

**TECHNICAL EXPLANATION OF H.R. 6131,
A BILL TO PERMIT CERTAIN EXPENDITURES FROM
THE LEAKING UNDERGROUND STORAGE TANK TRUST FUND,
AS INTRODUCED IN THE HOUSE ON SEPTEMBER 21, 2006**

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INTRODUCTION

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a technical explanation of H.R. 6131, a bill that updates section 9508 of the Internal Revenue Code to include the Leaking Underground Storage Tank Trust Fund expenditure purposes that were authorized by the Energy Policy Act of 2005.²

¹ This document may be cited as follows: Joint Committee on Taxation, *Technical Explanation of H.R. 6131, a Bill to Permit Certain Expenditures from the Leaking Underground Storage Tank Trust Fund, as Introduced in the House on September 21, 2006* (JCX-43-06), September 25, 2006.

² Pub. L. No. 109-58.

A. Expenditure Purposes for the Leaking Underground Storage Tank Trust Fund

Present Law

Internal Revenue Code provisions

Section 1362 of the Energy Policy Act of 2005³ extended the 0.1 cent per-gallon Leaking Underground Storage Tank (“LUST”) Trust Fund tax until October 1, 2011. Under section 9508 of the Internal Revenue Code (the “Code”), the LUST Trust Fund is available only for purposes specified in section 9003(h) of the Solid Waste Disposal Act as in effect on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986.⁴

All expenditures from the LUST Trust Fund must be authorized by the Code. In the event of an expenditure from the LUST Trust Fund that is not authorized by the Code, the Code provides that no amounts may be appropriated to the LUST Trust Fund on or after the date of such expenditure. An exception to this rule is provided to allow for the liquidation of contracts entered into in accordance with the Code before October 1, 2011. The determination of whether an expenditure is permitted is to be made without regard to (1) any provision of law that is not contained or referenced in the Code or in a revenue Act, and (2) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of the Code restriction. This provision became effective on August 10, 2005.⁵

Underground Storage Tank Compliance Act of 2005

Sections 1521 through 1533 of the Energy Policy Act of 2005 (also known as the “Underground Storage Tank Compliance Act of 2005”) broadened the uses of the LUST Trust Fund and authorizes States and the Environmental Protection Agency (“EPA”) to use funds appropriated from the LUST Trust Fund to address methyl tertiary butyl ether (“MTBE”) leaks.⁶

Section 1522 directs EPA to allot at least 80 percent of the funds made available from the LUST Trust Fund to the States for the LUST cleanup program (section 9004 of the Solid Waste Disposal Act). It also requires EPA or States to conduct compliance inspections of underground storage tanks every three years (sec. 1523 (section 9005(c) of the Solid Waste Disposal Act)); adds operator training requirements (sec. 1524 (section 9010 of the Solid Waste Disposal Act)); and authorizes EPA and States to use LUST Trust Fund money to respond to tank leaks involving oxygenated fuel additives (e.g., MTBE and ethanol) (sec. 1525 (section 9003(h) of the

³ Pub. L. No. 109-58.

⁴ Sec. 9508(c).

⁵ Sec. 9508(e). This provision was added to the Code by section 11147 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. No. 109-59).

⁶ The description that follows is taken primarily from Congressional Research Service, *Energy Policy Act of 2005: Summary and Analysis of Enacted Provisions* (March 8, 2006).

Solid Waste Disposal Act)). Section 1526 authorizes EPA and States to use LUST Trust Fund money to conduct inspections and enforce tank release prevention and detection requirements (sections 9011 and 9003(j) of the Solid Waste Disposal Act). The Act also prohibits fuel delivery to ineligible tanks (sec. 1527 (section 9012 of the Solid Waste Disposal Act)); and requires EPA, with Indian tribes, to develop and implement a strategy to address releases on tribal lands (sec. 1529 (section 9013 of the Solid Waste Disposal Act)).

Sec. 1530 (section 9003(i) of the Solid Waste Disposal Act) requires States to do one of the following to protect groundwater: (1) require that new tanks are secondarily contained and monitored for leaks if the tank is within 1,000 feet of a community water system or potable well; or (2) require that underground storage tank manufacturers and installers maintain evidence of financial responsibility to pay for corrective actions. It also requires that persons installing underground storage tank systems are certified or licensed, or that their underground storage tank system installation is certified by a professional engineer or inspected and approved by the State, or is compliant with a code of practice or other method that is no less protective of human health and the environment.

Sec. 1531 (section 9014 of the Solid Waste Disposal Act) authorized to be appropriated from the LUST Trust Fund, for each of FY2005 through FY2009, \$200 million for cleaning up leaks from petroleum tanks generally, and another \$200 million for responding to tank leaks involving MTBE or other oxygenated fuel additives (e.g., other ethers and ethanol). This section further authorizes to be appropriated from the LUST Trust Fund, for each of FY2005 through FY2009, \$155 million for EPA and States to carry out and enforce the underground storage tank leak prevention and detection requirements added by the Act and the LUST cleanup program.⁷

These provisions became effective on the date of enactment (August 8, 2005).

Public Law No. 109-168 made certain technical corrections to the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005 with respect to the regulation of underground storage tanks and government-owned tanks. It also adjusted and extended the authorization for appropriations to cover fiscal year 2006 through fiscal year 2011.

⁷ Section 9014 provides in pertinent part: There are authorized to be appropriated to the Administrator the following amounts: . . .

- (2) From the Trust Fund, notwithstanding section 9508(c)(1) of the Internal Revenue Code of 1986:
 - (A) to carry out section 9003(h) (except section 9003(h)(12)) \$200,000,000 for each of fiscal years 2005 through 2009;
 - (B) to carry out section 9003(h)(12), \$200,000,000 for each of fiscal years 2005 through 2009;
 - (C) to carry out sections 9003(i), 9004(f), and 9005(c) \$100,000,000 for each of fiscal years 2005 through 2009, and
 - (D) to carry out sections 9010, 9011, 9012, and 9013 \$55,000,000 for each of fiscal years 2005 through 2009.

Although the Underground Storage Tank Compliance Act of 2005 and Public Law No. 109-168 amended the Solid Waste Disposal Act, neither Act made conforming amendments to section 9508 of the Code.

Explanation of Provision

The provision updates the permitted expenditure purposes of Code section 9508(c) to include the purposes added by the Energy Policy Act of 2005. Specifically, the provision authorizes LUST Trust Fund amounts to be used to carry out the following provisions of the Solid Waste Disposal Act (as in effect on January 10, 2006, the date of enactment of Pub. L. No. 109-168):

- section 9003(i) (relating to measures to protect ground water);
- section 9003(j) (relating to compliance of government-owned tanks);
- section 9004(f) (relating to 80 percent distribution requirement for State enforcement efforts);
- section 9005(c) (relating to inspection of underground storage tanks);
- section 9010 (relating to operator training);
- section 9011 (relating to funds for release prevention and compliance);
- section 9012 (relating to the delivery prohibition for ineligible tanks/guidance/compliance); and
- section 9013 (relating to strategy for addressing tanks on tribal lands).

The Code continues to authorize the use of amounts in the LUST Trust Fund to carry out the purposes of section 9003(h) of the Solid Waste Disposal Act (as in effect on January 10, 2006, the date of enactment of Pub. L. No. 109-168).

Effective Date

The provision is effective on the date of enactment.