

**DESCRIPTION OF CERTAIN  
MOTOR FUELS EXCISE TAX PROPOSALS**

Scheduled for a Hearing

Before the

**SENATE COMMITTEE ON FINANCE**

on

July 18, 1995

Prepared by the Staff

of the

**JOINT COMMITTEE ON TAXATION**

July 17, 1995

JCX-32-95

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## INTRODUCTION

The Senate Committee on Finance has scheduled a public hearing on July 18, 1995, on certain proposals relating to the aviation and diesel fuels excise taxes.

This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of present law and proposals relating to (A) the transportation fuels tax exemption for fuels used in commercial aviation (S. 304, introduced by Senators Santorum, Hatch, D'Amato, Pressler, Moseley-Braun, and others) and (B) the diesel fuel excise tax on rail transportation and on recreational motorboats (S. 1034, introduced by Senators Braux and Chafee), and certain diesel fuel dyeing requirements.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, Description of Certain Motor Fuels Excise Tax Proposals (JCX-32-95), July 17, 1995.

## DESCRIPTION OF PROPOSALS

### **A. Transportation Fuels Tax Exemption for Fuels Used in Commercial Aviation (S. 304: Senators Santorum, Hatch, D'Amato, Pressler, Moseley-Braun, and others)**

#### **Present Law**

A 4.3-cents-per-gallon excise tax is imposed on fuels used in most transportation modes. Fuels subject to the tax include gasoline (including gasoline blended with alcohol, "gasohol"), diesel fuel, special motor fuels, propane, compressed natural gas, aviation fuels (jet fuel and gasoline), and any motor fuel used in shipping on the inland waterway system. The transportation modes subject to tax include highway, rail, air, inland waterway, and recreational boating. Fuel consumed before October 1, 1995, in commercial aviation, defined as the transportation of persons or property for hire, is exempt from this tax.

The 4.3-cents-per-gallon transportation fuels tax was enacted by the Omnibus Budget Reconciliation Act of 1993, as a deficit reduction measure. The two-year exemption for fuel used in commercial aviation was included because of the economic condition of the commercial aviation industry in 1993.<sup>1</sup>

Revenues from this transportation fuels tax are deposited in the General Fund of the Treasury. This tax is separate from, and in addition to, any user-based excise taxes imposed to fund the Highway Trust Fund, the Airport and Airway Trust Fund, the Leaking Underground Storage Tank Trust Fund, the Inland Waterways Trust Fund, or the Aquatic Resources Trust Fund.

The excise taxes paid (or collected) by commercial aviation to fund the Airport and Airway Trust Fund are: a 10-percent tax on domestic passenger tickets; a 6.25 percent tax on domestic freight transportation; and, a \$6 per person international departure tax. Noncommercial aviation is subject to fuels taxes of 17.5 cents per gallon (jet fuel) and 15 cents per gallon (gasoline) for this Trust Fund.

#### **Description of Proposal**

S. 304 would make permanent the exemption from the 4.3-cents-per-gallon transportation fuels tax for fuel used in commercial aviation.

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<sup>1</sup> See, statement by Senator Slade Gorton regarding the "desperate nature of the domestic airline industry...." 139 Cong. Rec. S. 7885 (daily ed., June 24, 1993).

**B. Diesel Fuel Excise Tax Modifications**

**Present Law**

**Diesel fuel tax rates**

An excise tax totaling 24.4 cents per gallon generally is imposed on diesel fuel (Code sec. 4081). This excise tax is comprised of several component rates, with various uses of this fuel being subject only to certain rates, as shown in Table 1.

**Table 1.--Diesel Fuel Excise Tax Component Rates**

<b><u>Transportation</u></b>	<b><u>Industry Trust Fund<sup>1</sup></u></b>	<b><u>"LUST" Trust Fund<sup>2</sup></u></b>	<b><u>General Fund</u></b>
Highway transportation (other than intercity buses):			
a. before October 1, 1995	17.5 ¢/gal.	0.1 ¢/gal.	6.8 ¢/gal.
b. after September 30, 1995	20.0 ¢/gal.	0.1 ¢/gal.	4.3 ¢/gal.
Intercity bus transportation	3.0 ¢/gal.	0.1 ¢/gal.	4.3 ¢/gal.
Inland waterway transportation	20.0 ¢/gal.	0.1 ¢/gal.	4.3 ¢/gal.
Recreational (noncommercial) boats	no trust fund tax	no trust fund tax	24.4 ¢/gal. <sup>3</sup>
Rail transportation:			
a. before October 1, 1995	no trust fund tax	0.1 ¢/gal.	6.8 ¢/gal.
b. after September 30, 1995	no trust fund tax	0.1 ¢/gal.	5.55 ¢/gal.

<sup>1</sup> Relevant industry trust funds are the Highway Trust Fund (highway transportation), the Inland Waterways Trust Fund (inland waterway transportation), and the Airport and Airway Trust Fund (aviation).

<sup>2</sup> The Leaking Underground Storage Tank Trust Fund.

<sup>3</sup> The tax on recreational boat diesel fuel was enacted as a revenue offset for repeal of the luxury excise tax on boats costing more than \$100,000.

### **Collection of and exemptions from the diesel fuel tax**

The Omnibus Budget Reconciliation Act of 1993 amended the rules governing imposition and collection of the diesel fuel excise tax. The tax currently is imposed when diesel fuel is removed from a registered and bonded pipeline or barge terminal facility (i.e., at the "terminal rack") (sec. 4081). Present law provides that tax is imposed on all diesel fuel removed from these terminal facilities unless the fuel is destined for a nontaxable use and is indelibly dyed pursuant to Treasury Department regulations (sec. 4082). The 1993 changes were enacted to improve compliance with the diesel fuel excise tax, which formerly was imposed on wholesale sale of the fuel.

In general, the diesel fuel tax does not apply to non-transportation uses of the fuel. Off-highway business uses such as use on a farm for farming purposes and use to power off-highway equipment (e.g., oil drilling equipment) are included within this exemption. Diesel fuel used as heating oil also is exempt from taxation. (Most fuel used as heating oil, commonly referred to as "number 2 fuel oil," is chemically the same as diesel fuel.) The tax also does not apply to fuel used by States and local governments, to exported fuel, and to fuel used in commercial shipping (other than on the inland waterway system).

Nontaxable (and partially taxable intercity bus and rail) users of diesel fuel realize their exemption in one of two ways. First, these persons may use dyed diesel fuel on which tax has not been paid. Alternatively, they may purchase tax-paid, undyed diesel fuel and file a claim for refund of tax paid. In the case of diesel fuel sold to States and local governments and to farmers, the refunds are claimed by registered ultimate vendors who sell the fuel to the consumers without collecting tax. These claims accrue interest unless they are paid within 20 days.

Other nontaxable (and partially taxable) users of diesel fuel may claim refunds in either of two ways. First, the refunds may be claimed on the taxpayers' income tax returns. (Estimated tax payments may be reduced to reflect these refunds.) Second, if the total amount of refund due to a taxpayer exceeds \$750 at the end of any of the first three quarters in a calendar year, the person may file a separate refund claim at that time.

### **Diesel fuel dyeing requirements**

To ensure that diesel fuel dye concentrations (which enable law enforcement officials to identify untaxed fuel used in a taxable use) are not reduced, present law imposes a penalty equal to the greater of \$1,000 or \$10 per gallon on persons who dilute dye concentrations below prescribed minimum levels. In certain circumstances, untaxed kerosene is blended with diesel fuel. When this blending occurs, tax is due on the kerosene unless the fuel is destined for a nontaxable use, in which case dye must be added to the fuel mixture to ensure that required concentrations are maintained.

Present law also imposes a penalty equal to the greater of \$1,000 or of \$10 per gallon on persons who sell or use untaxed diesel fuel in a taxable use after the fuel is removed from a registered and bonded terminal facility. For example, the Internal Revenue Service has undertaken a program of spot checks for dyed diesel fuel at truck stops and State highway weigh stations. Truck owners or drivers having dyed diesel fuel in their vehicle tanks are subject to this penalty. Similarly, owners or operators of truck stops having dyed diesel fuel in pumps dispensing the fuel to highway users are subject to the penalty.

A similar dyeing regime exists for diesel fuel under the Clean Air Act. That Act prohibits the use on highways of diesel fuel with a sulphur content exceeding prescribed levels. This "high sulphur" diesel fuel is required by the Environmental Protection Agency to be dyed. The State of Alaska is exempted from the Clean Air Act, but not the excise tax, dyeing regime through September 30, 1996.

### **Description of Proposals**

#### **Adjust General Fund diesel tax rate on rail diesel**

As described in Table 1, above, rail diesel will bear a General Fund tax rate of 5.55 cents per gallon after September 30, 1995; other diesel fuel generally will be subject to a General Fund tax rate of 4.3 cents per gallon. The 1.25-cents-per-gallon additional General Fund diesel fuel tax imposed on diesel fuel used in trains over that imposed on diesel fuel used in other transportation modes would be repealed or imposed at a reduced rate on diesel fuel used in all (including rail) transportation modes.

#### **Retail collection of tax on recreational boat diesel fuel (S. 1034)**

S. 1034 (Senators Breaux and Chafee) would suspend imposition of the diesel fuel excise tax on fuel used in recreational boats during the two-year period beginning on the date of its enactment. The Treasury Department would be directed to study alternative excise tax collection mechanisms for recreational boat diesel fuel, and to report to Congress within 18 months of the bill's enactment.

#### **Exempt Alaska from diesel dyeing requirement**

Diesel fuel sold in the State of Alaska would be exempt from the diesel dyeing requirement during the remainder of the period through September 30, 1996, when fuel sold in that State is exempt from the Clean Air Act dyeing requirement. Thus, undyed diesel fuel could be removed from terminal facilities without payment of tax if destined for a nontaxable use (subject to a certification procedure to be established by the Treasury Department.)