

**MODIFICATION OF THE CHAIRMAN'S MARK ON THE
"HIGHWAY REAUTHORIZATION AND EXCISE TAX
SIMPLIFICATION ACT OF 2004"**

Scheduled for Markup
By the
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INTRODUCTION

The Senate Committee on Finance has scheduled a markup on February 2, 2004, of the “Highway Reauthorization and Excise Tax Simplification Act of 2004.” A description of the Chairman's mark of the Highway Reauthorization and Excise Tax Simplification Act was published on January 29, 2004.¹ This document,² prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman’s Modification. This document is divided into three parts. The first part describes modifications to proposals included in the Chairman’s mark. The second part describes proposals that were not included in the Chairman’s mark. The third part includes revenue offset proposals not included in the Chairman’s mark.

¹ Joint Committee on Taxation, *Description of the Chairman's Mark of the “Highway Reauthorization and Excise Tax Simplification Act of 2004”* (JCX-5-04), January 29, 2004.

² This document may be cited as follows: Joint Committee on Taxation, *Modification of the Chairman’s Mark on the “Highway Reauthorization and Excise Tax Simplification Act of 2004”* (JCX-10-04), February 2, 2004.

I. MODIFICATION TO PROVISIONS IN THE CHAIRMAN'S MARK

A. Extension of Highway Trust Fund and Aquatic Resources Trust Fund

The modification clarifies that the Code provisions governing the purposes for which monies in the Highway Account may be spent are updated to include the reauthorization bill. The purposes for which monies in the Aquatic Resources Trust Fund may be spent are similarly updated as provided by the reauthorization bill.

The modification also provides that the prohibition on the use of Highway Account money for rail projects does not apply to projects in existence on the date of enactment.

B. Assessable Penalty for Refusal of Entry

The modification clarifies that the assessable penalty is imposed with respect to all refusals to permit entries or actions authorized under section 4083(c). As under the Chairman's mark, the penalty will not apply if it is shown that such refusal is due to reasonable cause.

C. Permit Ultimate Vendors to Administer Credits and Refunds of Highway Motor Fuels

The modification provides additional requirements of ultimate vendors who file for 20-day refunds on behalf of their customers. To qualify for 20-day refunds of highway exempt use, the ultimate vendor must certify that all of his claimants are registered and approved for highway exempt use. The ultimate vendor must register with the Secretary and, as part of his registration, the ultimate vendor must submit for pre-certification the highway exempt users on whose behalf the ultimate vendor will file claims for refunds. The submission must include the name and taxpayer identification number of the exempt user if such user will use the fuel on-road. Ultimate vendors will submit a list of their exempt users quarterly. This modification does not alter rules applicable to any claim for refund other than those requesting refund for exempt highway use within 20 days.

D. Modification of Tax on Use of Highway Vehicles

The modification requires electronic reporting for taxpayers filing excise tax returns with respect to 25 or more highway motor vehicles.

Under present law, any highway motor vehicle that is issued a base plate by Canada or Mexico and is operated on U.S. highways is subject to the highway use tax whether or not the vehicles are required to be registered in the United States. The tax rate is reduced by 25 percent for Canadian and Mexican vehicles.³ The modification eliminates the reduced rates for Canadian and Mexican vehicles, so that all vehicles are taxed at the same rate.

The modification delays the requirements for display of a decal or electronic identification device until October 1, 2005.

³ Sec. 4483(f); Treas. Reg. sec. 41.4483-7(a).

E. Total Accountability

The modification clarifies that the requirements of the bulk transfer exemption, as modified by the proposal, apply to removal of any product covered by the proposal. For example, under the modification, removal of a gasoline blendstock requiring further processing is considered removal of a taxable product and may be removed in bulk tax-free only if the requirements of the bulk transfer exemption are met. As a result, persons that remove such a product must register with the Secretary in order to qualify for a bulk transfer exemption.

The modification provides that non bulk removals from a foreign trade zone have the same tax and reporting requirements as products declared for export in non bulk removals at any other refinery or terminal. A refund is available if such a product is taxed on removal and exported, pursuant to present law refund provisions for exports of taxable fuel (sections 6416 and 6427). Customs bonded storage facilities located within a foreign trade zone are subject to the reporting requirements of the proposal even if such facilities are not liable for tax.

F. Credit for Taxpayers Owning Commercial Power Takeoff Vehicles

The modification strikes the requirement that the Secretary of Treasury provide a method for exempting fuel used for power takeoff equipment.

II. ADDITIONAL PROVISIONS

A. Provisions Relating to Fuel Fraud Prevention

1. Terminate dyed diesel use by intercity buses

Present Law

A manufacturer's tax of 24.4 cents per gallon applies to diesel fuel.⁴ Diesel fuel that is to be used for a nontaxable purpose will not be taxed upon removal from the terminal if it is dyed to indicate its nontaxable purpose. Use in an intercity bus is a nontaxable use for purposes of the manufacturer's tax on diesel fuel. However, diesel fuel is subject to a retail backup tax. The retail tax is 7.4 cents per gallon for intercity buses, but only applies if no tax was imposed on the diesel under the manufacturer's tax.⁵ Thus, dyed diesel removed from the terminal is exempt from the manufacturer's tax but a tax of 7.3 cents per gallon (plus .1 for LUST) is imposed on the delivery of the dyed fuel into the fuel supply tank of the intercity bus. The operator of the bus is liable for the tax.

Under present law, intercity bus operators also may buy fully taxed undyed diesel and seek a refund of the difference between the 24.4 cents per gallon rate and the 7.3 cents per gallon rate.

Description of Proposal

The proposal eliminates the ability of intercity buses to buy dyed diesel and self-assess the 7.4 cents per gallon. Under the proposal, operators of such buses must buy clear fuel and seek a refund of the difference between 24.4 and 7.4 cents per gallon of tax on diesel fuel. The proposal permits refund claimants to obtain interest if they file their refund claims electronically and the Secretary does not pay such claims within 20 days. The proposal also permits ultimate vendors to make such refund claims if the bus operator assigns its right to claim a refund to the ultimate vendor and the purchase of the fuel was made by credit card, including a fleet fueling card, under rules similar to that provided for ultimate vendor credit card purchases in the Chairman's mark.

Effective Date

The proposal is effective for fuel sold after September 30, 2004.

⁴ Sec. 4081.

⁵ Sec. 4041(a)(1)(B) and sec. 4041(a)(1)(C)(III)(i).

2. Modify definition of off-highway vehicle

Present Law

Under present law, the definition of a “highway vehicle” affects the application of the retail tax on heavy vehicles, the heavy vehicle use tax, the tax on tires, and fuel taxes.⁶ Section 4051 of the Code provides for a 12-percent retail sales tax on tractors and heavy trucks with a gross vehicle weight (“GVW”) over 33,000 pounds, and trailers with a GVW over 26,000 pounds. Section 4071 provides for a tax on highway vehicle tires that weigh more than 40 pounds, with higher rates of tax for heavier tires. Section 4481 provides for an annual use tax on heavy vehicles with a GVW of 55,000 pounds or more, with higher rates of tax on heavier vehicles. All of these excise taxes are paid into the Highway Trust Fund.

Federal excise taxes are also levied on the motor fuels used in highway vehicles. Gasoline is subject to a tax of 18.4 cents per gallon, of which 18.3 cents per gallon is paid into the Highway Trust Fund and 0.1 cents per gallon is paid into the Leaking Underground Storage Tank (“LUST”) Trust Fund. Highway diesel fuel is subject to a tax of 24.4 cents per gallon, of which 24.3 cents per gallon is paid into the Highway Trust Fund and 0.1 cents per gallon is paid into the LUST Trust Fund.

The Code does not define a “highway vehicle.” For purposes of these taxes, Treasury regulations define a highway vehicle as any self-propelled vehicle or trailer or semitrailer designed to perform a function of transporting a load over the public highway, whether or not also designed to perform other functions. Excluded from the definition of highway vehicle are (1) certain specially designed mobile machinery vehicles for nontransportation functions (the “mobile machinery exception”); (2) certain vehicles specially designed for off-highway transportation for which the special design substantially limits or impairs the use of such vehicle to transport loads over the highway (the “off-highway transportation vehicle” exception); and (3) certain trailers and semi-trailers specially designed to function only as an enclosed stationary shelter for the performance of non-transportation functions off the public highways.⁷

On June 6, 2002, the Treasury Department put forth proposed regulations that would modify the off-highway transportation vehicle exception.⁸ Under the proposed regulations, a vehicle is not treated as a highway vehicle if it is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design its capability to transport a load over the public highway is substantially limited or impaired. A vehicle’s design is determined solely on the basis of its physical characteristics. In determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether it is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether it can transport a load at a sustained speed of at least 25 miles per hour. Under the proposed regulation, it is not material that a

⁶ Secs. 4051, 4071, 4481, 4041, and 4081.

⁷ See Treas. Reg. sec. 48.4061-1(d).

⁸ Prop. Treas. Reg. sec. 48.4051-1(a)(2)(i).

vehicle can transport a greater load off the public highway than it is permitted to transport over the public highway.

The proposed regulation provides an exception to the definition of a highway vehicle for nontransportation trailers and semitrailers.⁹ Under the proposed regulation, a trailer or semitrailer is not treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an offhighway function at an offhighway site. For example, a trailer that is capable only of functioning as an office for an offhighway construction operation is not a highway vehicle.

Description of Proposal

The proposal adopts the definition of an offhighway transportation vehicle and a nontransportation trailer and semitrailer described in Proposed Treasury Regulation section 48.4051-1(a)(2).

For example, as provided in the proposed regulations,¹⁰ Vehicle C consists of a truck chassis on which an oversize body designed to transport and apply liquid agricultural chemicals on farms has been installed. It is capable of transporting a load over the public highway. It is 132 inches in width, which is considerably in excess of standard highway vehicle width. For travel on uneven and soft terrain, it is equipped with oversize wheels with high-flotation tires, and nonstandard axles, brakes, and transmission. It has a special fuel and carburetor air filtration system that enable it to perform efficiently in an environment of dirt and dust. It is not able to maintain a speed of 25 miles per hour for more than one mile while fully loaded. Because Vehicle C is a self-propelled vehicle capable of transporting a load over the public highway, it would meet the general definition of a highway vehicle. However, its considerable physical characteristics for transporting its load other than over the public highway, when compared with its physical characteristics for transporting the load over the public highway, establish that it is specially designed for the primary function of transporting its load other than over the public highway. Further, the physical characteristics for transporting its load other than over the public highway substantially limit its capability to transport a load over the public highway. Therefore, Vehicle C is an offhighway vehicle and is not treated as a highway vehicle.

Effective Date

The proposal generally is effective after the date of enactment. As to the fuel taxes, the proposal is effective for taxable years beginning after the date of enactment.

⁹ Prop. Treas. Reg. sec. 48.4051-1(a)(2)(ii).

¹⁰ Prop. Treas. Reg. sec. 48.4051-1(c), *Example (3)*.

3. Provide for transfer from Airport and Airway Trust Fund to Highway Trust Fund to adjust for continued highway use of aviation fuel

Present Law

Aviation fuel is kerosene and any liquid (other than any product taxable under section 4081) that is suitable for use as a fuel in an aircraft.¹¹ In general, the rate of tax on aviation fuel is 21.9 cents per gallon.¹² Aviation fuel sold for use or used in commercial aviation is taxed at a reduced rate of 4.4 cents per gallon.¹³ Certain sales of aviation fuel are exempt from tax.¹⁴

Taxes received for aviation fuel, except for the LUST Trust Fund financing rate, are appropriated to the Airport and Airway Trust Fund.¹⁵ Such appropriation occurs even if aviation fuel is used for non aviation purposes.

Taxes received on taxable fuel for transportation purposes generally are appropriated to the Highway Trust Fund.¹⁶

Description of Proposal

The proposal directs the Secretary to transfer from the Airport and Airway Trust Fund to the Highway Trust Fund annually an amount attributable to fuel that is used primarily for highway transportation purposes even though the fuel is taxed as if it were to be used for aviation purposes. The annual amount is to be allocated between the Highway Account and the Mass Transit Account, with 89 percent of the amount going to the Highway Account and 11 percent of the amount going to the Mass Transit Account. The total amount of the transfer for Fiscal Year 2005 is \$395 million; the amount for Fiscal Year 2006 is \$425 million; the amount for Fiscal

¹¹ Sec. 4093(a).

¹² Sec. 4091(b). This rate includes a 0.1 cent per gallon Leaking Underground Storage Tank (“LUST”) Trust Fund tax. The LUST Trust Fund tax is set to expire after March 31, 2005, with the result that on April 1, 2005, the tax rate is scheduled to be 21.8 cents per gallon. Secs. 4091(b)(3)(B) & 4081(d)(3). Beginning on October 1, 2007, the rate of tax is reduced to 4.3 cents per gallon. Sec. 4091(b)(3)(A).

¹³ Sec. 4092(b). The 4.4 cent rate includes 0.1 cent per gallon that is attributable to the LUST Trust Fund financing rate. A full exemption, discussed below, applies to aviation fuel that is sold for use in commercial aviation as fuel supplies for vessels or aircraft, which includes use by certain foreign air carriers and for the international flights of domestic carriers. Secs. 4092(a), 4092(b), & 4221(d)(3).

¹⁴ Sec. 4092.

¹⁵ Sec. 9502(b).

¹⁶ Sec. 9503(b).

Year 2007 is \$429 million; the amount for Fiscal Year 2008 is \$432 million; and the amount for Fiscal Year 2009 is \$435 million.

Effective Date

The proposal is effective on October 1, 2004.

4. Extension of temporary additional duty on ethyl alcohol (VEETC)

Present Law

Heading 9901.00.50 of the Harmonized Tariff Schedule of the United States (HTSUS) imposes a cumulative general duty of 14.27 cents per liter, in addition to any other duty applicable under the HTSUS, to imports of ethyl alcohol, or any mixture containing ethyl alcohol, if used as a fuel or in producing a mixture to be used as a fuel, that are entered into the United States prior to October 1, 2007. The temporary additional duty under Heading 9901.00.50 offsets the alcohol fuels credit of 52 cents per gallon that is available to taxpayers that blend ethanol with gasoline; both domestic and imported ethanol is eligible for the alcohol fuels credit.

Description of Proposal

The proposal extends the cumulative general duty of 14.27 cents per liter, in addition to any other duty applicable under the HTSUS, to imports of ethyl alcohol, or any mixture containing ethyl alcohol, if used as a fuel or in producing a mixture to be used as a fuel, that are entered into the United States prior to January 1, 2011. The proposal corresponds to the extension of the alcohol fuels credit through December 31, 2010, that is included in the Chairman's mark. The proposal is intended to maintain the status quo with respect to ethanol imports.

Effective Date

The proposed extension of the temporary additional duty on ethyl alcohol would become effective on the date of enactment.

B. Excise Tax Reform and Simplification

1. Credit for auxiliary power units installed on diesel-powered trucks

Present Law

A 12-percent excise tax is 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).

Description of Proposal

The proposal creates a tax credit for the purchase of certain auxiliary power units and installation on a heavy-duty highway vehicle. The taxpayer may claim a credit of \$250 against his or her income tax liability. A qualifying auxiliary power unit is an integrated system that provides heat, air conditioning, engine warming, and electricity to the factory installed components on a heavy-duty vehicle as if the main drive engine of the vehicle were running. A qualifying auxiliary power unit is a unit employed to reduce long-term idling of the diesel engine on heavy-duty vehicles and a qualifying unit must be certified by the Administrator of the Environmental Protection Agency as meeting emissions standards in regulations as in effect on the date of enactment. A heavy-duty highway vehicle is any highway vehicle weighing more than 12,500 pounds and powered by a diesel engine.

The credit expires after 2006.

Effective Date

The proposal is effective for vehicles with auxiliary power units purchased and installed for taxable years beginning after the date of enactment.

2. Reduction in rate of tax on portable aerated bait containers

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, including portable bait containers.¹⁷ Parts or accessories that are sold on or in connection with taxable articles are also treated as taxable.¹⁸ The Internal Revenue Service has ruled that aeration systems designed to keep fish and marine life alive are taxable parts or accessories when sold on or in connection with portable bait containers.¹⁹ Fish tank aerators, however, are not taxable.²⁰

Revenues from the excise tax on sport fishing equipment are deposited in the Sport Fishing 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.

¹⁷ Secs. 4161(a)(1); 4162(a)(6)(E). A three percent rate, however, applies to the sale of electric outboard motors and sonar devices suitable for finding fish. Sec. 4161(a)(2)(A).

¹⁸ Sec. 4161(a)(3).

¹⁹ See Private Ruling (IRS National Office Technical Advice Memorandum) 200022011 (Feb. 23, 2000).

²⁰ Rev. Rul. 85-150, 1985-2 C.B. 260.

Description of Proposal

The proposal reduces the excise tax on portable aerated bait containers to three percent.

Effective Date

The proposal is effective for articles sold by the manufacturer, producer, or importer on and after October 1, 2004.

C. Miscellaneous

1. Treasury study of highway fuels used by trucks for non-transportation purposes

Present Law

Fuel used in vehicles carrying equipment that is unrelated to the transportation function of the vehicle is subject to the Highway Trust Fund excise taxes without regard to whether the fuel is used for transportation or the unrelated equipment. An exception exempts from tax fuel used by non-transportation equipment if the fuel is used by a separate motor, if the vehicle owner can allocate fuel used in a manner acceptable to the IRS.

Description of Proposal

The proposal directs the Secretary of the Treasury to study the use of highway motor fuel by trucks that is not used for the propulsion of the vehicle. In particular, in the case of vehicles carrying equipment that is unrelated to the transportation function of the vehicle, the proposal directs the Secretary of the Treasury, in consultation with the Department of Transportation, and with public notice and comment to study and report to Congress its determination of the average annual amount of tax paid fuel consumed per vehicle, by type of vehicle, used by the propulsion engine to provide the power to operate the equipment attached to the highway vehicle. The Secretary will review the technical and administrative feasibility of exempting such non-propulsive use of highway fuels for the highway motor fuels excise taxes.

In the case where non-transportation equipment is run by a separate motor, the Secretary is to report the annual average amount of fuel exempted from tax in the use of such equipment by equipment type. The Secretary will review issues of administration and compliance related to the present-law exemption provided for such fuel use.

In addition, the Secretary is to report his estimates of the amount of taxable fuel consumed by trucks due to the long-term idling of diesel engines. The Secretary will report his findings to the House Committee on Ways and Means and the Senate Committee on Finance not later than January 1, 2006.

Effective Date

The proposal is effective upon the date of enactment.

2. Delta Regional Transportation Plan

Present Law

The Delta Regional Authority is a Federal-State partnership, serving a 240-county/parish area in an eight-State region.²¹ No State is required to participate with the authority. The duties of the authority are to: (1) produce a regional development plan; (2) set priorities for approval of grants in the region; (3) assess the region's needs and assets; (4) inform participating States about interstate cooperation; (5) work with States and local agencies to develop model legislation; (6) enhance the capacity of and support Local Development Districts, as well as the creation of Local Development Districts where none currently exist; (7) encourage private investment in economic development projects in the region; and (8) assist State governments with the States' economic development program.

Description of Proposal

The proposal directs the Delta Regional Authority to conduct a comprehensive study of transportation assets and needs in the eight states comprising the Delta region (Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee). Upon completion of the study, the Delta Regional Authority is to create a regional strategic plan to achieve efficient transportation systems in the Delta region.

The study and plan is to include but is not limited to the following transportation modes and systems: transit, rail, highway, interstate, bridges, air, airports, waterways and ports. The Delta Regional Authority is to work with local planning and development districts, local and regional governments, metropolitan planning organizations, State transportation entities, and Federal transportation agencies to develop a regional strategic transportation plan.

The proposal authorizes the Delta Regional Authority to receive \$1,000,000 to conduct a comprehensive study and plan. These funds are to remain available until spent.

Effective Date

The proposal is effective on the date of enactment

3. Treatment of employer-provided transit and van pooling benefits

Present Law

Under present law, qualified transportation benefits are excludable from gross income and wages for employment tax purposes. Qualified transportation benefits are: (1) transportation in a commuter highway vehicle if such transportation is in connection with travel between the

²¹ The covered States and counties are: Alabama - 20 counties; Arkansas - 42 counties; Illinois, 16 counties; Kentucky - 21 counties; Louisiana - 46 parishes; Mississippi - 45 counties; Missouri - 29 counties; and Tennessee - 21 counties. Delta Regional Authority, *Legislative Matters and Overview*, (February 1, 2004) < www.dra.gov/legislation.php >.

employee's residence and place of employment ("van pooling"); (2) transit passes; and (3) qualified parking. For purposes of the exclusion for van pooling benefits, a commuter highway vehicle is any highway vehicle: (1) the seating capacity of which is at least six adults (excluding the driver); and (2) at least 80 percent of the mileage use of which can reasonably be expected to be (a) for purposes of transporting employees in connection with travel between their residences and their place of employment and (b) on trips during which the number of employees transported for such purposes is at least one-half of the adult seating capacity of such vehicle (not including the driver).

The maximum amount of qualified parking that is excludable from income and wages is \$195 per month (for 2004). The maximum amount of transit passes and van pooling benefits that are excludable from income and wages per month is \$100 (for 2004). These dollar amounts are indexed for inflation.

Description of Proposal

Under the proposal, the maximum dollar amount of excludable van pooling and transit benefits would be increased to \$120 per year. This dollar amount would be indexed for inflation.

Effective Date

The proposal would be effective for taxable years beginning after December 31, 2004.

III. PROPOSALS TO REPLENISH THE GENERAL FUND

A. Modification to Corporate Estimated Tax Requirements

Present Law

In general, corporations are required to make quarterly estimated tax payments of their income tax liability (section 6655). For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

Description of Proposal

The proposal requires that corporate estimated tax payments due on or after July 1, 2009, and before October 1, 2009, be increased to 119 percent of the otherwise required amount.

Effective Date

The proposal is effective on the date of enactment.