement;

(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) Transportation research, technology, and training;

(8) Traffic control grants and traffic control signal projects;

(6) Intermodal urban projects and mass transit (including carpool and vanpool) grants;

(10) Magnetic levitation technology deployment;

(11) Intelligent transportation systems;

(12) Certain administrative costs of the Federal Highway Administration and NHTSA;

(13) Grants to the Internal Revenue Service for motor fuels tax and highway use tax enforcement activities; and

(14) Certain other highway and transit-related programs (including bicycle pathways and pedestrian walkways).

Mass Transit Account

The Highway Fund's Mass Transit Account receives revenues equivalent to 2.85 cents per gallon (2.0 cents prior to October 1, 1997) of the highway motor fuels excise taxes. Mass Transit Account monies are available through September 30, 1997, for capital and capital-related expenditures under sections 5338(a)(1) and (b)(1) of Title 49, United States Code, or the Intermodal Surface Transportation Efficiency Act of 1991.

The capital and capital-related mass transit programs include new rail or busway facilities, rail rolling stock, buses, improvement and maintenance of existing rail and other fixed guideway systems, and upgrading of bus systems.

Transfers from Highway Fund to National Recreational Trails Trust Fund

The National Recreational Trails Trust Fund ("Trails Fund") was established in the Intermodal Surface Transportation Act of 1991 ("1991 Act"). Amounts are authorized to be transferred from the Highway Fund into the Trails Fund equivalent to revenues received from "nonhighway recreational fuel taxes" (not to exceed $30 million per year under an obligational ceiling set in the 1991 Act), subject to amounts actually being appropriated to the Trails Fund. No monies have been transferred to date, since no amounts have been appropriated to the Trails Fund. The authority to transfer revenues to the Trails Fund is scheduled to expire after September 30, 1997.

Nonhighway recreational fuels taxes are the taxes imposed (to the extent attributable to the 11.5 cents per gallon rate) on (1) fuel used in vehicles and equipment on recreational trails or back country terrain, or (2) fuel used in camp stoves and other outdoor recreational equipment. Such revenues do not include small-engine gasoline tax revenues which are transferred to the Aquatic Resources Trust Fund.

Expenditures are authorized from the Trails Fund, subject to appropriations, for allocations to States for use on trails and trail-related projects as set forth in the 1991 Act. Authorized uses include (1) acquisition of new trails and access areas, (2) maintenance and restoration of existing trails, (3) State environmental protection education programs, and (4) program administrative costs.

III. SUMMARY OF S. 1173 TRUST FUND AUTHORIZATIONS

S. 1173 would extend authorizations for Highway Fund expenditures for six years, fiscal years 1998-2003. S.1173 also would modify the expenditure purposes of the Highway Fund as described below. As ordered reported by the Committee on Environment and Public Works ("Environment and Public Works"), S. 1173 contains no revenue provisions or other Code amendments.[7]

Highway Account Authorizations Under S. 1173

S. 1173, as reported by Environment and Public Works, would provide Highway Trust Fund (Highway Account) authorizations totaling $145.3 billion for the 6-year period, fiscal years 1998-2003.

New Highway Account expenditure programs include the following:

Program	6-year total (millions)
• Recreational trails program[8]	$119.0
• Motor fuel excise tax reporting system	20.0
• International border crossing planning incentive grants	8.4
• International trade corridor planning incentive grants	18.0
• Infrastructure financing (loans, loan guarantees, credit lines, including State infrastructure banks)	470.0
• Safety grants for seat belt use	470.0

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[7] See below for mention of the bill's authorization of amounts from the Highway Account for grants to the Internal Revenue Service for motor fuel tax evasion projects and motor fuel tax reporting system.

[8] A "trail" is a thoroughfare or track across land or snow used for recreational purposes, such as pedestrian activities, skating or skateboarding, equestrian activities, skiing, bicycling, aquatic activities, and motorized vehicular activities (including all-terrain vehicles, motorcycles, snowmobiles, off-road vehicles). Eligible expenses include costs of State administration of the program and educational programs to promote trail safety and environmental protection.

- Wetland restoration pilot program 100.0

- Transportation and community and system preservation pilot program (research and planning regarding relationships between transportation and community and environment preservation) 120.0

The bill would extend for 6 years (at $5 million per year) the current authorization from the Highway Account for funds to the Internal Revenue Service and the States for highway use tax evasion projects.

Other Highway Account safety program authorizations are to be marked up by the Senate Committee on Commerce, Science, and Transportation, and are expected to be offered as an amendment to S. 1173 when the bill goes to the Senate Floor.

Mass Transit Account Authorizations Under S. 1173

The Senate Committee on Banking, Housing, and Urban Affairs ("Banking") marked up mass transit authorizations on September 25, 1997. These provisions are expected to be added to S. 1173, and include amounts authorized from the Mass Transit Account of the Highway Fund and from the General Fund.

IV. POSSIBLE OPTION FOR REVENUE TITLE

1. Extension of existing Highway Fund excise taxes

The scheduled expiration date of the current Highway Fund excise taxes on motor fuels and heavy highway vehicles and tires would be extended for six years, through September 30, 2005.

2. Extension and modification of ethanol tax provisions

The current tax benefits for ethanol and renewable source methanol would be extended for seven years from their currently scheduled expiration dates; the ethanol benefits would be modified to reduce the benefit levels during the extension period. The modified ethanol benefit levels would be: 2001 and 2002 -- 53 cents per gallon; 2003 and 2004 -- 52 cents per gallon; and, 2005 through 2007 -- 51 cents per gallon. This extension and the modifications would apply to both the alcohol fuels credit and the associated excise tax provisions.

3. Extension and modification of Highway Fund provisions[9,10]

The current September 30, 1997 expiration date of authority to spend monies from the Highway Fund would be extended for six years, through September 30, 2003.

The Code provisions governing purposes for which monies in the Highway Fund may be spent would be updated to include the purposes provided in S. 1173, as enacted.

The anti-deficit provisions of the Mass Transit Account would be conformed to those of the Highway Account so that permitted obligations would be determined by reference to two years of projected revenues.

Transfers of revenues on motorboat and small engine gasoline from the Highway Fund to the Aquatic Resources Trust Fund and the Land and Water Conservation Fund would be extended for six years, through September 30, 2003.

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[9] A technical amendment of the taxpayer Relief Act of 1997 would be included clarifying that excise tax revenues attributable to LNG, CNG, propane, and methanol from natural gas (all of which are subject to reduced, energy equivalent rates, as indicated in Table 1) are divided between the Highway and Mass Transit Accounts of the Highway Fund in the same proportions as gasoline tax revenues are divided between those two accounts.

[10] A technical correction to the Taxpayer Relief Act of 1997 would be included providing that, the amount of gasoline and diesel fuel tax revenues deposited into the Mass Transit Account would be 2.86 cents per gallon (rather than 2.85 cents per gallon as provided in that 1997 Act).

The Code provisions establishing the National Recreational Trails Trust Fund and providing for transfer of revenues to the Trails Trust Fund would be repealed, effective on the date of the option's enactment. (As described above, no transfers have occurred to date because transfers are contingent on appropriations being enacted; no funds have been appropriated from the Trails Trust Fund. Under S. 1173, Highway Fund expenditures would be authorized for similar purposes as those of the Trails Trust Fund.)

Provisions would be incorporated into the Highway Fund clarifying that expenditures from the Highway Fund may occur only as provided in the Code. Clarification further would be provided that the expiration date for expenditures allowed from the Highway Fund does not preclude disbursements to liquidate contracts which were validly entered into before that date. Expenditures for contracts entered into or for amounts otherwise obligated after that date (or for other non-contract authority purposes permitted by non-Code provisions) would not be permitted, notwithstanding the provisions of any subsequently enacted authorization or appropriations legislation. If any such subsequent non-tax legislation provided for expenditures not provided for in the Code, or if any executive agency authorized such expenditures in contravention of the Code restrictions, excise tax revenues otherwise to be deposited in the Highway Fund would be retained in the General Fund beginning on the date of enactment of such legislation or the date of such executive agency action.

4. Authorize limited tax-exempt financing for toll road construction

Present law exempts interest on State or local government bonds from the regular income tax if the proceeds of the bonds are used to finance governmental activities of those units and the bonds are repaid with governmental revenues. Interest on bonds issued by States or local governments acting as conduits to provide financing for private persons is taxable unless a specific exception is provided in the Code. No such exception is provided for bonds issued to provide conduit financing for privately constructed and/or privately operated toll roads.

S. 1173 would authorize the construction of up to 15 highway infrastructure toll projects. The option would provide that these projects would be eligible for tax-exempt private activity bond financing. Bonds for these projects generally would be subject to all Code provisions governing issuance of tax-exempt private activity bonds except (1) the annual State volume limits (sec. 146) and (2) no proceeds of these bonds could be used to finance land. In lieu of the State volume limits, the aggregate amount of bonds that could be issued under this pilot project would be $15 billion (as allocated by the Treasury Department in consultation with the Department of Transportation).

5. Repeal 1.25 cents per gallon of tax rate on rail diesel fuel

Diesel fuel used by railroads is subject to a General Fund excise tax rate of 5.55 cents per gallon.[11] 1.25-cents-per-gallon of that tax rate, enacted as a deficit reduction measure in 1990, is scheduled to expire after September 30, 1999.[12] The remaining 4.3 cents per gallon of the tax is permanent.

The option would repeal the 1.25-cent-per-gallon rate on rail diesel that is scheduled to expire after September 30, 1999. The provision would be effective on May 16, 1999.

6. Employer-provided transportation benefits

Under present law, up to $170 per month of employer-provided parking is excludable from gross income. Effective with respect to taxable years beginning after December 1, 1998, an employer may offer the employee a choice between cash and employer-provided parking. The amount of cash offered is includible in income only if the employee chooses the cash instead of parking. Employees may exclude a maximum of $65 per month from gross income for the value of employer-provided transit passes or of vanpooling in an employer-provided vehicle. In order for the exclusion to apply, the employer-provided transit passes and vanpooling must be provided in addition to and not in lieu of any compensation that is otherwise payable to the employee.

The proposal would permit employers to offer employees the option of electing cash compensation in lieu of any qualified transportation benefit, or a combination of any of these benefits. Qualified transportation benefits include employer-provided transit passes, parking and vanpooling.

The proposal would be effective for taxable years beginning after December 31, 2002.

7. Clarification of tax treatment of environmental grant monies

S. 1173 would authorize expenditures for a Congestion Mitigation and Air Quality Program ("CMAQ") pursuant to which State transportation departments (or other project sponsors) would be permitted to enter into agreements with public and private entities to

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[11] This diesel fuel also will be subject to the 0.1-cent-per-gallon Leaking Underground Storage Tank Trust Fund rate when that rate generally is reinstated on October 1, 1997.

[12] At the time of its enactment, rail and highway users paid identical General Fund tax rates. Since enactment of the Taxpayer Relief Act of 1997, the entire amount of the highway motor fuels excise taxes paid by highway users is dedicated to the Highway Fund (as of October 1, 1997). There is no comparable trust fund that benefits rail users.

implement certain environmental projects, including programs to promote the use of alternative fuels by privately owned vehicles by underwriting the costs of converting vehicles to alternative fuels.

The option would provide that payments received under this program would not be taxable when received, but that no credit or other deduction would be allowed to taxpayers with respect to the property (or other expenditures) financed directly or indirectly with the CMAQ monies.