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HIGHWAY REAUTHORIZATION TAX ACT OF 2004

MARCH 23, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 3971]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3971) to amend the Internal Revenue Code of 1986 to credit the Highway Trust Fund with the full amount of fuel taxes, to combat fuel tax evasion, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Highway Reauthorization Tax Act of 2004".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title, etc.

TITLE I—RESTRUCTURING OF INCENTIVES FOR ALCOHOL FUELS, ETC.

Sec. 101. Reduced rates of tax on gasohol replaced with excise tax credit; repeal of other alcohol-based fuel incentives; etc.
Sec. 102. Alcohol fuel subsidies borne by general fund.

TITLE II—REDUCTION OF FUEL TAX EVASION

Sec. 201. Exemption from certain excise taxes for mobile machinery.
Sec. 202. Taxation of aviation-grade kerosene.
Sec. 203. Dye injection equipment.
Sec. 204. Authority to inspect on-site records.
Sec. 205. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries.
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Sec. 207. Penalties for failure to register and failure to report.
Sec. 208. Collection from Customs bond where importer not registered.
Sec. 209. Modifications of tax on use of certain vehicles.
Sec. 210. Modification of ultimate vendor refund claims with respect to farming.
Sec. 211. Dedication of revenues from certain penalties to the Highway Trust Fund.

TITLE III—OTHER EXCISE TAX PROVISIONS

Sec. 301. Taxable fuel refunds for certain ultimate vendors.
Sec. 302. Two-party exchanges.
Sec. 303. Simplification of tax on tires.

TITLE I—RESTRUCTURING OF INCENTIVES FOR ALCOHOL FUELS, ETC.

SEC. 101. REDUCED RATES OF TAX ON GASOHOL REPLACED WITH EXCISE TAX CREDIT; REPEAL OF OTHER ALCOHOL-BASED FUEL INCENTIVES; ETC.

(a) EXCISE TAX CREDIT FOR ALCOHOL FUEL MIXTURES.—

(1) IN GENERAL.—Subsection (f) of section 6427 is amended to read as follows:

"(f) ALCOHOL FUEL MIXTURES.—

"(1) IN GENERAL.—The amount of credit which would (but for section 40(c)) be determined under section 40(a)(1) for any period—

"(A) shall, with respect to taxable events occurring during such period, be treated—

"(i) as a payment of the taxpayer's liability for tax imposed by section 4081, and

"(ii) as received at the time of the taxable event, and

"(B) to the extent such amount of credit exceeds such liability for such period, shall (except as provided in subsection (k)) be paid subject to subsection (i)(3) by the Secretary without interest.

"(2) SPECIAL RULES.—

"(A) ONLY CERTAIN ALCOHOL TAKEN INTO ACCOUNT.—For purposes of paragraph (1), section 40 shall be applied—

"(i) by not taking into account alcohol with a proof of less than 190, and

"(ii) by treating as alcohol the alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

"(B) TREATMENT OF REFINERS.—For purposes of paragraph (1), in the case of a mixture—

"(i) the alcohol in which is described in subparagraph (A)(ii), and

"(ii) which is produced by any person at a refinery prior to any taxable event,

section 40 shall be applied by treating such person as having sold such mixture at the time of its removal from the refinery (and only at such time) to another person for use as a fuel.

"(3) MIXTURES NOT USED AS FUEL.—Rules similar to the rules of subparagraphs (A) and (D) of section 40(d)(3) shall apply for purposes of this subsection.

"(4) TERMINATION.—This section shall apply only to periods to which section 40 applies, determined by substituting in section 40(e)—

"(A) 'December 31, 2010' for 'December 31, 2007', and

"(B) 'January 1, 2011' for 'January 1, 2008'."

(2) REVISION OF RULES FOR PAYMENT OF CREDIT.—Paragraph (3) of section 6427(i) is amended to read as follows:

"(3) SPECIAL RULE FOR ALCOHOL MIXTURE CREDIT.—

"(A) IN GENERAL.—A claim may be filed under subsection (f)(1)(B) by any person for any period—

"(i) for which $200 or more is payable under such subsection (f)(1)(B), and

"(ii) which is not less than 1 week.

In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).

"(B) PAYMENT OF CLAIM.—Notwithstanding subsection (f)(1)(B), if the Secretary has not paid pursuant to a claim filed under this section within 45 days of the date of the filing of such claim (20 days in the case of an electronic claim), the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

"(C) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim."

(b) REPEAL OF OTHER INCENTIVES FOR FUEL MIXTURES.—

(1) Subsection (b) of section 4041 is amended to read as follows:

"(b) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—

"(1) IN GENERAL.—No tax shall be imposed by subsection (a) or (d)(1) on liquids sold for use or used in an off-highway business use.

"(2) TAX WHERE OTHER USE.—If a liquid on which no tax was imposed by reason of paragraph (1) is used otherwise than in an off-highway business use, a tax shall be imposed by paragraph (1)(B), (2)(B), or (3)(A)(ii) of subsection (a) (whichever is appropriate) and by the corresponding provision of subsection (d)(1) (if any).

"(3) OFF-HIGHWAY BUSINESS USE DEFINED.—For purposes of this subsection, the term 'off-highway business use' has the meaning given to such term by section 6421(e)(2); except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train."

(2) Section 4041(k) is hereby repealed.

(3) Section 4081(c) is hereby repealed.

(4) Section 4091(c) is hereby repealed.

(c) TRANSFERS TO HIGHWAY TRUST FUND.—Paragraph (4) of section 9503(b) is amended by adding "or" at the end of subparagraph (B), by striking the comma at the end of subparagraph (C) and inserting a period, and by striking subparagraphs (D), (E), and (F).

(d) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 40 is amended to read as follows:

"(c) COORDINATION WITH EXCISE TAX BENEFITS.—The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account the benefit provided with respect to such alcohol under section 6427(f)."

(2) Subparagraph (B) of section 40(d)(4) is amended by striking "under section 4041(k) or 4081(c)" and inserting "under section 6427(f)".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to fuel sold or used after September 30, 2004.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall apply to taxes imposed after September 30, 2003.

SEC. 102. ALCOHOL FUEL SUBSIDIES BORNE BY GENERAL FUND.

(a) TRANSFERS TO FUND.—Section 9503(b)(1) is amended by adding at the end the following new flush sentence:

"For purposes of this paragraph, the amount of taxes received under section 4081 shall include any amount treated as a payment under section 6427(f)(1)(A) and shall not be reduced by the amount paid under section 6427(f)(1)(B).".

(b) TRANSFERS FROM FUND.—Subparagraph (A) of section 9503(c)(2) is amended by adding at the end the following new sentence: "Clauses (i)(III) and (ii) shall not apply to claims under section 6427(f)(1)(B)."

(c) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxes received after September 30, 2004.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to amounts paid after September 30, 2004, and (to the extent related to section 34 of the Internal Revenue Code of 1986) to fuel used after such date.

TITLE II—REDUCTION OF FUEL TAX EVASION

SEC. 201. EXEMPTION FROM CERTAIN EXCISE TAXES FOR MOBILE MACHINERY.

(a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL.—

(1) IN GENERAL.—Section 4053 (relating to exemptions) is amended by adding at the end the following new paragraph:

"(8) MOBILE MACHINERY.—Any vehicle which consists of a chassis—

"(A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

"(B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

"(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(b) EXEMPTION FROM TAX ON USE OF CERTAIN VEHICLES.—

(1) IN GENERAL.—Section 4483 (relating to exemptions) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) EXEMPTION FOR MOBILE MACHINERY.—No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(8).".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the day after the date of the enactment of this Act.

(c) EXEMPTION FROM TAX ON TIRES.—

(1) IN GENERAL.—Section 4072(b)(2) is amended by adding at the end the following flush sentence: "Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(d) REFUND OF FUEL TAXES.—

(1) IN GENERAL.—Section 6421(e)(2) (defining off-highway business use) is amended by adding at the end the following new subparagraph:

"(C) USES IN MOBILE MACHINERY.—

"(i) IN GENERAL.—The term 'off-highway business use' shall include any use in a vehicle which meets the requirements described in clause (ii).

"(ii) REQUIREMENTS FOR MOBILE MACHINERY.—The requirements described in this clause are—

"(I) the design-based test, and

"(II) the use-based test.

"(iii) DESIGN-BASED TEST.—For purposes of clause (ii)(I), the design-based test is met if the vehicle consists of a chassis—

"(I) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

"(II) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

"(III) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

"(iv) USE-BASED TEST.—For purposes of clause (ii)(II), the use-based test is met if the use of the vehicle on public highways was less than 7,500 miles during the taxpayer's taxable year.".

(2) NO TAX-FREE SALES.—Subsection (b) of section 4082, as amended by section 202, is amended by inserting before the period at the end "and such term shall not include any use described in section 6421(e)(2)(C)".

(3) ANNUAL REFUND OF TAX PAID.—Section 6427(i)(2) (relating to exceptions) is amended by adding at the end the following new subparagraph:

"(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used solely in any off-highway business use described in section 6421(e)(2)(C).".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 202. TAXATION OF AVIATION-GRADE KEROSENE.

(a) RATE OF TAX.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) in the case of aviation-grade kerosene, 21.8 cents per gallon.".

(2) COMMERCIAL AVIATION.—Paragraph (2) of section 4081(a) is amended by adding at the end the following new subparagraph:

"(C) TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.".

(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—Subsection (a) of section 4081 is amended by adding at the end the following new paragraph:

"(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—

"(A) IN GENERAL.—In the case of aviation-grade kerosene which is removed from any terminal directly into the fuel tank of an aircraft (determined without regard to any refueler truck, tanker, or tank wagon which meets the requirements of subparagraph (B)), a refueler truck, tanker, or tank wagon shall be treated as part of such terminal if—

"(i) such truck, tanker, or wagon meets the requirements of subparagraph (B) with respect to an airport, and

"(ii) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with aviation-grade kerosene at such terminal.

"(B) REQUIREMENTS.—A refueler truck, tanker, or tank wagon meets the requirements of this subparagraph with respect to an airport if such truck, tanker, or wagon—

"(i) is loaded with aviation-grade kerosene at such terminal located within such airport and delivers such kerosene only into aircraft at such airport,

"(ii) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft,

"(iii) is not registered for highway use, and

"(iv) is operated by—

"(I) the terminal operator of such terminal, or

"(II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or wagon.

"(C) REPORTING.—The Secretary shall require under section 4101(d) reporting by such terminal operator of—

"(i) any information obtained under subparagraph (B)(iv)(II), and

"(ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made by trucks, tankers, or wagons operated by such terminal operator.".

(4) LIABILITY FOR TAX ON AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—Subsection (a) of section 4081 is amended by adding at the end the following new paragraph:

"(4) LIABILITY FOR TAX ON AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—For purposes of paragraph (2)(C), the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph. For purposes of the preceding sentence, fuel shall be treated as used when such fuel is removed into the fuel tank.".

(5) NONTAXABLE USES.—

(A) IN GENERAL.—Section 4082 is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

"(e) AVIATION-GRADE KEROSENE.—In the case of aviation-grade kerosene which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft, the rate of tax under section 4081(a)(2)(A)(iv) shall be zero.".

(B) CONFORMING AMENDMENTS.—

(i) Subsection (b) of section 4082 is amended by adding at the end the following new flush sentence:

"The term 'nontaxable use' does not include the use of aviation-grade kerosene in an aircraft.".

(ii) Section 4082(d) is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(6) NONAIRCRAFT USE OF AVIATION-GRADE KEROSENE.—

(A) IN GENERAL.—Subparagraph (B) of section 4041(a)(1) is amended by adding at the end the following new sentence: "This subparagraph shall not apply to aviation-grade kerosene.".

(B) CONFORMING AMENDMENT.—The heading for paragraph (1) of section 4041(a) is amended by inserting "AND KEROSENE" after "DIESEL FUEL".

(b) COMMERCIAL AVIATION.—Section 4083 is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

"(b) COMMERCIAL AVIATION.—For purposes of this subpart, the term 'commercial aviation' means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of section 4261(h).".

(c) REFUNDS.—

(1) IN GENERAL.—Paragraph (4) of section 6427(l) is amended to read as follows:

"(4) REFUNDS FOR AVIATION-GRADE KEROSENE.—

"(A) NO REFUND OF CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene used in commercial aviation (as defined in section 4083(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4081 as is attributable to—

"(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

"(ii) so much of the rate of tax specified in section 4081(a)(2)(A)(iv) as does not exceed 4.3 cents per gallon.

"(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—With respect to aviation-grade kerosene, if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

"(i) is registered under section 4101, and

"(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).".

(2) TIME FOR FILING CLAIMS.—Subparagraph (A) of section 6427(i)(4) is amended—

(A) by striking "subsection (l)(5)" both places it appears and inserting "paragraph (4)(B) or (5) of subsection (l)", and

(B) by striking "the preceding sentence" and inserting "subsection (l)(5)".

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 6427(l)(2) is amended to read as follows:

"(B) in the case of aviation-grade kerosene—

"(i) any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax, or

"(ii) any use in commercial aviation (within the meaning of section 4083(b)).".

(d) REPEAL OF PRIOR TAXATION OF AVIATION FUEL.—

(1) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by striking subpart B and by redesignating subpart C as subpart B.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041(c) is amended to read as follows:

"(c) AVIATION-GRADE KEROSENE.—

"(1) IN GENERAL.—There is hereby imposed a tax upon aviation-grade kerosene—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

"(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

"(2) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this subsection on the sale or use of any aviation-grade kerosene if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

"(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax specified in section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use.".

(B) Section 4041(d)(2) is amended by striking "section 4091" and inserting "section 4081".

(C) Section 4041 is amended by striking subsection (e).

(D) Section 4041 is amended by striking subsection (i).

(E) Sections 4101(a), 4103, 4221(a), and 6206 are each amended by striking ", 4081, or 4091" and inserting "or 4081".

(F) Section 6416(b)(2) is amended by striking "4091 or".

(G) Section 6416(b)(3) is amended by striking "or 4091" each place it appears.

(H) Section 6416(d) is amended by striking "or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)".

(I) Section 6427(j)(1) is amended by striking ", 4081, and 4091" and inserting "and 4081".

(J)(i) Section 6427(l)(1) is amended to read as follows:

"(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by sec-

tion 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any payment made to the ultimate vendor under paragraph (4)(B).".

(ii) Paragraph (5)(B) of section 6427(l) is amended by striking "Paragraph (1)(A) shall not apply to kerosene" and inserting "Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)".

(K) Subparagraph (B) of section 6724(d)(1) is amended by striking clause (xv) and by redesignating the succeeding clauses accordingly.

(L) Paragraph (2) of section 6724(d) is amended by striking subparagraph (W) and by redesignating the succeeding subparagraphs accordingly.

(M) Paragraph (1) of section 9502(b) is amended by adding "and" at the end of subparagraph (B) and by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

"(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and".

(N) The last sentence of section 9502(b) is amended to read as follows: "There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).".

(O) Subsection (b) of section 9508 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(P) Section 9508(c)(2)(A) is amended by striking "sections 4081 and 4091" and inserting "section 4081".

(Q) The table of subparts for part III of subchapter A of chapter 32 is amended to read as follows:

"Subpart A. Motor and aviation fuels.
"Subpart B. Special provisions applicable to fuels tax.".

(R) The heading for subpart A of part III of subchapter A of chapter 32 is amended to read as follows:

"Subpart A—Motor and Aviation Fuels".

(S) The heading for subpart B of part III of subchapter A of chapter 32, as redesignated by paragraph (1), is amended to read as follows:

"Subpart B—Special Provisions Applicable to Fuels Tax".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to aviation-grade kerosene removed, entered, or sold after September 30, 2004.

(f) FLOOR STOCKS TAX.—

(1) IN GENERAL.—There is hereby imposed on aviation-grade kerosene held on October 1, 2004, by any person a tax equal to—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the tax imposed before such date under section 4091 of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—The person holding the kerosene on October 1, 2004, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD AND TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

(3) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

(A) at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

(B) at the rate under section 4081(a)(2)(A)(iv) to the extent of the remainder.

(4) HELD BY A PERSON.—For purposes of this section, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(5) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section.

SEC. 203. DYE INJECTION EQUIPMENT.

(a) IN GENERAL.—Section 4082(a)(2) (relating to exemptions for diesel fuel and kerosene) is amended by inserting "by mechanical injection" after "indelibly dyed".

(b) DYE INJECTOR SECURITY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a), and such regulations shall include standards for making such systems tamper resistant.

(c) PENALTY FOR TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6715 the following new section:

"SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.

"(a) IMPOSITION OF PENALTY—

"(1) TAMPERING.—If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, such person shall pay a penalty in addition to the tax (if any).

"(2) FAILURE TO MAINTAIN SECURITY REQUIREMENTS.—If any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 fails to maintain the security standards for such system as established by the Secretary, then such operator shall pay a penalty in addition to the tax (if any).

"(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

"(1) for each violation described in paragraph (1), the greater of—

"(A) $25,000, or

"(B) $10 for each gallon of fuel involved, and

"(2) for each—

"(A) failure to maintain security standards described in paragraph (2), $1,000, and

"(B) failure to correct a violation described in paragraph (2), $1,000 per day for each day after which such violation was discovered or such person should have reasonably known of such violation.

"(c) JOINT AND SEVERAL LIABILITY.—

"(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

"(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.".

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding after the item related to section 6715 the following new item:

"Sec. 6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems.".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect on the 180th day after the date on which the Secretary issues the regulations described in subsection (b).

SEC. 204. AUTHORITY TO INSPECT ON-SITE RECORDS.

(a) IN GENERAL.—Section 4083(d)(1)(A) (relating to administrative authority), as previously amended by this Act, is amended by striking "and" at the end of clause (i) and by inserting after clause (ii) the following new clause:

"(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 205. REGISTRATION OF PIPELINE OR VESSEL OPERATORS REQUIRED FOR EXEMPTION OF BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.

(a) IN GENERAL.—Section 4081(a)(1)(B) (relating to exemption for bulk transfers to registered terminals or refineries) is amended—

(1) by inserting "by pipeline or vessel" after "transferred in bulk", and

(2) by inserting ", the operator of such pipeline or vessel," after "the taxable fuel".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

(c) PUBLICATION OF REGISTERED PERSONS.—Beginning on July 1, 2004, the Secretary of the Treasury (or the Secretary's delegate) shall periodically publish a current list of persons registered under section 4101 of the Internal Revenue Code of 1986 who are required to register under such section.

SEC. 206. DISPLAY OF REGISTRATION.

(a) IN GENERAL.—Subsection (a) of section 4101 (relating to registration) is amended—

(1) by striking "Every" and inserting the following:

"(1) IN GENERAL.—Every", and

(2) by adding at the end the following new paragraph:

"(2) DISPLAY OF REGISTRATION.—Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an electronic identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.".

(b) CIVIL PENALTY FOR FAILURE TO DISPLAY REGISTRATION.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6716 the following new section:

"SEC. 6717. FAILURE TO DISPLAY TAX REGISTRATION ON VESSELS.

"(a) FAILURE TO DISPLAY REGISTRATION.—Every operator of a vessel who fails to display proof of registration pursuant to section 4101(a)(2) shall pay a penalty of $500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

"(b) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the product of such amount and the aggregate number of penalties (if any) imposed with respect to prior months by this section on such person (or a related person or any predecessor of such person or related person).

"(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.".

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6716 the following new item:

"Sec. 6717. Failure to display tax registration on vessels.".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall take effect on October 1, 2004.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to penalties imposed after September 30, 2004.

SEC. 207. PENALTIES FOR FAILURE TO REGISTER AND FAILURE TO REPORT.

(a) INCREASED PENALTY.—Subsection (a) of section 7272 (relating to penalty for failure to register) is amended by inserting "($10,000 in the case of a failure to register under section 4101)" after "$50".

(b) INCREASED CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4101, false representations of registration status, etc.) is amended by striking "$5,000" and inserting "$10,000".

(c) ASSESSABLE PENALTY FOR FAILURE TO REGISTER.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6717 the following new section:

"SEC. 6718. FAILURE TO REGISTER.

"(a) FAILURE TO REGISTER.—Every person who is required to register under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

"(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

"(1) $10,000 for each initial failure to register, and

"(2) $1,000 for each day thereafter such person fails to register.

"(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.".

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6717 the following new item:

"Sec. 6718. Failure to register.".

(d) ASSESSABLE PENALTY FOR FAILURE TO REPORT.—

(1) IN GENERAL.—Part II of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

"SEC. 6725. FAILURE TO REPORT INFORMATION UNDER SECTION 4101.

"(a) IN GENERAL.—In the case of each failure described in subsection (b) by any person with respect to a vessel or facility, such person shall pay a penalty of $10,000 in addition to the tax (if any).

"(b) FAILURES SUBJECT TO PENALTY.—For purposes of subsection (a), the failures described in this subsection are—

"(1) any failure to make a report under section 4101(d) on or before the date prescribed therefor, and

"(2) any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.

"(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.".

(2) CLERICAL AMENDMENT.—The table of sections for part II of subchapter B of chapter 68 is amended by adding at the end the following new item:

"Sec. 6725. Failure to report information under section 4101.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties imposed after September 30, 2004.

SEC. 208. COLLECTION FROM CUSTOMS BOND WHERE IMPORTER NOT REGISTERED.

(a) TAX AT POINT OF ENTRY WHERE IMPORTER NOT REGISTERED.—Subpart B of part III of subchapter A of chapter 32, as redesignated by section 202(d), is amended by adding after section 4103 the following new section:

"SEC. 4104. COLLECTION FROM CUSTOMS BOND WHERE IMPORTER NOT REGISTERED.

"(a) IN GENERAL.—The importer of record shall be jointly and severally liable for the tax imposed by section 4081(a)(1)(A)(iii) if, under regulations prescribed by the Secretary, any other person that is not a person who is registered under section 4101 is liable for such tax.

"(b) COLLECTION FROM CUSTOMS BOND.—If any tax for which any importer of record is liable under subsection (a), or for which any importer of record that is not a person registered under section 4101 is otherwise liable, is not paid on or before the last date prescribed for payment, the Secretary may collect such tax from the Customs bond posted with respect to the importation of the taxable fuel to which the tax relates. For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any action by the Secretary described in the preceding sentence shall be treated as an action to collect the tax from a bond described in section 4101(b)(1) and not as an action to collect from a bond relating to the importation of merchandise.".

(b) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 32, as redesignated by section 202(d), is amended by adding after the item related to section 4103 the following new item:

"Sec. 4104. Collection from Customs bond where importer not registered.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fuel entered after September 30, 2004.

SEC. 209. MODIFICATIONS OF TAX ON USE OF CERTAIN VEHICLES.

(a) PRORATION OF TAX WHERE VEHICLE SOLD.—

(1) IN GENERAL.—Subparagraph (A) of section 4481(c)(2) (relating to where vehicle destroyed or stolen) is amended by striking "destroyed or stolen" both places it appears and inserting "sold, destroyed, or stolen".

(2) CONFORMING AMENDMENT.—The heading for section 4481(c)(2) is amended by striking "DESTROYED OR STOLEN" and inserting "SOLD, DESTROYED, OR STOLEN".

(b) REPEAL OF INSTALLMENT PAYMENT.—

(1) Section 6156 (relating to installment payment of tax on use of highway motor vehicles) is repealed.

(2) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6156.

(c) ELECTRONIC FILING.—Section 4481 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) ELECTRONIC FILING.—Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.".

(d) REPEAL OF REDUCTION IN TAX FOR CERTAIN TRUCKS.—Section 4483 is amended by striking subsection (f).

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.

SEC. 210. MODIFICATION OF ULTIMATE VENDOR REFUND CLAIMS WITH RESPECT TO FARMING.

(a) IN GENERAL.—

(1) REFUNDS.—Section 6427(l) is amended by adding at the end the following new paragraph:

"(6) REGISTERED VENDORS PERMITTED TO ADMINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL FUEL AND KEROSENE SOLD TO FARMERS.—

"(A) IN GENERAL.—In the case of diesel fuel or kerosene used on a farm for farming purposes (within the meaning of section 6420(c)), paragraph (1) shall not apply to the aggregate amount of such diesel fuel or kerosene if such amount does not exceed 250 gallons (as determined under subsection (i)(5)(A)(iii)).

"(B) PAYMENT TO ULTIMATE VENDOR.—The amount which would (but for subparagraph (A)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

"(i) is registered under section 4101, and

"(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).".

(2) FILING OF CLAIMS.—Section 6427(i) is amended by inserting at the end the following new paragraph:

"(5) SPECIAL RULE FOR VENDOR REFUNDS WITH RESPECT TO FARMERS.—

"(A) IN GENERAL.—A claim may be filed under subsection (l)(6) by any person with respect to fuel sold by such person for any period—

"(i) for which $200 or more ($100 or more in the case of kerosene) is payable under subsection (l)(6),

"(ii) which is not less than 1 week, and

"(iii) which is for not more than 250 gallons for each farmer for which there is a claim.

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under the preceding sentence.

"(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.".

(3) CONFORMING AMENDMENTS.—

(A) Section 6427(l)(5)(A) is amended to read as follows:

"(A) IN GENERAL.—Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.".

(B) The heading for section 6427(l)(5) is amended by striking "FARMERS AND".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuels sold for nontaxable use after the date of the enactment of this Act.

SEC. 211. DEDICATION OF REVENUES FROM CERTAIN PENALTIES TO THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsection (b) of section 9503 (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

"(5) CERTAIN PENALTIES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties paid under sections 6715, 6715A, 6717, 6718, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).".

(b) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 9503 is amended by inserting "AND PENALTIES" after "TAXES".

(2) The heading of paragraph (1) of section 9503(b) is amended by striking "IN GENERAL" and inserting "CERTAIN TAXES".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed after October 1, 2004.

TITLE III—OTHER EXCISE TAX PROVISIONS

SEC. 301. TAXABLE FUEL REFUNDS FOR CERTAIN ULTIMATE VENDORS.

(a) IN GENERAL.—Paragraph (4) of section 6416(a) (relating to abatements, credits, and refunds) is amended to read as follows:

"(4) REGISTERED ULTIMATE VENDOR TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

"(A) IN GENERAL.—For purposes of this subsection, if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101. For purposes of this subparagraph, if the sale of gasoline is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.

"(B) TIMING OF CLAIMS.—The procedure and timing of any claim under subparagraph (A) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor covered by such claim are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).".

(b) CREDIT CARD PURCHASES OF DIESEL FUEL OR KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Section 6427(l)(5)(C) (relating to nontaxable uses of diesel fuel, kerosene, and aviation fuel) is amended by adding at the end the following new flush sentence: "For purposes of this subparagraph, if the sale of diesel fuel or kerosene is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 302. TWO-PARTY EXCHANGES.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 32, as amended by this Act, is amended by adding after section 4104 the following new section:

"SEC. 4105. TWO-PARTY EXCHANGES.

"(a) IN GENERAL.—In a two-party exchange, the delivering person shall not be liable for the tax imposed under section 4081(a)(1)(A)(ii).

"(b) TWO-PARTY EXCHANGE.—The term 'two-party exchange' means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant fuel to a receiving person who is so registered where all of the following occur:

"(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

"(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

"(3) The terminal operator in its books and records treats the receiving person as the person that removes the taxable fuel across the terminal rack for purposes of reporting the transaction to the Secretary.

"(4) The transaction is the subject of a written contract.".

(b) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 32, as amended by this Act, is amended by adding after the item relating to section 4104 the following new item:

"Sec. 4105. Two-party exchanges.".

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 303. SIMPLIFICATION OF TAX ON TIRES.

(a) IN GENERAL.—Subsection (a) of section 4071 is amended to read as follows:

"(a) IMPOSITION AND RATE OF TAX.—There is hereby imposed on taxable tires sold by the manufacturer, producer, or importer thereof a tax at the rate of 9.4 cents

(4.7 cents in the case of a biasply tire) for each 10 pounds so much of the maximum rated load capacity thereof as exceeds 3,500 pounds.''

(b) TAXABLE TIRE.—Section 4072 is amended by redesignating subsections (a) and (b) as subsections (b) and (c), respectively, and by inserting before subsection (b) (as so redesignated) the following new subsection:

''(a) TAXABLE TIRE.—For purposes of this chapter, the term 'taxable tire' means any tire of the type used on highway vehicles if wholly or in part made of rubber and if marked pursuant to Federal regulations for highway use.''

(c) EXEMPTION FOR TIRES SOLD TO DEPARTMENT OF DEFENSE.—Section 4073 is amended to read as follows:

''SEC. 4073. EXEMPTIONS.

''The tax imposed by section 4071 shall not apply to tires sold for the exclusive use of the Department of Defense or the Coast Guard.''

(d) CONFORMING AMENDMENTS.—

(1) Section 4071 is amended by striking subsection (c) and by moving subsection (e) after subsection (b) and redesignating subsection (e) as subsection (c).

(2) The item relating to section 4073 in the table of sections for part II of subchapter A of chapter 32 is amended to read as follows:

''Sec. 4073. Exemptions.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales in calendar years beginning more than 30 days after the date of the enactment of this Act.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 3971, as amended, contains provisions that credit the Highway Trust Fund with the full amount of fuel taxes, combat fuel tax evasion, and make other changes related to highway excise taxes.

B. BACKGROUND AND NEED FOR LEGISLATION

The provisions approved by the Committee reflect the need to increase Highway Trust Fund resources for the purposes of funding a highway reauthorization bill. The bill increases Highway Trust Fund resources by reducing fuel tax evasion and ensuring that the Highway Trust Fund is credited with the full fuels tax. The bill also includes provisions to simplify and reform highway related excise taxes, refund procedures, and ethanol fuel subsidies.

In addition, the bill reflects the Committee's view of the appropriate treatment of mobile machinery vehicles. On June 6, 2002, the U.S. Department of the Treasury issued proposed regulations that would eliminate the mobile machinery exemption. The issuance of final regulations has been delayed to give Congress the opportunity to address the issue in the context of a highway bill.

C. LEGISLATIVE HISTORY

The House Committee on Ways and Means marked up the Highway Reauthorization Tax Act of 2004 on March 17, 2004, and ordered the bill, as amended, favorably reported by voice vote.

II. EXPLANATION OF THE BILL

TITLE I—RESTRUCTURING OF INCENTIVES FOR ALCOHOL FUELS, ETC.

A. REDUCED RATES OF TAX ON ALCOHOL FUEL MIXTURES REPLACED WITH AN EXCISE TAX CREDIT, ETC.

(Secs. 101 and 102 of the bill and secs. 4041, 4081, 4091, 6427, and 9503 of the Code)

PRESENT LAW

Alcohol fuels income tax credit

The alcohol fuels credit is the sum of three credits: the alcohol mixture credit, the alcohol credit, and the small ethanol producer credit. Generally, the alcohol fuels credit expires after December 31, 2007.[1]

A taxpayer (generally a petroleum refiner, distributor, or marketer) who mixes ethanol with gasoline (or a special fuel[2]) is an "ethanol blender." Ethanol blenders are eligible for an income tax credit of 52 cents per gallon of ethanol used in the production of a qualified mixture (the "alcohol mixture credit"). A qualified mixture means a mixture of alcohol and gasoline, (or of alcohol and a special fuel) sold by the blender as fuel, or used as fuel by the blender in producing the mixture. The term alcohol includes methanol and ethanol but does not include (1) alcohol produced from petroleum, natural gas, or coal (including peat), or (2) alcohol with a proof of less than 150. Businesses also may reduce their income taxes by 52 cents for each gallon of ethanol (not mixed with gasoline or other special fuel) that they sell at the retail level as vehicle fuel or use themselves as a fuel in their trade or business ("the alcohol credit"). The 52-cents-per-gallon income tax credit rate is scheduled to decline to 51 cents per gallon during the period 2005 through 2007. For blenders using an alcohol other than ethanol, the rate is 60 cents per gallon.[3]

A separate income tax credit is available for small ethanol producers (the "small ethanol producer credit"). A small ethanol producer is defined as a person whose ethanol production capacity does not exceed 30 million gallons per year. The small ethanol producer credit is 10 cents per gallon of ethanol produced during the taxable year for up to a maximum of 15 million gallons.

The credits that comprise the alcohol fuels tax credit are includible in income. The credit may not be used to offset alternative minimum tax liability. The credit is treated as a general business credit, subject to the ordering rules and carryforward/carryback rules that apply to business credits generally.

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[1] The alcohol fuels credit is unavailble when, for any period before January 1, 2008, the tax rates for gasoline and diesel fuels drop to 4.3 cents per gallon.

[2] A special fuel includes any liquid (other than gasoline) that is suitable for use in an internal combustion engine.

[3] In the case of any alcohol (other than ethanol) with a proof that is at least 150 but less than 190, the credit is 45 cents per gallon (the "low-proof blender amount"). For ethanol with a proof that is at least 150 but less than 190, the low-proof blender amount is 38.52 cents for sales or uses during calendar year 2004, and 37.78 cents for calendar years 2005, 2006, and 2007.

Excise tax reductions for alcohol mixture fuels

Generally, motor fuels tax rates are as follows: [4]

Gasoline	18.3 cents per gallon.
Diesel fuel and kerosene	24.3 cents per gallon.
Special motor fuels	18.3 cents per gallon generally.

Alcohol-blended fuels are subject to a reduced rate of tax. The benefits provided by the alcohol fuels income tax credit and the excise tax reduction are integrated such that the alcohol fuels credit is reduced to take into account the benefit of any excise tax reduction.

Gasohol

Registered ethanol blenders may forgo the full income tax credit and instead pay reduced rates of excise tax on gasoline that they purchase for blending with ethanol. Most of the benefit of the alcohol fuels credit is claimed through the excise tax system.

The reduced excise tax rates apply to gasohol upon its removal or entry. Gasohol is defined as a gasoline/ethanol blend that contains 5.7 percent ethanol, 7.7 percent ethanol, or 10 percent ethanol. For the calendar year 2004, the following reduced rates apply to gasohol: [5]

5.7 percent ethanol	15.436 cents per gallon.
7.7 percent ethanol	14.396 cents per gallon.
10.0 percent ethanol	13.200 cents per gallon.

Reduced excise tax rates also apply when gasoline is being purchased for the production of "gasohol." When gasoline is purchased for blending into gasohol, the rates above are multiplied by a fraction (e.g., 10/9 for 10-percent gasohol) so that the increased volume of motor fuel will be subject to tax. The reduced tax rates apply if the person liable for the tax is registered with the IRS and (1) produces gasohol with gasoline within 24 hours of removing or entering the gasoline or (2) gasoline is sold upon its removal or entry and such person has an unexpired certificate from the buyer and has no reason to believe the certificate is false.[6]

Qualified methanol and ethanol fuels

Qualified methanol or ethanol fuel is any liquid that contains at least 85 percent methanol or ethanol or other alcohol produced from a substance other than petroleum or natural gas. These fuels are taxed at reduced rates.[7] The rate of tax on qualified methanol is 12.35 cents per gallon. The rate on qualified ethanol in 2004 is 13.15 cents. From January 1, 2005, through September 30, 2007, the rate of tax on qualified ethanol is 13.25 cents.

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[4] These rules are also subject to an additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund. See secs. 4041(d) and 4081(a)(2)(B). In addition, the basic fuel tax rate will drop to 4.3 cents per gallon beginning on October 1, 2005.

[5] These rates include the additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund. These special rates will terminate after September 30, 2007 (sec. 4081(c)(8)).

[6] Treas. Reg. sec. 48.4081–6(c). A certificate from the buyer assures that the gasoline will be used to produce gasohol within 24 hours after purchase. A copy of the registrant's letter of registration cannot be used as a gasohol blender's certificate.

[7] These reduced rates terminate after September 30, 2007. Included in these rates is the 0.05-cent-per-gallon Leaking Underground Storage Tank Trust Fund tax imposed on such fuel. (sec. 4041(b)(2)).

Alcohol produced from natural gas

A mixture of methanol, ethanol, or other alcohol produced from natural gas that consists of at least 85 percent alcohol is also taxed at reduced rates.[8] For mixtures not containing ethanol, the applicable rate of tax is 9.25 cents per gallon before October 1, 2005. In all other cases, the rate is 11.4 cents per gallon. After September 30, 2005, the rate is reduced to 2.15 cents per gallon when the mixture does not contain ethanol and 4.3 cents per gallon in all other cases.

Blends of alcohol and diesel fuel or special motor fuels

A reduced rate of tax applies to diesel fuel or kerosene that is combined with alcohol as long as at least 10 percent of the finished mixture is alcohol. If none of the alcohol in the mixture is ethanol, the rate of tax is 18.4 cents per gallon. For alcohol mixtures containing ethanol, the rate of tax in 2004 is 19.2 cents per gallon and for 2005 through September 30, 2007, the rate for ethanol mixtures is 19.3 cents per gallon. Fuel removed or entered for use in producing a 10 percent diesel-alcohol fuel mixture (without ethanol), is subject to a tax of 20.44 cents per gallon. The rate of tax for fuel removed or entered to produce a 10 percent diesel-ethanol fuel mixture is 21.333 cents per gallon for 2004 and 21.444 cents per gallon for the period January 1, 2005, through September 30, 2007.[9]

Special motor fuel (nongasoline) mixtures with alcohol also are taxed at reduced rates.

Aviation fuel

Noncommercial aviation fuel is subject to a tax of 21.9 cents per gallon.[10] Fuel mixtures containing at least 10 percent alcohol are taxed at lower rates.[11] In the case of 10 percent ethanol mixtures, any sale or use during 2004, the 21.9 cents is reduced by 13.2 cents (for a tax of 8.7 cents per gallon), for 2005, 2006, and 2007 the reduction is 13.1 cents (for a tax of 8.8 cents per gallon) and is reduced by 13.4 cents in the case of any sale during 2008 or thereafter. For mixtures not containing ethanol, the 21.9 cents is reduced by 14 cents for a tax of 7.9 cents. These reduced rates expire after September 30, 2007.[12]

When aviation fuel is purchased for blending with alcohol, the rates above are multiplied by a fraction (10/9) so that the increased volume of aviation fuel will be subject to tax.

Refunds and payments

If fully taxed gasoline (or other taxable fuel) is used to produce a qualified alcohol mixture, the Code permits the blender to file a claim for a quick excise tax refund. The refund is equal to the difference between the gasoline (or other taxable fuel) excise tax that was paid and the tax that would have been paid by a registered blender on the alcohol fuel mixture being produced. Generally, the

[8] These rates include the additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund (sec. 4041(d)(1)).

[9] These rates include the additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund.

[10] This rate includes the additional 0.1 cent-per-gallon tax for the Leaking Underground Storage Tank Trust Fund.

[11] Secs. 4041(k)(1) and 4091(c).

[12] Sec. 4091(c)(1).

IRS pays these quick refunds within 20 days. Interest accrues if the refund is paid more than 20 days after filing. A claim may be filed by any person with respect to gasoline, diesel fuel, or kerosene used to produce a qualified alcohol fuel mixture for any period for which $200 or more is payable and which is not less than one week.

Ethyl tertiary butyl ether (ETBE)

Ethyl tertiary butyl ether ("ETBE") is an ether that is manufactured using ethanol. Unlike ethanol, ETBE can be blended with gasoline before the gasoline enters a pipeline because ETBE does not result in contamination of fuel with water while in transport. Treasury regulations provide that gasohol blenders may claim the income tax credit and excise tax rate reductions for ethanol used in the production of ETBE. The regulations also provide a special election allowing refiners to claim the benefit of the excise tax rate reduction even though the fuel being removed from terminals does not contain the requisite percentages of ethanol for claiming the excise tax rate reduction.

Highway Trust Fund

With certain exceptions, the taxes imposed by section 4041 (relating to retail taxes on diesel fuels and special motor fuels) and section 4081 (relating to tax on gasoline, diesel fuel and kerosene) are credited to the Highway Trust Fund. In the case of alcohol fuels, 2.5 cents per gallon of the tax imposed is retained in the General Fund.[13] In the case of a taxable fuel taxed at a reduced rate upon removal or entry prior to mixing with alcohol, 2.8 cents of the reduced rate is retained in the General Fund.[14]

Taxes from gasoline and special motor fuels used in motorboats and gasoline used in the nonbusiness use of small-engine outdoor power equipment

The Aquatic Resources Trust Fund is funded by a portion of the receipts from the excise tax imposed on motorboat gasoline and special motor fuels, as well as small-engine fuel taxes, that are first deposited into the Highway Trust Fund. As a result, transfers to the Aquatic Resources Trust Fund are governed in part by Highway Trust Fund provisions.[15]

A total tax rate of 18.4 cents per gallon is imposed on gasoline and special motor fuels used in motorboats. Of this rate, 0.1 cent per gallon is dedicated to the Leaking Underground Storage Tank Trust Fund. Of the remaining 18.3 cents per gallon, the Code currently transfers 13.5 cents per gallon from the Highway Trust Fund to the Aquatics Resources Trust Fund and Land and Water Conservation Fund. The remainder, 4.8 cents per gallon, is retained in the General Fund. In addition, the Sport Fish Restoration Account of the Aquatics Resources Trust Fund receives 13.5 cents per gallon of the revenues from the tax imposed on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power

[13] Sec. 9503(b)(4)(E).
[14] Sec. 9503(b)(4)(F).
[15] Sec. 9503(c)(4) and 9503(c)(5).

equipment. The balance of 4.8 cents per gallon is retained in the General Fund.[16]

REASONS FOR CHANGE

Highway vehicles using alcohol-blended fuels contribute to the wear and tear of the same highway system used by gasoline or diesel vehicles. Therefore, the Committee believes that alcohol-blended fuels should be taxed at rates equal to gasoline or diesel. The Committee believes that present law provides opportunities for fraud because individuals can buy gasoline at reduced tax rates for blending with alcohol, but never actually use the gasoline to make an alcohol fuel blend. The Committee believes that eliminating the reduced tax rate on gasoline prior to blending with alcohol will reduce such opportunities for fraud. The Committee also believes that providing a tax credit based on the gallons of alcohol used to make an alcohol fuel and eliminating the various blend tiers associated with reduced tax rates for alcohol-blended fuels will simplify present law.

EXPLANATION OF PROVISION

Overview

The provision eliminates reduced rates of excise tax for alcohol-blended fuels and imposes the full rate of excise tax on alcohol-blended fuels (18.4 cents per gallon on gasoline blends and 24.4 cents per gallon of diesel blended fuel). In place of reduced rates, the provision permits the section 40 alcohol mixture credit, with certain modifications, to be applied against excise tax liability. The credit may be taken against the tax imposed on taxable fuels (by section 4081). To the extent a person does not have section 4081 liability, the provision allows taxpayers to file a claim for payment equal to the amount of the credit for the alcohol used to produce an eligible mixture. Under certain circumstances, a tax is imposed if an alcohol fuel mixture credit is claimed with respect to alcohol used in the production of any alcohol mixture, which is subsequently used for a purpose for which the credit is not allowed or changed into a substance that does not qualify for the credit. The provision eliminates the General Fund retention of certain taxes on alcohol fuels, and credits these taxes to the Highway Trust Fund.

Alcohol fuel mixture excise tax credit and payment provisions

Alcohol fuel mixture excise tax credit

The provision eliminates the reduced rates of excise tax for alcohol-blended fuels and taxable fuels used to produce an alcohol fuel mixture. Under the provision, the full rate of tax for taxable fuels is imposed on both alcohol fuel mixtures and the taxable fuel used to produce an alcohol fuel mixture.

In lieu of the reduced excise tax rates, the provision provides that the alcohol mixture credit provided under section 40 may be applied against section 4081 excise tax liability (hereinafter referred to as "the alcohol fuel mixture credit"). The credit is treated as a payment of the taxpayer's tax liability received at the time of

[16] The Sport Fish Restoration Account also is funded with receipts from an ad valorem manufacturer's excise tax on sport fishing equipment.

the taxable event. The alcohol fuel mixture credit is 52 cents for each gallon of alcohol used by a person in producing an alcohol fuel mixture for sale or use in a trade or business of the taxpayer. The credit declines to 51 cents per gallon after calendar year 2004. For mixtures not containing ethanol (renewable source methanol), the credit is 60 cents per gallon. As discussed further below, the excise tax credit is refundable in order to provide a benefit equivalent to the reduced tax rates, which are being repealed under the provision.

For purposes of the alcohol fuel mixture credit, an "alcohol fuel mixture" is a mixture of alcohol and gasoline or alcohol and a special fuel which is sold for use or used as a fuel by the taxpayer producing the mixture. Alcohol for this purpose includes methanol, ethanol, and alcohol gallon equivalents of ETBE or other ethers produced from such alcohol. It does not include alcohol produced from petroleum, natural gas, or coal (including peat), or alcohol with a proof of less than 190 (determined without regard to any added denaturants). Special fuel is any liquid fuel (other than gasoline) which is suitable for use in an internal combustion engine. The benefit obtained from the excise tax credit is coordinated with the alcohol fuels income tax credit. For refiners making an alcohol fuel mixture with ETBE, the mixture is treated as sold to another person for use as a fuel only upon removal from the refinery. The excise tax credit is available through December 31, 2010.

Payments with respect to qualified alcohol fuel mixtures

To the extent the alcohol fuel mixture credit exceeds any section 4081 liability of a person, the Secretary is to pay such person an amount equal to the alcohol fuel mixture credit with respect to such mixture. These payments are intended to provide an equivalent benefit to replace the partial exemption for fuels to be blended with alcohol and alcohol fuels being repealed by the provision. If claims for payment are not paid within 45 days, the claim is to be paid with interest. The provision also provides that in the case of an electronic claim, if such claim is not paid within 20 days, the claim is to be paid with interest. If claims are filed electronically, the claimant may make a claim for less than $200.

The provision does not apply with respect to alcohol fuel mixtures sold after December 31, 2010.

Alcohol fuel subsidies borne by General Fund

The provision eliminates the requirement that 2.5 and 2.8 cents per gallon of excise taxes be retained in the General Fund with the result that the full amount of tax on alcohol fuels is credited to the Highway Trust Fund. The provision also authorizes the full amount of fuel taxes to be appropriated to the Highway Trust Fund without reduction for amounts equivalent to the excise tax credits allowed for alcohol fuel mixtures and the Trust Fund is not required to reimburse any payments with respect to qualified alcohol fuel mixtures.

Motorboat and small engine fuel taxes

The provision eliminates the General Fund retention of the 4.8 cents per gallon of the taxes imposed on gasoline and special motor

fuels used in motorboats and gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment.

EFFECTIVE DATES

The provisions generally are effective for fuel sold or used after September 30, 2004. The repeal of the General Fund retention of the 2.5/2.8 cents per gallon of tax regarding alcohol fuels and the repeal of the 4.8 cents per gallon General Fund retention of the taxes imposed on fuels used in motorboats and small engine equipment is effective for taxes imposed after September 30, 2003. The provision regarding the crediting of the full amount of tax to the Highway Trust Fund without regard to credits and payments is effective for taxes received after September 30, 2004, and payments made after September 30, 2004.

TITLE II—REDUCTION OF FUEL TAX EVASION

A. Exemption From Certain Excise Taxes for Mobile Machinery Vehicles

(Sec. 201 of the bill, and secs. 4053, 4072, 4082, 4483 and 6421 of the Code)

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.[17] Section 4051 of the Code provides for a 12–percent retail sales tax on tractors, 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 non-transportation 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" excep-

[17] Secs. 4051, 4071, 4481, 4041 and 4081.

tion); 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.[18]

The mobile machinery exception applies if three tests are met: (1) the vehicle consists of a chassis to which jobsite machinery (unrelated to transportation) has been permanently mounted; (2) the chassis has been specially designed to serve only as a mobile carriage and mount for the particular machinery and (3) by reason of such special design, the chassis could not, without substantial structural modification, be used to transport a load other than the particular machinery. An example of a mobile machinery vehicle is a crane mounted on a truck chassis that meets the forgoing factors.

On June 6, 2002, the Treasury Department put forth proposed regulations that would eliminate the mobile machinery exception.[19] The other exceptions from the definition of highway vehicle would continue to apply with some modifications. Under the proposed regulations, the chassis of a mobile machinery vehicle would be subject to the retail sales tax on heavy vehicles unless the vehicle qualified under the off-highway transportation vehicle exception. Also, under the proposed regulations, mobile machinery vehicles may be subject to the heavy vehicle use tax. In addition, the tax credits, refunds, and exemptions from tax may not be available for the fuel used in these vehicles.

REASONS FOR CHANGE

The Treasury Department has delayed issuance of final regulations regarding mobile machinery to allow Congressional action on a statutory definition of mobile machinery vehicle as part of the reauthorization of the Highway Trust Fund. The Highway Trust Fund is supported by taxes related to the use of vehicles on the public highways. The Committee understands that a mobile machinery exemption was created by Treasury regulation because the Treasury Department believed that mobile machinery used the public highways only incidentally to get from one job site to another. However, it has come to the Committee's attention that certain vehicles are taking advantage of the mobile machinery exemption even though they spend a significant amount of time on public highways and, therefore, cause wear and tear to such highways. Because the mobile machinery exemption is based on incidental use of the public highways, the Committee believes it is appropriate to add a use-based test to the design-based test that exists under current regulation. The Committee believes that a use-based test is practical to administer only for purposes of the fuel excise tax.

EXPLANATION OF PROVISION

The provision codifies the present-law mobile machinery exemption for purposes of three taxes: the retail tax on heavy vehicles, the heavy vehicle use tax, and the tax on tires. Thus, if a vehicle can satisfy the three-part test, it will not be treated as a highway vehicle and will be exempt from these taxes.

For purposes of the fuel excise tax, the three-part design test is codified and a use test is added. Specifically, in addition to the

[18] See Treas. Reg. sec. 48.4061–1(d)).
[19] Prop. Treas. Reg. sec. 48.4051–1(a), 67 Fed. Reg. 38913, 38914–38915 (2002).

three-part design test, the vehicle must not have traveled more than 7,500 miles over public highways during the owner's taxable year. Refunds of fuel taxes are permitted on an annual basis only. For purposes of this rule, a person's taxable year is his taxable year for income tax purposes.

EFFECTIVE DATE

The provision 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.

B. TAXATION OF AVIATION-GRADE KEROSENE

(Sec. 202 of the bill and secs. 4041, 4081, 4082, 4083, 4091, 4092, 4093, 4101, and 6427 of the Code)

PRESENT LAW

In general

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.[20] Unlike other fuels that generally are taxed upon removal from a terminal rack,[21] aviation fuel is taxed upon sale of the fuel by a producer or importer.[22] Sales by a registered producer to another registered producer are exempt from tax, with the result that, as a practical matter, aviation fuel is not taxed until the fuel is used at the airport (or sold to an unregistered person). Use of untaxed aviation fuel by a producer is treated as a taxable sale.[23] The producer or importer is liable for the tax. The rate of tax on aviation fuel is 21.9 cents per gallon.[24]

The tax on aviation fuel is reported by filing Form 720—Quarterly Federal Excise Tax Return. Generally, semi-monthly deposits are required using Form 8109B—Federal Tax Deposit Coupon or by depositing the tax by electronic funds transfer.

Partial exemptions

In general, aviation fuel sold for use or used in commercial aviation is taxed at a reduced rate of 4.4 cents per gallon.[25] Commercial aviation means any use of an aircraft in a business of transporting persons or property for compensation or hire by air (unless the use is allocable to any transportation exempt from certain excise taxes).[26]

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[20] Sec. 4093(a).

[21] A rack is a mechanism capable of delivering taxable fuel into a means of transport other than a pipeline or vessel. Treas. Reg. sec. 48.4081–1(b).

[22] Sec. 4091(a)(1).

[23] Sec. 4091(a)(2).

[24] 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) and 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).

[25] 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), and 4221(d)(3).

[26] Secs. 4092(b) and 4041(c)(2).

In order to qualify for the 4.4 cents per gallon rate, the person engaged in commercial aviation must be registered with the Secretary [27] and provide the seller with a written exemption certificate stating the airline's name, address, taxpayer identification number, registration number, and intended use of the fuel. A person that is registered as a buyer of aviation fuel for use in commercial aviation generally is assigned a registration number with a "Y" suffix (a "Y" registrant), which entitles the registrant to purchase aviation fuel at the 4.4 cents per gallon rate.

Large commercial airlines that also are producers of aviation fuel qualify for registration numbers with an "H" suffix. As producers of aviation fuel, "H" registrants may buy aviation fuel tax free pursuant to a full exemption that applies to sales of aviation fuel by a registered producer to a registered producer. If the "H" registrant ultimately uses such untaxed fuel in domestic commercial aviation, the H registrant is liable for the aviation fuel tax at the 4.4 cents per gallon rate.

Exemptions

Aviation fuel sold by a producer or importer for use by the buyer in a nontaxable use is exempt from the excise tax on sales of aviation fuel.[28] To qualify for the exemption, the buyer must provide the seller with a written exemption certificate stating the buyer's name, address, taxpayer identification number, registration number (if applicable), and intended use of the fuel.

Nontaxable uses include: (1) use other than as fuel in an aircraft (such as use in heating oil); (2) use on a farm for farming purposes; (3) use in a military aircraft owned by the United States or a foreign country; (4) use in a domestic air carrier engaged in foreign trade or trade between the United States and any of its possessions; [29] (5) use in a foreign air carrier engaged in foreign trade or trade between the United States and any of its possessions (but only if the foreign carrier's country of registration provides similar privileges to United States carriers); (6) exclusive use of a State or local government; (7) sales for export, or shipment to a United States possession; (8) exclusive use by a nonprofit educational organization; (9) use by an aircraft museum exclusively for the procurement, care, or exhibition of aircraft of the type used for combat or transport in World War II, and (10) use as a fuel in a helicopter or a fixed-wing aircraft for purposes of providing transportation with respect to which certain requirements are met.[30]

A producer that is registered with the Secretary may sell aviation fuel tax-free to another registered producer.[31] Producers include refiners, blenders, wholesale distributors of aviation fuel, dealers selling aviation fuel exclusively to producers of aviation fuel, the actual producer of the aviation fuel, and with respect to fuel purchased at a reduced rate, the purchaser of such fuel.

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[27] Notice 88–132, sec. III(D). See also, Form 637—Application for Registration (For Certain Excise Tax Activities). A bond may be required as a condition of registration.

[28] Sec. 4092(a).

[29] "Trade" includes the transportation of persons or property for hire. Treas. Reg. sec. 48.4221–4(b)(8).

[30] Secs. 4041(f)(2), 4041(g), 4041(h), 4041(l), and 4092.

[31] Sec. 4092(c).

Refunds and credits

A claim for refund of taxed aviation fuel held by a registered aviation fuel producer is allowed[32] (without interest) if: (1) the aviation fuel tax was paid by an importer or producer (the "first producer") and the tax has not otherwise been credited or refunded; (2) the aviation fuel was acquired by a registered aviation fuel producer (the "second producer") after the tax was paid; (3) the second producer files a timely refund claim with the proper information; and (4) the first producer and any other person that owns the fuel after its sale by the first producer and before its purchase by the second producer have met certain reporting requirements.[33] Refund claims should contain the volume and type of aviation fuel, the date on which the second producer acquired the fuel, the amount of tax that the first producer paid, a statement by the claimant that the amount of tax was not collected nor included in the sales price of the fuel by the claimant when the fuel was sold to a subsequent purchaser, the name, address, and employer identification number of the first producer, and a copy of any required statement of a subsequent seller (subsequent to the first producer but prior to the second producer) that the second producer received. A claim for refund is filed on Form 8849, Claim for Refund of Excise Taxes, and may not be combined with any other refunds.[34]

A payment is allowable to the ultimate purchaser of taxed aviation fuel if the aviation fuel is used in a nontaxable use.[35] A claim for payment may be made on Form 8849 or on Form 720, Schedule C. A claim made on Form 720, Schedule C, may be netted against the claimant's excise tax liability.[36] Claims for payment not so taken may be allowable as income tax credits[37] on Form 4136, Credit for Federal Tax Paid on Fuels.

REASONS FOR CHANGE

The Committee believes that the present law rules for taxation of aviation fuel create opportunities for widespread abuse and evasion of fuels excise taxes. In general, aviation fuel is taxed on its sale, whereas other fuel generally is taxed on its removal from a refinery or terminal rack. Because the incidence of tax on aviation fuel is sale and not removal, under present law, aviation fuel may be removed from a refinery or terminal rack tax free if such fuel is intended for use in aviation purposes. The Committee is aware that unscrupulous persons are removing fuel tax free, purportedly for aviation use, but then selling the fuel for highway use, charging their customer the full rate of tax that would be owed on highway fuel, and keeping the amount of the tax.

In order to prevent such fraud, the Committee believes that it is appropriate to conform the tax treatment of all taxable fuels by shifting the incidence of taxation on aviation fuel from the sale of aviation fuel to the removal of such fuel from a refinery or terminal rack. In general, all removals of aviation fuel will be fully taxed at the time of removal, therefore minimizing the cost to the govern-

[32] Sec. 4091(d).
[33] Treas. Reg. sec. 48.4091–3(b).
[34] Treas. Reg. sec. 48.4091–3(d)(1).
[35] Sec. 6427(1)(1).
[36] Treas. Reg. sec. 40.6302(c)–1(a)(3).
[37] Sec. 34.

ment of the fraudulent diversion of aviation fuel for non-aviation uses. If fuel is later used for an aviation use to which a reduced rate of tax applies, refunds are available. The Committee notes that when the incidence of tax for other fuels (for example, gasoline or diesel) was shifted to the terminal rack, collection of the tax increased significantly indicating that fraud had been occurring.

The proposal provides exceptions to the general rule in cases where the opportunities for fraud are insignificant. For example, if fuel is removed from an airport terminal directly into the wing of a commercial aircraft by a hydrant system, it is clear that the fuel will be used in commercial aviation and that the reduced rate of tax for commercial aviation should apply. In addition, if a terminal is located within a secure airport and, except in exigent circumstances, does not fuel highway vehicles, then the Committee believes it is appropriate to permit certain airline refueling vehicles to transport fuel from the terminal rack directly to the wing of an aircraft and have the applicable rate of tax (reduced or otherwise) apply upon removal from the refueling vehicle.

EXPLANATION OF PROVISION

The provision changes the incidence of taxation of aviation fuel from the sale of aviation fuel to the removal of aviation fuel from a refinery or terminal, or the entry into the United States of aviation fuel. Sales of not previously taxed aviation fuel to an unregistered person also are subject to tax.

Under the provision, the full rate of tax—21.9 cents per gallon—is imposed upon removal of aviation fuel from a refinery or terminal (or entry into the United States). Aviation fuel may be removed at a reduced rate—either 4.4 or zero cents per gallon—only if the aviation fuel is: (1) removed directly into the wing of an aircraft (i) that is registered with the Secretary as a buyer of aviation fuel for use in commercial aviation (e.g., a "Y" registrant under current law), (ii) that is a foreign airline entitled to the present law exemption for aviation fuel used in foreign trade, or (iii) for a tax-exempt use; or (2) removed or entered as part of an exempt bulk transfer.[38] An exempt bulk transfer is a removal or entry of aviation fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the aviation fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered with the Secretary.

Under a special rule, the provision treats certain refueler trucks, tankers, and tank wagons as a terminal if certain requirements are met. For the special rule to apply, a qualifying truck, tanker, or tank wagon must be loaded with aviation fuel from a terminal: (1) that is located within an airport, and (2) from which no vehicle licensed for highway use is loaded with aviation fuel, except in exigent circumstances identified by the Secretary in regulations. The Committee intends that a terminal is located within an airport if the terminal is located in a secure facility on airport grounds. For example, if an access road runs between a terminal and an airport's runways, and the terminal, like the runways, is physically located on airport grounds and is part of a secure facility, the Committee intends that under the provision the terminal is located

[38] See sec. 4081(a)(1)(B).

within the airport. The Committee intends that an exigent circumstance under which loading a vehicle registered for highway use with fuel would not disqualify a terminal under the special rule, would include, for example, the unloading of fuel from bulk storage tanks into highway vehicles in order to repair the storage tanks.

In order to qualify for the special rule, a refueler truck, tanker, or tank wagon must: (1) deliver the aviation fuel directly into the wing of the aircraft at the airport where the terminal is located; (2) have storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft; (3) not be licensed for highway use; and (4) be operated by the terminal operator (who operates the terminal rack from which the fuel is unloaded) or by a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or tank wagon.[39]

The provision does not change the applicable rates of tax under present law, 21.9 cents per gallon for use in noncommercial aviation, 4.4 cents per gallon for use in commercial aviation, and zero cents per gallon for use by domestic airlines in an international flight, by foreign airlines, or other nontaxable use. The provision imposes liability for the tax on aviation fuel removed from a refinery or terminal directly into the wing of an aircraft for use in commercial aviation on the person receiving the fuel, in which case, such person self-assesses the tax on a return. The provision does not change present-law nontaxable uses of aviation fuel, or change the persons or the qualifications of persons who are entitled to purchase fuel at a reduced rate, except that a producer is not permitted to purchase aviation fuel at a reduced rate by reason of such persons' status as a producer.

Under the provision, a refund is allowable to the ultimate vendor of aviation fuel if such ultimate vendor purchases fuel tax paid and subsequently sells the fuel to a person qualified to purchase at a reduced rate and who waives the right to a refund. In such a case, the provision permits an ultimate vendor to net refund claims against any excise tax liability of the ultimate vendor, in a manner similar to the present law treatment of ultimate purchaser payment claims.

As under present law, if previously taxed aviation fuel is used for a nontaxable use, the ultimate purchaser may claim a refund for the tax previously paid. If previously taxed aviation fuel is used for a taxable non aircraft use, the fuel is subject to the tax imposed on kerosene (24.4 cents per gallon) and a refund of the previously paid aviation fuel tax is allowed. Claims by the ultimate vendor or the purchaser that are not taken as refund claims may be allowable as income tax credits.

For example, for an airport that is not served by a pipeline, aviation fuel generally is removed from a terminal and transported to an airport storage facility for eventual use at the airport. In such a case, the aviation fuel will be taxed at 21.9 cents per gallon upon removal from the terminal. At the airport, if the fuel is purchased from a vendor by a person registered with the Secretary to use fuel in commercial aviation, the purchaser may buy the fuel at a re-

[39] The provision requires that if such delivery of information is provided to a terminal operator (or if a terminal operator collects such information), that the terminal operator provide such information to the Secretary.

duced rate (generally, 4.4 cents per gallon for domestic flights and zero cents per gallon for international flights) and waive the right to a refund. The ultimate vendor generally may claim a refund for the difference between 21.9 cents per gallon of tax paid upon removal and the rate of tax paid to the vendor by the purchaser. To obtain a zero rate upon purchase, a registered domestic airline must certify to the vendor at the time of purchase that the fuel is for use in an international flight; otherwise, the airline must pay the 4.4 cents per gallon rate and file a claim for refund to the Secretary if the fuel is used for international aviation. If a zero rate is paid and the fuel subsequently is used in domestic and not international travel, the domestic airline is liable for tax at 4.4 cents per gallon. A foreign airline eligible under present law to purchase aviation fuel tax-free would continue to purchase such fuel tax-free.

As another example, for an airport that is served by a pipeline, aviation fuel generally is delivered to the wing of an aircraft either by a refueling truck or by a "hydrant" that runs directly from the pipeline to the airplane wing. If a refueling truck that is not licensed for highway use loads fuel from a terminal located within the airport (and the other requirements of the provision for such truck and terminal are met), and delivers the fuel directly to the wing of an aircraft for use in commercial aviation, the aviation fuel is taxed at 4.4 cents per gallon upon delivery to the wing and the person receiving the fuel is liable for the tax, which such person would be able to self-assess on a return.[40] If fuel is loaded into a refueling truck that does not meet the requirements of the provision, then the fuel is treated as removed from the terminal into the refueling truck and tax of 21.9 cents per gallon is paid on such removal. The ultimate vendor is entitled to a refund of the difference between 21.9 cents per gallon paid on removal and the rate paid by a commercial airline purchaser (assuming the purchaser waived the refund right). If fuel is removed from a terminal directly to the wing of an aircraft registered to use fuel in commercial aviation by a hydrant or similar device, the person removing the aviation fuel is liable for a tax of 4.4 cents per gallon (or zero in the case of an international flight or qualified foreign airline) and may self-assess such tax on a return.

Under the provision, a floor stocks tax applies to aviation fuel held by a person (if title for such fuel has passed to such person) on October 1, 2004. The tax is equal to the amount of tax that would have been imposed before October 1, 2004, if the provision was in effect at all times before such date, reduced by the tax imposed by section 4091, as in effect on the day before the date of enactment. The Secretary shall determine the time and manner for payment of the tax, including the nonapplication of the tax on de minimis amounts of aviation fuel. Under the provision, 0.1 cents per gallon of such tax is transferred to the LUST Trust Fund. The remainder is transferred to the Airport and Airway Trust Fund.

EFFECTIVE DATE

The provision is effective for aviation fuel removed, entered, or sold after September 30, 2004.

[40] Alternatively, if the aviation fuel in the example is for use in noncommercial aviation, the fuel is taxed at 21.9 cents per gallon upon delivery into the wing. Self-assessment of the tax would not apply in such case.

C. Mechanical Dye Injection Equipment and Related Penalties

(Sec. 203 of the bill and sec. 4082 and new sec. 6715A of the Code)

PRESENT LAW

Overview

Diesel fuel is usually dyed at a terminal rack by either manual dyeing or mechanical injection. At a terminal using a typical manual dyeing technique, a measured amount of dye is manually placed into an empty tank compartment of a transport trailer while the trailer is at the terminal rack. Then, as diesel fuel is pumped into the compartment at the rack, the dye and the fuel are mixed together. Further mixing occurs through the motion of the trailer as it moves on the highway.

At a terminal using a typical mechanical injection system, a measured amount of dye is automatically injected into the diesel fuel as the fuel is delivered into a compartment of a transport trailer at the terminal rack.

Statutory rules

Gasoline, diesel fuel and kerosene are generally subject to excise tax upon removal from a refinery or terminal, upon importation into the United States, and upon sale to unregistered persons unless there was a prior taxable removal or importation of such fuels.[41] However, a tax is not imposed upon diesel fuel or kerosene if all of the following are met: (1) the Secretary determines that the fuel is destined for a nontaxable use, (2) the fuel is indelibly dyed in accordance with regulations prescribed by the Secretary,[42] and (3) the fuel meets marking requirements prescribed by the Secretary.[43] A nontaxable use is defined as (1) any use that is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax, (2) any use in a train, or (3) certain uses in buses for public and school transportation, as described in section 6427(b)(1) (after application of section 6427(b)(3)).[44]

The Secretary is required to prescribe necessary regulations relating to dyeing, including specifically the labeling of retail diesel fuel and kerosene pumps.[45]

A person who sells dyed fuel (or holds dyed fuel for sale) for any use that such person knows (or has reason to know) is a taxable use, or who willfully alters or attempts to alter the dye in any dyed

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[41] Sec. 4081(a)(1)(A). If such fuel is used for a nontaxable purpose, the purchaser is entitled to a refund of tax paid, or in some cases, an income tax credit. See sec. 6427. See also sec. 6421 (allowing certain credits or refunds for off-highway business use and certain other exempt uses of gasoline).

[42] Dyeing is not a requirement, however, for certain fuels under certain conditions, *i.e.*, diesel fuel or kerosene exempted from dyeing in certain States by the EPA under the Clean Air Act, aviation-grade kerosene as determined under regulations prescribed by the Secretary, kerosene received by pipeline or vessel and used by a registered recipient to produce substances (other than gasoline, diesel fuel or special fuels), kerosene removed or entered by a registrant to produce such substances or for resale, and (under regulations) kerosene sold by a registered distributor who sells kerosene exclusively to ultimate vendors that resell it (1) from a pump that is not suitable for fueling any diesel-powered highway vehicle or train, or (2) for blending with heating oil to be used during periods of extreme or unseasonable cold. Sec. 4082(c), (d).

[43] Sec. 4082(a).

[44] Sec. 4082(b).

[45] Sec. 4082(e).

fuel, is subject to a penalty.[46] The penalty also applies to any person who uses dyed fuel for a taxable use (or holds dyed fuel for such a use) and who knows (or has reason to know) that the fuel is dyed.[47] The penalty is the greater of $1,000 per act or $10 per gallon of dyed fuel involved. In determining the amount of the penalty, the $1,000 is increased by the product of $1,000 and the number of prior penalties imposed upon such person (or a related person or predecessor of such person or related person).[48] The penalty may be imposed jointly and severally on any business entity, each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty.[49] For purposes of the penalty, the term "dyed fuel" means any dyed diesel fuel or kerosene, whether or not the fuel was dyed pursuant to section 4082.[50]

Regulations

The Secretary has prescribed certain regulations under this provision, including regulations that specify the allowable types and concentration of dye, that the person claiming the exemption must be a taxable fuel registrant, that the terminal must be an approved terminal (in the case of a removal from a terminal rack), and the contents of the notice to be posted on diesel fuel and kerosene pumps.[51] However, the regulations do not prescribe the time or method of adding the dye to taxable fuel.[52]

REASONS FOR CHANGE

The Federal government, State governments, and various segments of the petroleum industry have long been concerned with the problem of diesel fuel tax evasion. To address this problem, Congress changed the law to require that untaxed diesel fuel be indelibly dyed. The Committee is concerned, however, that tax can still be evaded through removals at a terminal of undyed fuel that has been designated as dyed.

Manual dyeing is inherently difficult to monitor. It occurs after diesel fuel has been withdrawn from a terminal storage tank, generally requires the work of several people, is imprecise, and does not automatically create a reliable record. The Committee believes that requiring that untaxed diesel fuel be dyed only by mechanical injection will significantly reduce the opportunities for diesel fuel tax evasion.

The Committee further believes that security of such mechanical dyeing systems will be enhanced by the establishment of standards for making such systems tamper resistant, and by the addition of new penalties for tampering with such mechanical dyeing systems and for failing to maintain the established security standards for such systems. In furtherance of the enforcement of these penalties in the case of business entities, it is appropriate to impose joint

[46] Sec. 6715(a).
[47] Sec. 6715(a).
[48] Sec. 6715(b).
[49] Sec. 6715(d).
[50] Sec. 6715(c)(1).
[51] See Treas. Reg. secs. 48.4082–1, –2.
[52] In March 2000, the IRS withdrew its Notice of Proposed Rulemaking PS–6–95 (61 F.R. 10490 (1996)) relating to dye injection systems. Announcement 2000–42, 2000–1 C.B. 949. The proposed regulation established standards for mechanical dye injection equipment and required terminal operators to report nonconforming dyeing to the IRS. See also Treas. Reg. sec. 48.4082–1(c), (d).

and several liability for such penalties upon natural persons who have willfully participated in any act giving rise to these penalties and upon the parent corporation of an affiliated group of which the business entity is a member.

EXPLANATION OF PROVISION

With respect to terminals that offer dyed fuel, the provision eliminates manual dyeing of fuel and requires dyeing by a mechanical system. Not later than 180 days after enactment of this provision, the Secretary of the Treasury is to prescribe regulations establishing standards for tamper resistant mechanical injector dyeing. Such standards shall be reasonable, cost-effective, and establish levels of security commensurate with the applicable facility.

The provision adds an additional set of penalties for violation of the new rules. A penalty, equal to the greater of $25,000 or $10 for each gallon of fuel involved, applies to each act of tampering with a mechanical dye injection system. The person committing the act is also responsible for any unpaid tax on removed undyed fuel. A penalty of $1,000 is imposed for each failure to maintain security for mechanical dye injection systems. An additional penalty of $1,000 is imposed for each day any such violation remains uncorrected after the first day such violation has been or reasonably should have been discovered. For purposes of the daily penalty, a violation may be corrected by shutting down the portion of the system causing the violation. If any of these penalties are imposed on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty. If such business entity is part of an affiliated group, the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty.

EFFECTIVE DATE

The provision requiring the use of mechanical dye injection systems and imposing penalties is effective 180 days after the date that the Secretary issues the required regulations. The Secretary must issue such regulations no later than 180 days after enactment.

D. AUTHORITY TO INSPECT ON-SITE RECORDS

(Sec. 204 of the bill and sec. 4083 of the Code)

PRESENT LAW

The IRS is authorized to inspect any place where taxable fuel is produced or stored (or may be stored). The inspection is authorized to: (1) examine the equipment used to determine the amount or composition of the taxable fuel and the equipment used to store the fuel; and (2) take and remove samples of taxable fuel. Places of inspection, include, but are not limited to, terminals, fuel storage facilities, retail fuel facilities or any designated inspection site.[53]

In conducting the inspection, the IRS may detain any receptacle that contains or may contain any taxable fuel, or detain any vehicle

[53] Sec. 4083(c)(1)(A).

or train to inspect its fuel tanks and storage tanks. The scope of the inspection includes the book and records kept to determine the excise tax liability under section 4081.[54]

REASONS FOR CHANGE

The Committee believes it is appropriate to expand the authority of the IRS to make on site inspections of books and records. The Committee believes that such expanded authority will aid in the detection of fuel tax evasion and the enforcement of Federal fuel taxes.

EXPLANATION OF PROVISION

The provision expands the scope of the inspection to include any books, records or shipping papers pertaining to the sale and transportation of taxable fuel, located in any authorized inspection locations or possessed by any carrier.

EFFECTIVE DATE

The provision is effective on the date on enactment.

E. Registration and Reporting Requirements

1. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries (sec. 205 of the bill and sec. 4081 of the Code)

PRESENT LAW

In general, gasoline, diesel fuel, and kerosene ("taxable fuel") are taxed upon removal from a refinery or a terminal.[55] Tax also is imposed on the entry into the United States of any taxable fuel for consumption, use, or warehousing. The tax does not apply to any removal or entry of a taxable fuel transferred in bulk (a "bulk transfer") to a terminal or refinery if both the person removing or entering the taxable fuel and the operator of such terminal or refinery are registered with the Secretary.[56]

Present law does not require that the vessel or pipeline operator that transfers fuel as part of a bulk transfer be registered in order for the transfer to be exempt. For example, a registered refiner may transfer fuel to an unregistered vessel or pipeline operator who in turn transfers fuel to a registered terminal operator. The transfer is exempt despite the intermediate transfer to an unregistered person.

In general, the owner of the fuel is liable for payment of tax with respect to bulk transfers not received at an approved terminal or refinery.[57] The refiner is liable for payment of tax with respect to certain taxable removals from the refinery.[58]

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[54] Treas. Reg. sec. 48.4083–1(b)(2).
[55] Sec. 4081(a)(1)(A).
[56] Sec. 4081(a)(1)(B). The sale of a taxable fuel to an unregistered person prior to a taxable removal or entry of the fuel is subject to tax. Sec. 4081(a)(1)(A).
[57] Treas. Reg. sec. 48.4081–3(e)(2).
[58] Treas. Reg. sec. 48.4081–3(b)

REASONS FOR CHANGE

The Committee is concerned that unregistered pipeline and vessel operators are receiving transfers in bulk of taxable fuel, and then diverting the fuel to retailers or end users without the tax ever being paid. The Committee believes that requiring that a pipeline or vessel operator be registered with the IRS in order to claim a bulk transfer exemption, in combination with other provisions that impose penalties relating to registration, will help to ensure that transfers of fuel in bulk are delivered as intended to approved refineries and terminals and taxed appropriately.

EXPLANATION OF PROVISION

The provision requires that for a bulk transfer of a taxable fuel to be exempt from tax, any pipeline or vessel operator that is a party to the bulk transfer be registered with the Secretary. Transfer to an unregistered party will subject the transfer to tax.

The Secretary is required to publish periodically a list of all registered persons that are required to register.

EFFECTIVE DATE

The provision is effective on October 1, 2004, except that the Secretary is required to publish the list of registered persons beginning on July 1, 2004.

2. Display of registration and penalties for failure to display registration and to register (secs. 206 and 207 of the bill, secs. 4101, 7232, 7272 and new secs. 6717 and 6718 of the Code)

PRESENT LAW

Blenders, enterers, pipeline operators, position holders, refiners, terminal operators, and vessel operators are required to register with the Secretary with respect to fuels taxes imposed by sections 4041(a)(1) and 4081.[59] A non-assessable penalty for failure to register is $50.[60] A criminal penalty of $5,000, or imprisonment of not more than five years, or both, together with the costs of prosecution also applies to a failure to register and to certain false statements made in connection with a registration application.[61]

REASONS FOR CHANGE

Registration with the Secretary is a critical component of enabling the Secretary to regulate the movement and use of taxable fuels and ensure that the appropriate excise taxes are being collected. The Committee believes that present law penalties are not severe enough to ensure that persons that are required to register in fact register. Accordingly, the Committee believes it is appropriate to increase present law penalties significantly and to add a new assessable penalty for failure to register. In addition, the Committee believes that persons that do business with vessel operators should be able easily to verify whether the vessel operator is registered. Thus, the Committee requires that vessel operators display

[59] Sec. 4104; Treas. Reg. sec. 48.4101–1(a) and (c)(1).
[60] Sec. 7272(a).
[61] Sec. 7232.

proof of registration on their vessels and imposes an attendant penalty for failure to display such proof.

EXPLANATION OF PROVISION

The provision requires that every operator of a vessel who is required to register with the Secretary display on each vessel used by the operator to transport fuel, proof of registration through an electronic identification device prescribed by the Secretary. A failure to display such proof of registration results in a penalty of $500 per month per vessel. The amount of the penalty is increased for multiple prior violations. No penalty is imposed upon a showing by the taxpayer of reasonable cause. The provision authorizes amounts equivalent to the penalties received to be appropriated to the Highway Trust Fund.

The provision imposes a new assessable penalty for failure to register of $10,000 for each initial failure, plus $1,000 per day that the failure continues. No penalty is imposed upon a showing by the taxpayer of reasonable cause. In addition, the provision increases the present-law non-assessable penalty for failure to register from $50 to $10,000 and the present law criminal penalty for failure to register from $5,000 to $10,000. The provision authorizes amounts equivalent to any of such penalties received to be appropriated to the Highway Trust Fund.

EFFECTIVE DATE

The provision requiring display of registration is effective on October 1, 2004. The provision relating to penalties is effective for penalties imposed after September 30, 2004.

3. Penalties for failure to report (sec. 207 of the bill and new sec. 6725 of the Code)

PRESENT LAW

A fuel information reporting program, the Excise Summary Terminal Activity Reporting System ("ExSTARS"), requires terminal operators and bulk transport carriers to report monthly on the movement of any liquid product into or out of an approved terminal.[62] Terminal operators file Form 720–TO—Terminal Operator Report, which shows the monthly receipts and disbursements of all liquid products to and from an approved terminal.[63] Bulk transport carriers (barges, vessels, and pipelines) that receive liquid product from an approved terminal or deliver liquid product to an approved terminal file Form 720–CS—Carrier Summary Report, which details such receipts and disbursements. In general, the penalty for failure to file a report or a failure to furnish all of the required information in a report is $50 per report.[64]

[62] Sec. 4010(d); Treas. Reg. sec. 48.4101–2. The reports are required to be filed by the end of the month following the month to which the report relates.

[63] An approved terminal is a terminal that is operated by a taxable fuel registrant that is a terminal operator. Treas. Reg. sec. 48.4081–1(b).

[64] Sec. 6721(a).

REASONS FOR CHANGE

The Committee believes that the proper and timely reporting of the disbursements of taxable fuels under the ExSTARs system is essential to the Treasury Department's ability to monitor and enforce the excise fuels taxes. Accordingly, the Committee believes it is appropriate to provide for significant penalties if required information is not provided accurately, completely, and on a timely basis.

EXPLANATION OF PROVISION

The provision imposes a new assessable penalty for failure to file a report or to furnish information required in a report required by the ExSTARS system. The penalty is $10,000 per failure with respect to each vessel or facility (e.g., a terminal or other facility) for which information is required to be furnished. No penalty is imposed upon a showing by the taxpayer of reasonable cause. The provision authorizes amounts equivalent to the penalties received to be appropriated to the Highway Trust Fund.

EFFECTIVE DATE

The provision is effective for penalties imposed after September 30, 2004.

F. Collection From Customs Bond Where Importer Not Registered

(Sec. 208 of the bill and new sec. 4104 of the Code)

PRESENT LAW

Typically, gasoline, diesel fuel, and kerosene are transferred by pipeline or barge in large quantities ("bulk") to terminal storage facilities that geographically are located closer to destination retail markets. A fuel is taxed when it "breaks bulk," i.e., when it is removed from the refinery or terminal, typically by truck or rail car, for delivery to a smaller wholesale facility or a retail outlet. The party liable for payment of the taxes is the "position holder," i.e., the person shown on the records of the terminal facility as holding the inventory position in the fuel.

Tax is also imposed on the entry into the United States of any taxable fuel for consumption, use, or warehousing.[65] This tax does not apply to any entry of a taxable fuel transferred in bulk to a terminal or refinery if the person entering the taxable fuel and the operator of such terminal or refinery are registered. The "enterer" is liable for the tax. An enterer generally means the importer of record (under customs law) with respect to the taxable fuel. However, if the importer of record is acting as an agent (a broker for example), the person for whom the agent is acting is the enterer. If there is no importer of record for taxable fuel entered into the United States, the owner of the taxable fuel at the time it is brought into the United States is the enterer. An importer's liability for Customs duties includes a liability for any internal revenue

[65] Sec. 4081(a)(1)(A)(iii).

taxes that attach upon the importation of merchandise unless otherwise provided by law or regulation.[66]

As a part of the entry documentation, the importer, consignee, or an authorized agent usually is required to file a bond with Customs. The bond, among other things, guarantees that proper entry summary, with payment of estimated duties and taxes when due, will be made for imported merchandise and that any additional duties and taxes subsequently found to be due will be paid.

As a condition of permitting anyone to be registered with the IRS, under section 4101 of the Code, the Secretary may require that such person give a bond in such sum as the Secretary determines appropriate.

REASONS FOR CHANGE

It is the Committee's understanding that fuel is brought into the United States by unregistered parties and the appropriate tax is not being remitted. Therefore, the Committee believes it is appropriate to allow the Secretary to recover the tax due from the Customs bond.

EXPLANATION OF PROVISION

Under the provision, the importer of record is jointly and severally liable for the tax imposed upon entry of fuel into the United States if, under regulations, any other person that is not registered with the Secretary as a taxable fuel registrant is liable for such tax. If the importer of record is liable for the tax and such tax is not paid on or before the last date prescribed for payment, the Secretary may collect such tax from the Customs bond posted with respect to the importation of the taxable fuel to which the tax relates.

For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any action by the Secretary to collect the tax from the Customs bond is treated as an action to collect tax from a bond authorized by section 4101 of the Code, not as an action to collect from a bond relating to the importation of merchandise.

EFFECTIVE DATE

The provision is effective for fuel entered after September 30, 2004.

G. MODIFICATION OF THE USE TAX ON HEAVY HIGHWAY VEHICLES

(Sec. 209 of the bill and secs. 4481, 4483 and 6156 of the Code)

PRESENT LAW

An annual use tax is imposed on heavy highway vehicles, at the rates below.[67]

Under 55,000 pounds	No tax.
55,000–75,000 pounds	$100 plus $22 per 1,000 pounds over 55,000.
Over 75,000 pounds	$550.

[66] 19 CFR 141.3.
[67] Sec. 4481.

The annual use tax is imposed for a taxable period of July 1 through June 30. Generally, the tax is paid by the person in whose name the vehicle is registered. In certain cases, taxpayers are allowed to pay the tax in installments.[68] State governments are required to receive proof of payment of the highway use tax as a condition of vehicle registration.

Exemptions and reduced rates are provided for certain "transit-type buses," trucks used for fewer than 5,000 miles on public highways (7,500 miles for agricultural vehicles), and logging trucks.[69] 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 for Canadian and Mexican vehicles is 75 percent of the rate that would otherwise be imposed.[70]

REASONS FOR CHANGE

The Committee notes that in the case of taxpayers that elect quarterly installment payments, the IRS has no procedure for ensuring that installments subsequent to the first one actually are paid. Thus, it is possible for taxpayers to receive State registrations when only the first quarterly installment is paid with the return. Similarly, it is possible for taxpayers repeatedly to pay the first quarterly installment and continue to receive State registrations because the IRS has no computerized system for checking past compliance when it issues certificates of payment for the current year. In the case of taxpayers owning only one or a few vehicles, it is not cost effective for the IRS to monitor and enforce compliance. Thus, the Committee believes it is appropriate to eliminate the ability of taxpayers to pay the use tax in installments. The Committee also believes that Canadian and Mexican vehicles operating on U.S. highways should be subject to the full amount of use tax, as such vehicles contribute to the wear and tear on U.S. highways.

EXPLANATION OF PROVISION

The provision eliminates the ability to pay the tax in installments. It also eliminates the reduced rates for Canadian and Mexican vehicles. The proposal requires taxpayers with 25 or more vehicles for any taxable period to file their returns electronically. Finally, the proposal permits proration of tax for vehicles sold during the taxable period.

EFFECTIVE DATE

The provision is effective for taxable periods beginning after the date of enactment.

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[68] Sec. 6156.
[69] See generally, sec. 4483.
[70] Sec. 4483(f): Treas. Reg. sec. 41.4483–7(a).

H. Modification of Ultimate Vendor Refund Claims with Respect to Farming

(Sec. 210 of the bill and sec. 6427 of the Code)

PRESENT LAW

In general, the Code provides that, if diesel fuel, kerosene, or aviation fuel on which tax has been imposed is used by any person in a nontaxable use, the Secretary is to refund (without interest) the amount of tax imposed. The refund is made to the ultimate purchaser of the taxed fuel. However, in the case of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, refund payments are paid to the ultimate, registered vendors ("ultimate vendors") of such fuels.

REASONS FOR CHANGE

The Committee reaffirms its belief that fuel used for farming purposes be exempt from tax, but is concerned that, when large quantities of undyed, or clear, diesel fuel or kerosene are sold for exempt uses and a refund claimed by the "ultimate vendor," there is an increased possibility of diversion of fuel to taxable uses. If there were no expense to the provision and storage of dyed fuel, and if dyed fuel were easily available at all times and locations, the Committee would prefer that only dyed fuel be sold for exempt purposes. However, the Committee recognizes that, to insure sufficient quantities of fuel are available in a timely manner for farming purposes, sometimes clear fuel must be sold to the farmer. In such circumstances, a refund for the tax paid in the price of the clear fuel is appropriate. The Committee believes that the person engaged in farming who purchases the clear fuel is in the best position to certify that the taxed fuel is, in fact, used for farming purposes and therefore it is more appropriate for such a person to claim refunds, rather than the "ultimate vendor" who, as a dealer in fuels, really has no knowledge as to what use the fuel will be put. Notwithstanding this general conclusion, the Committee believes it is appropriate to permit "ultimate vendor" refunds when small amounts of fuel are purchased to ease the filing burden on farmers who purchase small quantities of clear fuel.

EXPLANATION OF PROVISION

In the case of diesel fuel or kerosene used on a farm for farming purposes, the provision limits ultimate vendor claims for refund to sales of such fuel in amounts less than 250 gallons per farmer per claim period. Qualifying ultimate vendor claims for refund with respect to fuel sales to farmers may be filed for refund amounts totaling $200 or more ($100 or more in the case of kerosene) accrued over any period greater than one week. However, no claim for refund is allowed unless filed on or before the last day of the quarter following the earliest calendar quarter in which an exempt sale was made for which a refund is being claimed.

EFFECTIVE DATE

The provision is effective for fuels sold for nontaxable use after the date of enactment.

I. Dedication of Revenue from Certain Penalties to the Highway Trust Fund

(Sec. 211 of the bill and sec. 9503 of the Code)

PRESENT LAW

Present law does not dedicate to the Highway Trust Fund any penalties assessed and collected by the Secretary.

REASONS FOR CHANGE

The Committee believes it is appropriate to dedicate to the Highway Trust Fund penalties associated with the administration and enforcement of taxes supporting the Highway Trust Fund.

EXPLANATION OF PROVISION

The provision dedicates to the Highway Trust Fund amounts equivalent to the penalties assessed under the penalty provisions created by the bill as well as the existing penalties (as increased by the provision) for failing to register under section 4101 and as otherwise required by law or regulation.

EFFECTIVE DATE

The provision is effective for penalties assessed after October 1, 2004.

TITLE III—OTHER HIGHWAY EXCISE TAX PROVISIONS

A. Taxable Fuel Refunds for Certain Ultimate Vendors

(Sec. 301 of the bill and secs. 6416 and 6427 of the Code)

PRESENT LAW

The Code provides that, in the case of gasoline on which tax has been paid and sold to a State or local government, to a nonprofit educational organization, for supplies for vessels or aircraft, for export, or for the production of special fuels, a wholesale distributor that sells the gasoline for such exempt purposes is treated as the person who paid the tax and thereby is the proper claimant for a credit or refund of the tax paid. In the case of undyed diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, a credit or payment is allowable only to the ultimate, registered vendors ("ultimate vendors") of such fuels.

In general, refunds are paid without interest. However, in the case of overpayments of tax on gasoline, diesel fuel, or kerosene that is used to produce a qualified alcohol mixture and for refunds due ultimate vendors of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, the Secretary is required to pay interest on certain refunds. The Secretary must pay interest on refunds of $200 or more ($100 or more in the case of kerosene) due to the taxpayer arising from sales over any period of a week or more, if the Secretary does not make payment of the refund within 20 days.

REASONS FOR CHANGE

The Committee observes that refund procedures for gasoline differ from those for diesel fuel and kerosene. The Committee believes that simplification of administration can be achieved for both taxpayers and the IRS by providing a more uniform refund procedure applicable to all taxed highway fuels. The Committee further believes that compliance can be increased and administration made less costly by increased use of electronic filing.

The Committee further observes that often State and local governments find it prudent to monitor and pay for fuel purchases by the use of a credit card, fleet buying card, or similar arrangement. In such a case the person extending the credit stands between the vendor of fuel and purchaser of fuel (the State or local government) in an exempt transaction, and the person extending the credit insures payment of the fuel bill thereby paying the amount of any tax owed that is embedded in the price of the fuel. In addition, because the person extending credit to the tax-exempt purchaser has a contractual relationship with the tax-exempt user, the person extending the credit should be best able to establish that the fuel should be sold at a tax-exempt price. The Committee believes that in such a situation it is appropriate to deem the person extending the credit to hold ultimate vendor status, not withstanding that such a person is not actually a vendor of fuel. The Committee observes that the billing service provided by the person extending credit to the tax-exempt purchaser creates a "paper trail" that should facilitate compliance and aid in any necessary audits that the IRS may undertake.

EXPLANATION OF PROVISION

For sales of gasoline to a State or local government for the exclusive use of a State or local government or to a nonprofit educational organization for its exclusive use on which tax has been imposed, the provision conforms the payment of refunds to that procedure established under present law in the case of diesel fuel or kerosene. That is, the ultimate vendor claims the refund.

The provision modifies the payment of interest on refunds. Under the provision, in the case of overpayments of tax on gasoline, diesel fuel, or kerosene that is used to produce a qualified alcohol mixture and for refunds due ultimate vendors of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, all refunds unpaid after 45 days must be paid with interest. If the taxpayer has filed for his or her refund by electronic means, refunds unpaid after 20 days must be paid with interest.

Lastly, for claims for refund of tax paid on diesel fuel or kerosene sold to State and local governments or for sales of gasoline to a State or local government for the exclusive use of a State or local government or to a nonprofit educational organization for its exclusive use on which tax has been imposed and for which the ultimate purchaser utilized a credit card, the provision deems the person extending the credit to the ultimate purchaser to be the ultimate vendor. That is, the person extending credit via a credit card administers claims for refund, and is responsible for supplying all the appropriate documentation currently required from ultimate vendors.

EFFECTIVE DATE

The provision is effective on October 1, 2004.

B. TWO-PARTY EXCHANGES

(Sec. 302 of the bill and new sec. 4105 of the Code)

PRESENT LAW

Most fuel is taxed when it is removed from a registered terminal.[71] The party liable for payment of this tax is the "position holder." The position holder is the person reflected on the records of the terminal operator as holding the inventory position in the fuel.[72]

It is common industry practice for oil companies to serve customers of other oil companies under exchange agreements, e.g., where Company A's terminal is more conveniently located for wholesale or retail customers of Company B. In such cases, the exchange agreement party (Company B in the example) owns the fuel when the motor fuel is removed from the terminal and sold to B's customer.

REASONS FOR CHANGE

The Committee believes it is appropriate to recognize industry practice under exchange agreements by relieving the original position holder of tax liability for the removal of a taxable fuel from a terminal if certain circumstances are met.

EXPLANATION OF PROVISION

The provision permits two registered parties to switch position holder status in fuel within a registered terminal (thereby relieving the person originally owning the fuel[73] of tax liability as the position holder) if all of the following occur:

(1) The transaction includes a transfer from the original owner, i.e., the person who holds the original inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator prior to the transaction.

(2) The exchange transaction occurs at the same time as completion of removal across the rack from the terminal by the receiving person or its customer.

(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across a terminal rack for purposes of reporting the transaction to the Internal Revenue Service.

(4) The transaction is the subject of a written contract.

EFFECTIVE DATE

The provision is effective on the date of enactment.

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[71] A "terminal" is a storage and distribution facility that is supplied by pipeline or vessel, and from which fuel may be removed at a rack. A "rack" is a mechanism capable of delivering taxable fuel into a means of transport other than a pipeline or vessel.

[72] Such person has a contractual agreement with the terminal operator to store and provide services with respect to the fuel. A "terminal operator" is any person who owns, operates, or otherwise controls a terminal. A terminal operator can also be a position holder if that person owns fuel in its terminal.

[73] In the provision, this person is referred to as the "delivering person."

C. Simplification of Tax on Tires

(Sec. 303 of the bill and sec. 4071 of the Code)

PRESENT LAW

A graduated excise tax is imposed on the sale by a manufacturer (or importer) of tires designed for use on highway vehicles (sec. 4071). The tire tax rates are as follows:

Tire weight	*Tax rate*
Not more than 40 lbs.	No tax.
More than 40 lbs., but not more than 70 lbs.	15 cents/lb. in excess of 40 lbs.
More than 70 lbs., but not more than 90 lbs.	$4.50 plus 30 cents/lb. in excess of 70 lbs.
More than 90 lbs.	$10.50 plus 50 cents/lb. in excess of 90 lbs.

No tax is imposed on the recapping of a tire that previously has been subject to tax. Tires of extruded tiring with internal wire fastening also are exempt.

The tax expires after September 30, 2005.

REASONS FOR CHANGE

Under present law, the tire excise tax is based on the weight of each tire. This forces tire manufacturers to weigh sample batches of every type of tire made and collect the tax based on that weight. This regime also makes it difficult for the IRS to measure and enforce compliance with the tax, as the IRS likewise must weigh sample batches of tires to ensure compliance. The Committee believes significant administrative simplification for both tire manufacturers and the IRS will be achieved if the tax were based on the weight carrying capacity of the tire, rather than the weight of the tire, because Department of Transportation requires the load rating to be stamped on the side of highway tires. Thus, both the manufacturer and the IRS will know immediately whether a tire is taxable and how much tax should be paid.

EXPLANATION OF PROVISION

The provision modifies the excise tax applicable to tires. The provision replaces the present-law tax rates based on the weight of the tire with a tax rate based on the load capacity of the tire. In general, the tax is 9.4 cents for each 10 pounds of tire load capacity in excess of 3,500 pounds. In the case of a biasply tire, the tax rate is 4.7 cents for each 10 pounds of tire load capacity in excess of 3,500 pounds.

The provision modifies the definition of tires for use on highway vehicles to include any tire marked for highway use pursuant to certain regulations promulgated by the Secretary of Transportation. The provision also exempts from tax any tire sold for the exclusive use of the United States Department of Defense or the United States Coast Guard.

Tire load capacity is the maximum load rating labeled on the tire pursuant to regulations promulgated by the Secretary of Transportation. A biasply tire is any tire manufactured primarily for use on piggyback trailers.

EFFECTIVE DATE

The provision is effective for sales in calendar years beginning more than 30 days after the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 3971.

MOTION TO REPORT THE BILL

The bill, H.R. 3971, as amended was ordered favorably reported by voice vote (with a quorum being present).

VOTES ON AMENDMENTS

An amendment by Mr. Pomeroy that would make ethanol tax subsidies permanent was defeated by voice vote.

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 3971 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2004–2008:

ESTIMATED BUDGET EFFECTS OF H.R. 3971,
THE "HIGHWAY REAUTHORIZATION TAX ACT OF 2004,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2004 - 2008

[Millions of Dollars]

Provision	Effective	2004	2005	2006	2007	2008	2004-08
Restructuring of Incentives for Alcohol Fuels, Etc.							
1. Provide excise tax credit (in lieu of reduced tax rate on gasoline) to certain blenders of alcohol fuel mixtures (sunset 12/31/10)	fsoua 9/30/04	*No Revenue Effect*					
2. Provide that all alcohol fuels excise tax credits and payments are paid from the General Fund [1]	tra 9/30/04 & apa 9/30/04	---	---	---	---	---	---
3. Repeal reduced-rate sales of gasoline for blending with alcohol and reduced-rate sales of alcohol fuel blends	fsoua 9/30/04	---	22	23	23	23	91
4. Provide outlay payments (in lieu of excise tax credits and refunds) to producers of alcohol fuel mixtures:							
a. Outlay effects [2] [3]	fsoua 9/30/04	---	-105	-114	-116	-117	-451
b. Revenue effects	fsoua 9/30/04	---	105	114	116	117	451
5. Transfer full amount of alcohol fuel excise taxes to the Highway Trust Fund (i.e., repeal 2.5/2.8 cents transfer to General Fund)	tia 9/30/03	*No Revenue Effect*					
6. Transfer full amount of motorboat fuel taxes and certain small engine fuel taxes to the Aquatic Resources Trust Fund	tia 9/30/03	*No Revenue Effect*					
Total of Restructuring of Incentives for Alcohol Fuels, Etc.		**---**	**22**	**23**	**23**	**23**	**91**
Reduction of Fuel Tax Evasion							
A. Exemption From Certain Excise Taxes for Mobile Machinery Vehicles	DOE [4]	---	76	95	95	95	360
B. Taxation of Aviation-Grade Kerosene	[5]	---	395	423	426	427	1,671
C. Dye Injection Equipment, Security Standards, and Related Penalties	[6]	---	20	45	45	45	155
D. Authority to Inspect On-Site Records	DOE	*Negligible Revenue Effect*					

Provision	Effective	2004	2005	2006	2007	2008	2004-08
E. Registration and Reporting Requirements							
1. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries [7]	10/1/04	---	115	123	124	124	486
2. Display of registration and penalty for failure to display	[8]	*Revenue Effects Included in Line E.1. Above*					
3. Penalties for failure to register and failure to report	pia 9/30/04	---	2	2	2	2	8
F. Collection From Customs Bonds Where Importer Not Registered	fea 9/30/04	2	7	8	8	8	33
G. Modifications to Heavy Vehicle Use Tax	tpba DOE	106	121	124	126	128	606
H. Modification of Ultimate Vendor Refund Claims With Respect to Farming	fsfnua 9/30/04	*Negligible Revenue Effect*					
I. Dedication of Revenue From Certain Penalties to the Highway Trust Fund	paa 10/1/04	*No Revenue Effect*					
Total of Reduction of Fuel Tax Evasion		**108**	**736**	**820**	**826**	**829**	**3,319**
Other Highway Excise Tax Provisions							
A. Taxable Fuel Refunds for Certain Ultimate Vendors	10/1/04	*Negligible Revenue Effect*					
B. Two-Party Exchanges	DOE	*Negligible Revenue Effect*					
C. Simplify the Heavy Truck Tire Tax [9]	[10]	*Negligible Revenue Effect*					
Total of Other Highway Excise Tax Provisions		***Negligible Revenue Effect***					
NET TOTAL		**108**	**758**	**843**	**849**	**852**	**3,410**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:

apa = amounts paid after
DOE = date of enactment
fea = fuel entered after
fsfnua = fuels sold for nontaxable use after
fsoua = fuel sold or used after
paa = penalties assessed after
pia = penalties imposed after
tia = taxes imposed after
tpba = taxable periods beginning after
tra = taxes received after

[1] The bill provides that the excise tax credit expires after December 31, 2010. If this bill is enacted, the Congressional Budget Office's subsequent baseline would not assume extension of the excise tax credit beyond its expiration because the requirement to assume extension of excise taxes dedicated to trust funds does not apply to excise tax credits paid from the General Fund. For purposes of this revenue estimate, therefore, it is assumed that the excise tax credit would expire as scheduled. This treatment generates changes in revenues after December 31, 2010.

[2] Estimate provided by the Congressional Budget Office. Negative numbers indicate an increase in outlays.

[3] The outlay payments for ethanol expire after December 31, 2010.

[Footnotes for the Table are continued on the following page]

Footnotes for the Table continued:

[4] As to fuel taxes, effective for taxable years beginning after the date of enactment.
[5] Effective for aviation fuel removed, entered into the United States, or sold after September 30, 2004.
[6] Generally effective 180 days after the date on which the Secretary issues the regulations, which are required no later than 180 days after the date of enactment.
[7] Bulk transfers to unregistered parties would be taxed at the time of the transfer. The Secretary would be required to publish a list of certain registered persons beginning on July 1, 2004.
[8] The display of registration provision is effective on October 1, 2004, and the penalty provision is effective for penalties imposed after September 30, 2004.
[9] The revenue neutral tax rate on each ten pounds of tire capacity above 3,500 pounds is 9.4 cents on tires in general and 4.7 cents for biasply tires. Estimate does not include potential outlay effects, which are the responsibility of the Congressional Budget Office.
[10] Effective for sales in calendar years beginning more than 30 days after the date of enactment.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 22, 2004.

Hon. William "Bill" M. Thomas,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3971, the Highway Reauthorization Tax Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Annie Bartsch (for revenues), and Dave Hull (for direct spending).

Sincerely,

Douglas Holtz-Eakin, *Director.*

Enclosure.

H.R. 3971—Highway Reauthorization Tax Act of 2004

Summary: H.R. 3971 would amend several provisions of tax law relating to alcohol fuels. The bill would replace the reduced tax rate on alcohol fuels with an excise credit and make several changes intended to reduce evasion of fuel taxes. The tax provisions of the bill would generally take effect on October 1, 2004.

The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimate that enacting the bill would increase governmental receipts by $108 million in 2004, about $4.8 billion over the 2004–2009 period, and about $15.1 billion over the 2004–2014 period. (About $5.9 billion of the 10-year increase occurs because the new excise credit is assumed to expire in 2010, whereas the existing reduction in the excise tax rate is assumed to remain in effect beyond 2010, as specified in law.) CBO estimates that the bill would increase direct spending by $105 million in 2005, $571 million over the 2004–2009 period, and $901 million over the 2004–2014 period.

JCT has determined that H.R. 3971 contains three private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA). The cost of complying with those mandates would exceed the annual threshold for private-sector mandates established by UMRA ($120 million in 2004, adjusted annually for inflation) beginning in 2005.

JCT has determined that the tax provisions contain no intergovernmental mandates, as defined by UMRA, and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3971 is shown in the following table. The spending impact of the legislation falls within budget function 350 (agriculture).

	By fiscal year, in millions of dollars—										
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CHANGES IN REVENUES											
Replacing Reduced Tax Rate on Alcohol Fuels with Excise Credit:											
Impact of Expiring Excise Credit	0	0	0	0	0	0	0	[a] 1,131	[a] 1,559	[a] 1,586	[a] 1,614
Increased Compliance	0	22	23	23	23	22	22	22	21	21	21
Impact of Making Direct Payments to Some Recipients	0	105	114	116	117	119	121	[a] 38	[a] 0	[a] 0	[a] 0
Taxing Aviation-Grade Kerosene	0	395	423	426	427	427	425	421	417	413	412
Other Provisions Intended to Reduce Fuel Tax Evasion	108	341	397	400	402	405	405	407	408	409	410
Estimated Revenues	108	863	957	965	969	973	973	2,019	2,405	2,429	2,457
CHANGES IN DIRECT SPENDING [b]											
Replacing Reduced Tax Rate on Alcohol Fuels with Excise Credit:											
Impact of Making Direct Payments to Some Recipients	0	105	114	116	117	119	121	[a] 38	[a] 0	[a] 0	[a] 0
Impact of Expiring Excise Credit on Farm Programs	0	0	0	0	0	0	0	[a] 19	[a] 32	[a] 54	[a] 66
Total Changes in Direct Spending	0	105	114	116	117	119	121	57	32	54	66

[a] These effects result from application of the budget law for constructing CBO's baseline in the case of expiring excise taxes dedicated to trust funds. Under current law, the taxes on motor fuels dedicated to the Highway Trust Fund (HTF) expire in 2005, and are assumed to be permanently extended in CBO's baseline under budget law. The lower excise tax rates on alcohol fuels, which reduce revenue to the HTF, expire in 2007 and are also assumed to be permanently extended in CBO's baseline. H.R. 3971 would replace the lower excise tax rates on alcohol fuels with an excise tax credit that would not reduce revenue to the HTF and that would expire in 2010. If this bill is enacted, CBO's subsequent baseline would not assume extension of the excise tax credit beyond its expiration because the requirement to assume extension only applies to excise taxes dedicated to trust funds. For purposes of this cost estimate, therefore, CBO and JCT assume that the credit would expire as scheduled. That treatment generates changes in revenues and outlays beyond 2010.

[b] The estimated changes in budget authority equal the estimated changes in outlays for each provision.

Note.—Positive (negative) changes in revenues correspond to decreases (increases) in budget deficits. Positive (negative) changes in direct spending correspond to increases (decreases) in budget deficits.

Sources: CBO and the Joint Committee on Taxation.

Basis of estimate

Revenues

JCT provided all the revenue estimates. One provision would repeal the existing exemptions from the gasoline tax rate for alcohol fuels and replace those exemptions with an excise tax credit worth the same amount. JCT estimates the increased compliance from doing so would increase federal revenues by $22 million in 2005, $113 million over the 2005–2009 period, and $220 million over the 2005–2014 period. This estimate assumes the excise tax credit for alcohol fuels would be extended beyond the provision's 2010 expiration.

Budget law (the Balanced Budget and Emergency Deficit Control Act of 1985) requires CBO to treat excise taxes dedicated to trust funds as permanent, even if they expire during the projection period. CBO's baseline includes permanent extension of the reduced rates of taxation on alcohol fuels beyond their expiration because they reduce amounts credited to the Highway Trust Fund (HTF). However, the excise tax credit for alcohol fuels, as provided for in the bill, would not reduce amounts credited to the HTF. Therefore, CBO and JCT do not assume the credit would be extended and es-

timate that repealing the existing exemptions from the gasoline tax rate for alcohol fuels would increase governmental receipts by an additional $5.9 billion between 2011 and 2014, after the new tax credit would expire.

H.R. 3971 also would provide direct payments to recipients of the excise tax credits for both alcohol fuel mixtures who would have insufficient tax liability to use them otherwise. Under current law, the equivalent lower rates of taxation reduce revenues. As a result, JCT estimates that the provision would increase outlays and correspondingly raise revenues by an estimated $571 million over the 2005–2009 period and $730 million over the 2005–2011 period, with no effect beyond the credit's December 31, 2010, expiration.

The bill also contains numerous provisions intended to reduce evasion of fuel taxes. JCT estimates that taxing aviation-grade kerosene at the terminal rack would increase governmental receipts by $395 million in 2005, about $2.1 billion over the 2005–2009 period, and about $4.2 billion over the 2005–2014 period. Other such provisions include, but are not limited to, exempting mobile machinery vehicles from certain excise taxes, implementing registration and reporting requirements for certain operators of pipelines and vessels, and modifying the use tax on heavy vehicles. In total, JCT estimates that the remaining evasion provisions would increase revenues by $108 million in 2004, about $2.1 billion between 2004 and 2009, and about $4.1 billion between 2004 and 2014.

Direct spending

Providing Direct Payments in Lieu of Excise Credits. The bill would provide for payments to recipients of the tax credits who have insufficient tax liability to use them otherwise. As a result of this provision, CBO estimates that outlays would increase by $571 million over the 2005–2009 period and $730 million over the 2005–2011 period. Because these payments would replace the existing reduced tax rate on alcohol fuels, this amount exactly equals the increased revenues estimated for this provision.

Expiration of Special Tax Treatment for Ethanol. Expiration of the excise tax credit for alcohol fuels in the bill also would result in increased spending for farm income payments after 2010. Because the alcohol in such fuels is primarily derived from corn, demand for corn rises and falls with the demand for ethanol. The higher after-tax price of alcohol fuels resulting from expiration of the tax credit in 2010 would slightly reduce demand for ethanol and corn prices relative to those projected in the CBO baseline. As a result, CBO estimates that federal spending for farm price and income support payments would increase by $171 million over the 2011–2014 period.

Intergovernmental and private-sector impact: JCT has determined that H.R. 3971 contains three private-sector mandates as defined in UMRA: (1) taxing aviation-grade kerosene; (2) requiring registration of pipeline and vessel operators; and (3) modifying the heavy vehicle use tax. The cost of complying with those mandates would exceed the annual threshold for private-sector mandates established by UMRA ($120 million in 2004, adjusted annually for inflation) beginning in 2005. JCT has determined that the cost of complying with the three mandates would be no greater than the estimated revenue effects of the provisions. Those effects sum to

$108 million in 2004 and $631 million in 2005, and grow slowly thereafter.

JCT has determined that H.R. 3971 contains no intergovernmental mandates and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On October 14, 2003, CBO transmitted a cost estimate for S. 1548, a bill to amend the Internal Revenue Code of 1986 to provide incentives for the production of renewable fuels and to simplify the administration of the Highway Trust Fund fuel excise taxes, and for other purposes, as ordered reported by the Senate Committee on Finance on September 17, 2003.

Like H.R. 3971, that bill included excise tax credits that expire in 2010. Unlike H.R. 3971, S. 1548 included incentives for the production of biodiesel fuels. CBO estimated that enacting S. 1548 would increase governmental receipts by $28 million in 2004, by $277 million over the 2004–2008 period, and by about $4.3 billion over the 2004–2013 period. In addition, CBO estimated that the bill would increase direct spending by $16 million in 2004, by $108 million over the 2004–2008 period, and by $339 million over the 2004–2013 period. Some of the differences between CBO's estimates of S. 1548 and H.R. 3971 are due to changes in JCT's estimates of the effects of replacing the reduced tax rate on alcohol fuels, with an excise tax credit. The remaining differences are due to the provisions not included in both bills.

Estimate prepared by: Federal Revenues: Annie Bartsch and Andrew Shaw, and Federal Spending: Dave Hull.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis, and Robert A. Sunshine, Assistant Director for Budget Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning fuel tax evasion that the Committee concluded that it is appropriate and timely to enact the revenue provision included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of gen-

eral performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *"), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the following provisions of the bill contain Federal mandates on the private sector (for amounts, see table in Part II.A above): (1) the provision relating to the taxation of aviation grade kerosene; (2) the provision requiring registration of pipeline and vessel operators for exemption of bulk transfers and imposing a penalty for failure to display such registration; and (3) the provision to modify the heavy vehicle use tax.

The costs required to comply with each Federal private sector mandate generally are no greater than the estimated budget effects of the provision. Benefits from the provisions include the prevention of fuel tax evasion and improved administration of the Federal tax laws.

The Committee has determined that the revenue provisions of the bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly

amends the Internal Revenue Code (the "Code") and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that have "widespread applicability" to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter A—Determination of Tax Liability

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart D—Business Related Credits

* * * * * * *

SEC. 40. ALCOHOL USED AS FUEL.

(a) * * *

* * * * * * *

[(c) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such alcohol solely by reason of the application of subsection (b)(2), (k), or (m) of section 4041, section 4081(c), or section 4091(c).]

(c) COORDINATION WITH EXCISE TAX BENEFITS.—The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account the benefit provided with respect to such alcohol under section 6427(f).

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(4) VOLUME OF ALCOHOL.—For purposes of determining—

(A) * * *

(B) [under section 4041(k) or 4081(c)] *under section 6427(f)* the percentage of any mixture which consists of alcohol,

the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 5 percent of the volume of such alcohol (including denaturants).

* * * * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * * * *

CHAPTER 31—RETAIL EXCISE TAXES

* * * * * * *

Subchapter B—Special Fuels

* * * * * * *

SEC. 4041. IMPOSITION OF TAX.

(a) DIESEL FUEL AND SPECIAL MOTOR FUELS.—

(1) TAX ON DIESEL FUEL *AND KEROSENE* IN CERTAIN CASES.—

(A) * * *

(B) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded. *This subparagraph shall not apply to aviation-grade kerosene.*

* * * * * * *

[(b) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE; REDUCTION IN TAX FOR QUALIFIED METHANOL AND ETHANOL FUEL.—

[(1) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE

[(A) IN GENERAL.—No tax shall be imposed by subsection (a) or (d)(1) on liquids sold for use or used in an off-highway business use.

[(B) TAX WHERE OTHER USE.—If a liquid on which no tax was imposed by reason of subparagraph (A) is used otherwise than in an off-highway business use, a tax shall be imposed by paragraph (1)(B), (2)(B), or (3)(A)(ii) of subsection (a) (whichever is appropriate) and by the corresponding provision of subsection (d)(1) (if any).

[(C) OFF-HIGHWAY BUSINESS USE DEFINED.—For purposes of this subsection, the term "off-highway business use" has the meaning given to such term by section

6421(e)(2); except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train.

[(2) QUALIFIED METHANOL AND ETHANOL FUEL

[(A) IN GENERAL.—In the case of any qualified methanol or ethanol fuel—

[(i) the rate applicable under subsection (a)(2) shall be the applicable blender rate per gallon less than the otherwise applicable rate (6 cents per gallon in the case of a mixture none of the alcohol in which consists of ethanol), and

[(ii) subsection (d)(1) shall be applied by substituting "0.05 cent" for "0.1 cent" with respect to the sales and uses to which clause (i) applies.

[(B) QUALIFIED METHANOL OR ETHANOL FUEL.—The term "qualified methanol or ethanol fuel" means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from a substance other than petroleum or natural gas.

[(C) APPLICABLE BLENDER RATE—.—For purposes of subparagraph (A)(i), the applicable blender rate is—

[(i) except as provided in clause (ii), 5.4 cents, and

[(ii) for sales or uses during calendar years 2001 through 2007, 1/10 of the blender amount applicable under section 40(h)(2) for the calendar year in which the sale or use occurs.

[(D) TERMINATION.—On and after October 1, 2007, subparagraph (A) shall not apply.

[(c) NONCOMMERCIAL AVIATION.—

[(1) TAX ON NONGASOLINE FUELS WHERE NO TAX IMPOSED ON FUEL UNDER SECTION 4091.—There is hereby imposed a tax upon kerosene and any other liquid (other than any product taxable under section 4081)—

[(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation; or

[(B) used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such liquid under this section.

The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4091(b)(1) which is in effect at the time of such sale or use. No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.

[(2) DEFINITION OF NONCOMMERCIAL AVIATION.—For purposes of this chapter, the term "noncommercial aviation" means any use of an aircraft, other than use in a business of transporting persons or property for compensation or hire by air. The term also includes any use of an aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of section 4261(h).

[(3) TERMINATION.—The rate of the taxes imposed by paragraph (1) shall be 4.3 cents per gallon—

[(A) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

[(B) after September 30, 2007.]

(b) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—

(1) IN GENERAL.—No tax shall be imposed by subsection (a) or (d)(1) on liquids sold for use or used in an off-highway business use.

(2) TAX WHERE OTHER USE.—If a liquid on which no tax was imposed by reason of paragraph (1) is used otherwise than in an off-highway business use, a tax shall be imposed by paragraph (1)(B), (2)(B), or (3)(A)(ii) of subsection (a) (whichever is appropriate) and by the corresponding provision of subsection (d)(1) (if any).

(3) OFF-HIGHWAY BUSINESS USE DEFINED.—For purposes of this subsection, the term "off-highway business use" has the meaning given to such term by section 6421(e)(2); except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train.

(c) AVIATION-GRADE KEROSENE.—

(1) IN GENERAL.—There is hereby imposed a tax upon aviation-grade kerosene—

(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

(2) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this subsection on the sale or use of any aviation-grade kerosene if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax specified in section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use.

(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

(1) * * *

(2) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c), there is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than gasoline (as defined in section 4083)—

(A) * * *

* * * * * * *

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under [section 4091] *section 4081*.

* * * * * * *

[(e) ADDITIONAL TAX.—If a liquid on which tax was imposed on the sale thereof is taxable at a higher rate under subsection (c)(1) of this section on the use thereof, there is hereby imposed a tax equal to the difference between the tax so imposed and the tax payable at such higher rate.]

* * * * * * *

[(i) REGISTRATION.—If any liquid is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this section that a tax imposed by this section applies to the sale of such liquid unless the purchaser is registered in such manner (and furnishes such information in respect of the use of the liquid) as the Secretary shall by regulations provide.]

* * * * * * *

[(k) FUELS CONTAINING ALCOHOL.—

[(1) IN GENERAL.—Under regulations prescribed by the Secretary, in the case of the sale or use of any liquid at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3))—

[(A) the rates under paragraphs (1) and (2) of subsection (a) shall be the comparable rates under section 4081(c), and

[(B) the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(c).

[(2) LATER SEPARATION.—If any person separates the liquid fuel from a mixture of the liquid fuel and alcohol to which paragraph (1) applied, such separation shall be treated as a sale of the liquid fuel. Any tax imposed on such sale shall be reduced by the amount (if any) of the tax imposed on the sale of such mixture.

[(3) TERMINATION.—Paragraph (1) shall not apply to any sale or use after September 30, 2007.]

* * * * * * *

Subchapter C—Heavy Trucks and Trailers

* * * * * * *

SEC. 4053. EXEMPTIONS.

No tax shall be imposed by section 4051 on any of the following articles:

(1) * * *

* * * * * * *

(8) MOBILE MACHINERY.—Any vehicle which consists of a chassis—

(A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

(B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery

or equipment or similar machinery or equipment requiring such a specially designed chassis.

CHAPTER 32—MANUFACTURERS EXCISE TAXES

* * * * * * *

Subchapter A—Automotive and Related Items

* * * * * * *

PART II—TIRES

Sec. 4071. Imposition of tax.

* * * * * * *

[Sec. 4073. Exemption for tires with internal wire fastening.]
Sec. 4073. Exemptions.

* * * * * * *

SEC. 4071. IMPOSITION OF TAX.

[(a) IMPOSITION AND RATE OF TAX.—There is hereby imposed on tires of the type used on highway vehicles, if wholly or in part made of rubber, sold by the manufacturer, producer, or importer a tax at the following rates:

[If the tire weighs:	**The rate of tax is:**
Not more than 40 lbs.	No tax.
More than 40 lbs. but not more than 70 lbs.	15 cents per lb. in excess of 40 lbs.
More than 70 lbs. but not more than 90 lbs.	$4.50 plus 30 cents per in excess of 70 lbs.
More than 90 lbs.	$10.50 plus 50 cents per lb. in excess of 90 lbs.]

(a) IMPOSITION AND RATE OF TAX.—There is hereby imposed on taxable tires sold by the manufacturer, producer, or importer thereof a tax at the rate of 9.4 cents (4.7 cents in the case of a biasply tire) for each 10 pounds so much of the maximum rated load capacity thereof as exceeds 3,500 pounds.

* * * * * * *

[(c) DETERMINATION OF WEIGHT.—For purposes of this section, weight shall be based on total weight exclusive of metal rims or rim bases. Total weight of the articles shall be determined under regulations prescribed by the Secretary.]

[(e)] *(c)* TIRES ON IMPORTED ARTICLES.—For the purposes of subsection (a), if an article imported into the United States is equipped with tires—

(1) * * *

* * * * * * *

SEC. 4072. DEFINITIONS.

(a) TAXABLE TIRE.—For purposes of this chapter, the term "taxable tire" means any tire of the type used on highway vehicles if wholly or in part made of rubber and if marked pursuant to Federal regulations for highway use.

[(a)] *(b)* RUBBER.—For purposes of this chapter, the term "rubber" includes synthetic and substitute rubber.

[(b)] *(c)* TIRES OF THE TYPE USED ON HIGHWAY VEHICLES.—For purposes of this part, the term "tires of the type used on highway vehicles" means tires of the type used on—

(1) motor vehicles which are highway vehicles, or

(2) vehicles of the type used in connection with motor vehicles which are highway vehicles.

Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).

[SEC. 4073. EXEMPTION FOR TIRES WITH INTERNAL WIRE FASTENING.

[The tax imposed by section 4071 shall not apply to tires of extruded tiring with an internal wire fastening agent.]

SEC. 4073. EXEMPTIONS.

The tax imposed by section 4071 shall not apply to tires sold for the exclusive use of the Department of Defense or the Coast Guard.

PART III—PETROLEUM PRODUCTS

[Subpart A. Gasoline.
[Subpart B. Disel fuel and aviation fuel.
[Subpart C. Special provisions applicable to petroleum products.]
Subpart A. Motor and aviation fuels.
Subpart B. Special provisions applicable to fuels tax.

[Subpart A—Gasoline and Diesel Fuel]

Subpart A—Motor and Aviation Fuels

SEC. 4081. IMPOSITION OF TAX.

(a) TAX IMPOSED.—

(1) TAX ON REMOVAL, ENTRY, OR SALE.—

(A) * * *

(B) EXEMPTION FOR BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.—The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk *by pipeline or vessel* to a terminal or refinery if the person removing or entering the taxable fuel*, the operator of such pipeline or vessel,* and the operator of such terminal or refinery are registered under section 4101.

(2) RATES OF TAX.—

(A) IN GENERAL.—The rate of the tax imposed by this section is—

(i) * * *

(ii) in the case of aviation gasoline, 19.3 cents per gallon, [and]

(iii) in the case of diesel fuel or kerosene, 24.3 cents per gallon[.]*; and*

(iv) in the case of aviation-grade kerosene, 21.8 cents per gallon.

* * * * * * *

(C) TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation, the rate

of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.

(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—

(A) IN GENERAL.—In the case of aviation-grade kerosene which is removed from any terminal directly into the fuel tank of an aircraft (determined without regard to any refueler truck, tanker, or tank wagon which meets the requirements of subparagraph (B)), a refueler truck, tanker, or tank wagon shall be treated as part of such terminal if—

(i) such truck, tanker, or wagon meets the requirements of subparagraph (B) with respect to an airport, and

(ii) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with aviation-grade kerosene at such terminal.

(B) REQUIREMENTS.—A refueler truck, tanker, or tank wagon meets the requirements of this subparagraph with respect to an airport if such truck, tanker, or wagon—

(i) is loaded with aviation-grade kerosene at such terminal located within such airport and delivers such kerosene only into aircraft at such airport,

(ii) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft,

(iii) is not registered for highway use, and

(iv) is operated by—

(I) the terminal operator of such terminal, or

(II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or wagon.

(C) REPORTING.—The Secretary shall require under section 4101(d) reporting by such terminal operator of—

(i) any information obtained under subparagraph (B)(iv)(II), and

(ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made by trucks, tankers, or wagons operated by such terminal operator.

(4) LIABILITY FOR TAX ON AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—For purposes of paragraph (2)(C), the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph. For purposes of the preceding sentence, fuel shall be treated as used when such fuel is removed into the fuel tank.

* * * * * * *

[(c) TAXABLE FUELS MIXED WITH ALCOHOL.—Under regulations prescribed by the Secretary—

[(1) IN GENERAL.—The rate of tax under subsection (a) shall be the alcohol mixture rate in the case of the removal or entry of any qualified alcohol mixture.

[(2) TAX PRIOR TO MIXING.—

[(A) IN GENERAL.—In the case of the removal or entry of any taxable fuel for use in producing at the time of such removal or entry a qualified alcohol mixture, the rate of

tax under subsection (a) shall be the applicable fraction of the alcohol mixture rate. Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing a qualified alcohol mixture after the time of such removal or entry.

[(B) APPLICABLE FRACTION.—For purposes of subparagraph (A), the applicable fraction is—

[(i) in the case of a qualified alcohol mixture which contains gasoline, the fraction the numerator of which is 10 and the denominator of which is—

[(I) 9 in the case of 10 percent gasohol,

[(II) 9.23 in the case of 7.7 percent gasohol, and

[(III) 9.43 in the case of 5.7 percent gasohol, and

[(ii) in the case of a qualified alcohol mixture which does not contain gasoline, 10/9.

[(3) ALCOHOL; QUALIFIED ALCOHOL MIXTURE.—For purposes of this subsection—

[(A) ALCOHOL.—The term "alcohol" includes methanol and ethanol but does not include alcohol produced from petroleum, natural gas, or coal (including peat). Such term does not include alcohol with a proof of less than 190 (determined without regard to any added denaturants).

[(B) QUALIFIED ALCOHOL MIXTURE.—The term "qualified alcohol mixture" means—

[(i) any mixture of gasoline with alcohol if at least 5.7 percent of such mixture is alcohol, and

[(ii) any mixture of diesel fuel with alcohol if at least 10 percent of such mixture is alcohol.

[(4) ALCOHOL MIXTURE RATES FOR GASOLINE MIXTURES.—For purposes of this subsection—

[(A) GENERAL RULES—

[(i) MIXTURES CONTAINING ETHANOL.—Except as provided in clause (ii), in the case of a qualified alcohol mixture which contains gasoline, the alcohol mixture rate is the excess of the rate which would (but for this paragraph) be determined under subsection (a) over—

[(I) in the case of 10 percent gasohol, the applicable blender rate (as defined in section 4041(b)(2)(C)) per gallon,

[(II) in the case of 7.7 percent gasohol, the number of cents per gallon equal to 77 percent of such applicable blender rate, and

[(III) in the case of 5.7 percent gasohol, the number of cents per gallon equal to 57 percent of such applicable blender rate.

[(ii) MIXTURES NOT CONTAINING ETHANOL.—In the case of a qualified alcohol mixture which contains gasoline and none of the alcohol in which consists of ethanol, the alcohol mixture rate is the excess of the rate which would (but for this paragraph) be determined under subsection (a) over—

[(I) in the case of 10 percent gasohol, 6 cents per gallon,

[(II) in the case of 7.7 percent gasohol, 4.62 cents per gallon, and

[(III) in the case of 5.7 percent gasohol, 3.42 cents per gallon.

[(B) 10 PERCENT GASOHOL.—The term "10 percent gasohol" means any mixture of gasoline with alcohol if at least 10 percent of such mixture is alcohol.

[(C) 7.7 PERCENT GASOHOL.—The term "7.7 percent gasohol" means any mixture of gasoline with alcohol if at least 7.7 percent, but not 10 percent or more, of such mixture is alcohol.

[(D) 5.7 PERCENT GASOHOL.—The term "5.7 percent gasohol" means any mixture of gasoline with alcohol if at least 5.7 percent, but not 7.7 percent or more, of such mixture is alcohol.

[(5) ALCOHOL MIXTURE RATE FOR DIESEL FUEL MIXTURES.—The alcohol mixture rate for a qualified alcohol mixture which does not contain gasoline is the excess of the rate which would (but for this paragraph) be determined under subsection (a) over the applicable blender rate (as defined in section 4041(b)(2)(C)) per gallon (6 cents per gallon in the case of a qualified alcohol mixture none of the alcohol in which consists of ethanol).

[(6) LIMITATION.—In no event shall any alcohol mixture rate determined under this subsection be less than 4.3 cents per gallon.

[(7) LATER SEPARATION OF FUEL FROM QUALIFIED ALCOHOL MIXTURE.—If any person separates the taxable fuel from a qualified alcohol mixture on which tax was imposed under subsection (a) at a rate determined under paragraph (1) or (2) (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.

[(8) TERMINATION.—Paragraphs (1) and (2) shall not apply to any removal, entry, or sale after September 30, 2007.]

* * * * * * *

SEC. 4082. EXEMPTIONS FOR DIESEL FUEL AND KEROSENE.

(a) IN GENERAL.—The tax imposed by section 4081 shall not apply to diesel fuel and kerosene—

(1) * * *

(2) which is indelibly dyed *by mechanical injection* in accordance with regulations which the Secretary shall prescribe, and

* * * * * * *

(b) NONTAXABLE USE.—For purposes of this section, the term "nontaxable use" means—

(1) any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax,

(2) any use in a train, and

(3) any use described in section 6427(b)(1) (after the application of section 6427(b)(3)) *and such term shall not include any use described in section 6421(e)(2)(C).*

The term "nontaxable use" does not include the use of aviation-grade kerosene in an aircraft.

* * * * * * *

(d) ADDITIONAL EXCEPTIONS TO DYEING REQUIREMENTS FOR KEROSENE.—

[(1) AVIATION-GRADE KEROSENE.—Subsection (a)(2) shall not apply to aviation-grade kerosene (as determined under regulations prescribed by the Secretary) which the Secretary determines is destined for use as a fuel in an aircraft.]

[(2)] *(1)* USE FOR NON-FUEL FEEDSTOCK PURPOSES.—Subsection (a)(2) shall not apply to kerosene—

(A) * * *

* * * * * * *

[(3)] *(2)* WHOLESALE DISTRIBUTORS.—To the extent provided in regulations, subsection (a)(2) shall not apply to kerosene received by a wholesale distributor of kerosene if such distributor—

(A) is registered under section 4101 with respect to the tax imposed by section 4081 on kerosene, and

(B) sells kerosene exclusively to ultimate vendors described in section 6427(l)(5)(B) with respect to kerosene.

(e) AVIATION-GRADE KEROSENE.—In the case of aviation-grade kerosene which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft, the rate of tax under section 4081(a)(2)(A)(iv) shall be zero.

[(e)] *(f)* REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out this section, including regulations requiring the conspicuous labeling of retail diesel fuel and kerosene pumps and other delivery facilities to assure that persons are aware of which fuel is available only for nontaxable uses.

[(f)] *(g)* CROSS REFERENCE.—

For tax on train and certain bus uses of fuel purchased tax-free, see section 4041(a)(1).

SEC. 4083. DEFINITIONS; SPECIAL RULE; ADMINISTRATIVE AUTHORITY.

(a) * * *

* * * * * * *

(b) COMMERCIAL AVIATION.—For purposes of this subpart, the term "commercial aviation" means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of section 4261(h).

[(b)] *(c)* CERTAIN USES DEFINED AS REMOVAL.—If any person uses taxable fuel (other than in the production of taxable fuels or special fuels referred to in section 4041), such use shall for the purposes of this chapter be considered a removal.

[(c)] *(d)* ADMINISTRATIVE AUTHORITY.—

(1) IN GENERAL.—In addition to the authority otherwise granted by this title, the Secretary may in administering com-

pliance with this subpart, section 4041, and penalties and other administrative provisions related thereto—

(A) enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of—

(i) examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel, [and]

(ii) taking and removing samples of such fuel, and

(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and

* * * * * * *

[Subpart B—Aviation Fuel

[SEC. 4091. IMPOSITION OF TAX.

[(a) TAX ON SALE.—

[(1) IN GENERAL.—There is hereby imposed a tax on the sale of aviation fuel by the producer or the importer thereof or by any producer of aviation fuel.

[(2) USE TREATED AS SALE.—For purposes of paragraph (1), if any producer uses aviation fuel (other than for a nontaxable use as defined in section 6427(1)(2)(B)) on which no tax has been imposed under such paragraph or on which tax has been credited or refunded, then such use shall be considered a sale.

[(b) RATE OF TAX.—

[(1) IN GENERAL.—The rate of the tax imposed by subsection (a) shall be 21.8 cents per gallon.

[(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAX.—The rate of tax specified in paragraph (1) shall be increased by 0.1 cent per gallon. The increase in tax under this paragraph shall in this title be referred to as the Leaking Underground Storage Tank Trust Fund financing rate.

[(3) TERMINATION.—

[(A) The rate of tax specified in paragraph (1) shall be 4.3 cents per gallon—

[(i) after December 31, 1996, and before the date which is 7 calendar days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

[(ii) after September 30, 2007.

[(B) The Leaking Underground Storage Tank Trust Fund financing rate shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

[(c) REDUCED RATE OF TAX FOR AVIATION FUEL IN ALCOHOL MIXTURE, ETC.—Under regulations prescribed by the Secretary—

[(1) IN GENERAL.—The rate of tax under subsection (a) shall be reduced by the applicable blender amount per gallon in the case of the sale of any mixture of aviation fuel if—

[(A) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

[(B) the aviation fuel in such mixture was not taxed under paragraph (2).

In the case of such a mixture none of the alcohol in which is ethanol, the preceding sentence shall be applied by sub-

stituting "14 cents" for "the applicable blender amount". For purposes of this paragraph, the term "applicable blender amount" means 13.3 cents in the case of any sale or use during 2001 or 2002, 13.2 cents in the case of any sale or use during 2003 or 2004, 13.1 cents in the case of any sale or use during 2005, 2006, or 2007, and 13.4 cents in the case of any sale or use during 2008 or thereafter.

[(2) TAX PRIOR TO MIXING.—In the case of the sale of aviation fuel for use (at the time of such sale) in producing a mixture described in paragraph (1), the rate of tax under subsection (a) shall be 10/9 of the rate which would (but for this paragraph) have been applicable to such mixture had such mixture been created prior to such sale.

[(3) LATER SEPARATION.—If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which tax was imposed under subsection (a) at a rate determined under paragraph (1) or (2) (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such aviation fuel. The amount of tax imposed on any sale of such aviation fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior sale of such fuel.

[(4) LIMITATION.—In no event shall any rate determined under paragraph (1) be less than 4.3 cents per gallon.

[(5) TERMINATION.—Paragraphs (1) and (2) shall not apply to any sale after September 30, 2007.

[(d) REFUND OF TAX-PAID AVIATION FUEL TO REGISTERED PRODUCER OF FUEL.—If—

[(1) a producer of aviation fuel is registered under section 4101, and

[(2) such producer establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) on aviation fuel held by such producer, then an amount equal to the tax so paid shall be allowed as a refund (without interest) to such producer in the same manner as if it were an overpayment of tax imposed by this section.

[SEC. 4092. EXEMPTIONS.

[(a) NONTAXABLE USES.—No tax shall be imposed by section 4091 on aviation fuel sold by a producer or importer for use by the purchaser in a nontaxable use (as defined in section 6427(l)(2)(B)).

[(b) NO EXEMPTION FROM CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of fuel sold for use in commercial aviation (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), subsection (a) shall not apply to so much of the tax imposed by section 4091 as is attributable to—

[(1) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

[(2) in the case of fuel sold after September 30, 1995, 4.3 cents per gallon of the rate specified in section 4091(b)(1).

For purposes of the preceding sentence, the term "commercial aviation" means any use of an aircraft other than in noncommercial aviation (as defined in section 4041(c)(2)).

[(c) SALES TO PRODUCER.—Under regulations prescribed by the Secretary, the tax imposed by section 4091 shall not apply to aviation fuel sold to a producer of such fuel.

[SEC. 4093. DEFINITIONS.

[(a) AVIATION FUEL.—For purposes of this subpart, the term "aviation fuel" means kerosene and any other liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in an aircraft.

[(b) PRODUCER.—For purposes of this subpart—

[(1) CERTAIN PERSONS TREATED AS PRODUCERS.—

[(A) IN GENERAL.—The term "producer" includes any person described in subparagraph (B) and registered under section 4101 with respect to the tax imposed by section 4091.

[(B) PERSONS DESCRIBED.—A person is described in this subparagraph if such person is—

[(i) a refiner, blender, or wholesale distributor of aviation fuel, or

[(ii) a dealer selling aviation fuel exclusively to producers of aviation fuel.

[(C) REDUCED RATE PURCHASERS TREATED AS PRODUCERS.—Any person to whom aviation fuel is sold at a reduced rate under this subpart shall be treated as the producer of such fuel.

[(2) WHOLESALE DISTRIBUTOR.—For purposes of paragraph (1), the term "wholesale distributor" includes any person who sells aviation fuel to producers, retailers, or to users who purchase in bulk quantities and accept delivery into bulk storage tanks. Such term does not include any person who (excluding the term "wholesale distributor" from paragraph (1)) is a producer or importer.]

[Subpart C—Special Provisions Applicable to Petroleum Products]

Subpart B—Special Provisions Applicable to Fuels Tax

Sec. 4101. Registration and bond.

* * * * * * *

Sec. 4104. Collection from Customs bond where importer not registered.

Sec. 4105. Two-party exchanges.

SEC. 4101. REGISTRATION AND BOND.

(a) REGISTRATION.—[Every]

(1) IN GENERAL.—Every person required by the Secretary to register under this section with respect to the tax imposed by section 4041(a)(1)[, 4081, or 4091] *or 4081* shall register with the Secretary at such time, in such form and manner, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

(2) DISPLAY OF REGISTRATION.—Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an electronic identification

device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.

* * * * * * *

SEC. 4103. CERTAIN ADDITIONAL PERSONS LIABLE FOR TAX WHERE WILLFUL FAILURE TO PAY.

In any case in which there is a willful failure to pay the tax imposed by section 4041(a)(1)**[**, 4081, or 4091**]** *or 4081*, each person—

(1) * * *

* * * * * * *

SEC. 4104. COLLECTION FROM CUSTOMS BOND WHERE IMPORTER NOT REGISTERED.

(a) IN GENERAL.—The importer of record shall be jointly and severally liable for the tax imposed by section 4081(a)(1)(A)(iii) if, under regulations prescribed by the Secretary, any other person that is not a person who is registered under section 4101 is liable for such tax.

(b) COLLECTION FROM CUSTOMS BOND.—If any tax for which any importer of record is liable under subsection (a), or for which any importer of record that is not a person registered under section 4101 is otherwise liable, is not paid on or before the last date prescribed for payment, the Secretary may collect such tax from the Customs bond posted with respect to the importation of the taxable fuel to which the tax relates. For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any action by the Secretary described in the preceding sentence shall be treated as an action to collect the tax from a bond described in section 4101(b)(1) and not as an action to collect from a bond relating to the importation of merchandise.

SEC. 4105. TWO-PARTY EXCHANGES.

(a) IN GENERAL.—In a two-party exchange, the delivering person shall not be liable for the tax imposed under section 4081(a)(1)(A)(ii).

(b) TWO-PARTY EXCHANGE.—The term "two-party exchange" means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant fuel to a receiving person who is so registered where all of the following occur:

(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

(3) The terminal operator in its books and records treats the receiving person as the person that removes the taxable fuel across the terminal rack for purposes of reporting the transaction to the Secretary.

(4) The transaction is the subject of a written contract.

* * * * * * *

Subchapter G—Exemptions, Registration, Etc.

* * * * * * *

SEC. 4221. CERTAIN TAX-FREE SALES.

(a) GENERAL RULE.—Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121[, 4081, or 4091] *or 4081*) on the sale by the manufacturer (or under subchapter A or C of chapter 31 on the first retail sale) of an article—

(1) * * *

* * * * * * *

CHAPTER 36—CERTAIN EXCISE TAX

* * * * * * *

Subchapter A—Harbor Maintenance Tax

* * * * * * *

Subchapter D—Tax on Use of Certain Vehicles

* * * * * * *

SEC. 4481. IMPOSITION OF TAX.

(a) * * *

* * * * * * *

(c) PRORATION OF TAX

(1) * * *

(2) WHERE VEHICLE [DESTROYED OR STOLEN] *SOLD, DESTROYED, OR STOLEN.*—

(A) IN GENERAL.—If in any taxable period a highway motor vehicle is [destroyed or stolen] *sold, destroyed, or stolen* before the first day of the last month in such period and not subsequently used during such taxable period, the tax shall be reckoned proportionately from the first day of the month in such period in which the first use of such highway motor vehicle occurs to and including the last day of the month in which such highway motor vehicle was [destroyed or stolen] *sold, destroyed, or stolen*.

(B) DESTROYED.—For purposes of subparagraph (A), a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild.

* * * * * * *

(e) ELECTRONIC FILING.—Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.

[(e)] *(f)* PERIOD TAX IN EFFECT.—The tax imposed by this section shall apply only to use before October 1, 2005.

* * * * * * *

SEC. 4483. EXEMPTIONS.

(a) * * *

* * * * * * *

[(f) REDUCTION IN TAX FOR TRUCKS BASE-PLATED IN A CONTIGUOUS FOREIGN COUNTRY.—If the base for registration purposes of any highway motor vehicle is in a contiguous foreign country for any taxable period, the tax imposed by section 4481 for such period shall be 75 percent of the tax which would (but for this subsection) be imposed by section 4481 for such period.]

(g) EXEMPTION FOR MOBILE MACHINERY.—No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(8).

[(g)] *(h)* TERMINATION OF EXEMPTIONS.—Subsections (a) and (c) shall not apply on and after October 1, 2005.

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Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

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CHAPTER 62—TIME AND PLACE FOR PAYING TAX

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Subchapter A—Place and Due Date for Payment of Tax

Sec. 6151. Time and place for paying tax shown on returns.

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[Sec. 6156. Installment payments of tax on use of highway motor vehicles.]

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[SEC. 6156. INSTALLMENT PAYMENTS OF TAX ON USE OF HIGHWAY MOTOR VEHICLES.

[(a) PRIVILEGE TO PAY TAX IN INSTALLMENTS.—If the taxpayer files a return of the tax imposed by section 4481 on or before the date prescribed for the filing of such return, he may elect to pay the tax shown on such return in equal installments in accordance with the following table:

[If liability is incurred in—	**The number of installments shall be—**
July, August, or September	4
October, November, or December	3
January, February, or March	2

[(b) DATES FOR PAYING INSTALLMENTS.—In the case of any tax payable in installments by reason of an election under subsection (a)—

[(1) the first installment shall be paid on the date prescribed for payment of the tax,

[(2) the second installment shall be paid on or before the last day of the third month following the calendar quarter in which the liability was incurred,

[(3) the third installment (if any) shall be paid on or before the last day of the sixth month following the calendar quarter in which the liability was incurred, and

[(4) the fourth installment (if any) shall be paid on or before the last day of the ninth month following the calendar quarter in which the liability was incurred.

[(c) PRORATION OF ADDITIONAL TAX TO INSTALLMENTS.—If an election has been made under subsection (a) in respect of tax reported on a return filed by the taxpayer and tax required to be shown but not shown on such return is assessed before the date prescribed for payment of the last installment, the additional tax shall be prorated equally to the installments for which the election was made. That part of the additional tax so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as and as part of such installment. That part of the additional tax so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary.

[(d) ACCELERATION OF PAYMENTS.—If the taxpayer does not pay any installment under this section on or before the date prescribed for its payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary.

[(e) SECTION INAPPLICABLE TO CERTAIN LIABILITIES.—This section shall not apply to any liability for tax incurred in—

[(1) April, May, or June of any year, or

[(2) July, August, or September of 2005.]

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CHAPTER 63—ASSESSMENT

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Subchapter A—In General

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SEC. 6206. SPECIAL RULES APPLICABLE TO EXCESSIVE CLAIMS UNDER SECTIONS 6420, 6421, AND 6427.

Any portion of a payment made under section 6420, 6421, or 6427 which constitutes an excessive amount (as defined in section 6675(b)), and any civil penalty provided by section 6675, may be assessed and collected as if it were a tax imposed by section 4081 (with respect to payments under sections 6420 and 6421), or 4041[, 4081, or 4091] *or 4081* (with respect to payments under section 6427) and as if the person who made the claim were liable for such tax. The period for assessing any such portion, and for assessing any such penalty, shall be 3 years from the last day prescribed for the filing of the claim under section 6420, 6421, or 6427, as the case may be.

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter B—Rules of Special Application

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SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

(a) CONDITION TO ALLOWANCE.—

(1) * * *

* * * * * * *

[(4) WHOLESALE DISTRIBUTORS TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

[(A) IN GENERAL.—For purposes of this subsection, a wholesale distributor who purchases any gasoline on which tax imposed by section 4081 has been paid and who sells the gasoline to its ultimate purchaser shall be treated as the person (and the only person) who paid such tax.

[(B) WHOLESALE DISTRIBUTOR.—For purposes of subparagraph (A), the term "wholesale distributor" has the meaning given such term by section 4093(b)(2) (determined by substituting "any gasoline taxable under section 4081" for "aviation fuel" therein). Such term includes any person who makes retail sales of gasoline at 10 or more retail motor fuel outlets.]

(4) REGISTERED ULTIMATE VENDOR TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

(A) IN GENERAL.—For purposes of this subsection, if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101. For purposes of this subparagraph, if the sale of gasoline is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.

(B) TIMING OF CLAIMS.—The procedure and timing of any claim under subparagraph (A) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor covered by such claim are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).

(b) SPECIAL CASES IN WHICH TAX PAYMENTS CONSIDERED OVERPAYMENTS.—Under regulations prescribed by the Secretary, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) * * *

(2) SPECIFIED USES AND RESALES.—The tax paid under chapter 32 (or under subsection (a) or (d) of section 4041 in respect of sales or under section 4051) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) * * *

* * * * * * *

Subparagraphs (C) and (D) shall not apply in the case of any tax paid under section 4064. In the case of the tax imposed by section 4131, subparagraphs (B), (C), and (D) shall not apply and subparagraph (A) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. This paragraph shall not apply in the case of any tax imposed under section 4041(a)(1) or 4081 on diesel fuel or kerosene and any tax paid under section **[**4091 or**]** 4121.

(3) TAX-PAID ARTICLES USED FOR FURTHER MANUFACTURE, ETC.—If the tax imposed by chapter 32 has been paid with respect to the sale of any article (other than coal taxable under section 4121) by the manufacturer, producer, or importer thereof and such article is sold to a subsequent manufacturer or producer before being used, such tax shall be deemed to be an overpayment by such subsequent manufacturer or producer if—

(A) in the case of any article other than any fuel taxable under section 4081 **[**or 4091**]**, such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of—

(i) * * *

* * * * * * *

(B) in the case of any fuel taxable under section 4081 **[**or 4091**]**, such fuel is used by the subsequent manufacturer or producer, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.

* * * * * * *

(d) CREDIT ON RETURNS.—Any person entitled to a refund of tax imposed by chapter 31 or 32, paid to the Secretary may, instead of filing a claim for refund, take credit therefor against taxes imposed by such chapter due on any subsequent return. The preceding sentence shall not apply to the tax imposed by section 4081 in the case of refunds described in section 4081(e) **[**or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)**]**.

* * * * * * *

SEC. 6421. GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES, USED BY LOCAL TRANSIT SYSTEMS, OR SOLD FOR CERTAIN EXEMPT PURPOSES.

(a) * * *

* * * * * * *

(e) DEFINITIONS.—For purposes of this section—

(1) * * *
(2) OFF-HIGHWAY BUSINESS USE.—
(A) * * *

* * * * * * *

(C) USES IN MOBILE MACHINERY.—

(i) IN GENERAL.—The term "off-highway business use" shall include any use in a vehicle which meets the requirements described in clause (ii).

(ii) REQUIREMENTS FOR MOBILE MACHINERY.—The requirements described in this clause are—

(I) the design-based test, and

(II) the use-based test.

(iii) DESIGN-BASED TEST.—For purposes of clause (ii)(I), the design-based test is met if the vehicle consists of a chassis—

(I) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

(II) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

(III) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

(iv) USE-BASED TEST.—For purposes of clause (ii)(II), the use-based test is met if the use of the vehicle on public highways was less than 7,500 miles during the taxpayer's taxable year.

* * * * * * *

SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) * * *

* * * * * * *

[(f) GASOLINE, DIESEL FUEL, KEROSENE, AND AVIATION FUEL USED TO PRODUCE CERTAIN ALCOHOL FUELS.—

[(1) IN GENERAL.—Except as provided in subsection (k), if any gasoline, diesel fuel, kerosene, or aviation fuel on which tax was imposed by section 4081 or 4091 at the regular tax rate is used by any person in producing a mixture described in section 4081(c) or 4091(c)(1)(A) (as the case may be) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

[(2) DEFINITIONS.—For purposes of paragraph (1)—

[(A) REGULAR TAX RATE.—The term "regular tax rate" means—

[(i) in the case of gasoline, diesel fuel, or kerosene, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof, and

[(ii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 determined without regard to subsection (c) thereof.

[(B) INCENTIVE TAX RATE.—The term "incentive tax rate" means—

[(i) in the case of gasoline, diesel fuel, or kerosene, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(2) thereof, and

[(ii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(2) thereof.

[(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any gasoline, diesel fuel, kerosene, or aviation fuel with respect to which an amount is payable under subsection (d), or (l) of this section or under section 6420 or 6421.

[(4) TERMINATION.—This subsection shall not apply with respect to any mixture sold or used after September 30, 2007.]

(f) ALCOHOL FUEL MIXTURES.—

(1) IN GENERAL.—The amount of credit which would (but for section 40(c)) be determined under section 40(a)(1) for any period—

(A) shall, with respect to taxable events occurring during such period, be treated—

(i) as a payment of the taxpayer's liability for tax imposed by section 4081, and

(ii) as received at the time of the taxable event, and

(B) to the extent such amount of credit exceeds such liability for such period, shall (except as provided in subsection (k)) be paid subject to subsection (i)(3) by the Secretary without interest.

(2) SPECIAL RULES.—

(A) ONLY CERTAIN ALCOHOL TAKEN INTO ACCOUNT.—For purposes of paragraph (1), section 40 shall be applied—

(i) by not taking into account alcohol with a proof of less than 190, and

(ii) by treating as alcohol the alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

(B) TREATMENT OF REFINERS.—For purposes of paragraph (1), in the case of a mixture—

(i) the alcohol in which is described in subparagraph (A)(ii), and

(ii) which is produced by any person at a refinery prior to any taxable event,

section 40 shall be applied by treating such person as having sold such mixture at the time of its removal from the

refinery (and only at such time) to another person for use as a fuel.

(3) MIXTURES NOT USED AS FUEL.—Rules similar to the rules of subparagraphs (A) and (D) of section 40(d)(3) shall apply for purposes of this subsection.

(4) TERMINATION.—This section shall apply only to periods to which section 40 applies, determined by substituting in section 40(e)—

(A) "December 31, 2010" for "December 31, 2007", and

(B) "January 1, 2011" for "January 1, 2008".

* * * * * * *

(i) TIME FOR FILING CLAIMS; PERIOD COVERED.—

(1) * * *

(2) EXCEPTIONS.—

(A) * * *

* * * * * * *

(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used solely in any off-highway business use described in section 6421(e)(2)(C).

[(3) SPECIAL RULE FOR ALCOHOL MIXTURE CREDIT.—

[(A) IN GENERAL.—A claim may be filed under subsection (f) by any person with respect to gasoline, diesel fuel, or kerosene used to produce a qualified alcohol mixture (as defined in section 4081(c)(3) for any period—

[(i) for which $200 or more is payable under such subsection (f), and

[(ii) which is not less than 1 week.

[(B) PAYMENT OF CLAIM.—Notwithstanding subsection (f)(1), if the Secretary has not paid pursuant to a claim filed under this section within 20 days of the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

[(C) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.]

(3) SPECIAL RULE FOR ALCOHOL MIXTURE CREDIT.—

(A) IN GENERAL.—A claim may be filed under subsection (f)(1)(B) by any person for any period—

(i) for which $200 or more is payable under such subsection (f)(1)(B), and

(ii) which is not less than 1 week.

In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).

(B) PAYMENT OF CLAIM.—Notwithstanding subsection (f)(1)(B), if the Secretary has not paid pursuant to a claim filed under this section within 45 days of the date of the filing of such claim (20 days in the case of an electronic claim), the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

(C) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the

last day of the first quarter following the earliest quarter included in the claim.

(4) SPECIAL RULE FOR VENDOR REFUNDS.—

(A) IN GENERAL.—A claim may be filed under [subsection (l)(5)] *paragraph (4)(B) or (5) of subsection (l)* by any person with respect to fuel sold by such person for any period—

(i) for which $200 or more ($100 or more in the case of kerosene) is payable under [subsection (l)(5)] *paragraph (4)(B) or (5) of subsection (l)*, and

* * * * * * *

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under [the preceding sentence] *subsection (l)(5)*.

* * * * * * *

(5) SPECIAL RULE FOR VENDOR REFUNDS WITH RESPECT TO FARMERS.—

(A) IN GENERAL.—A claim may be filed under subsection (l)(6) by any person with respect to fuel sold by such person for any period—

(i) for which $200 or more ($100 or more in the case of kerosene) is payable under subsection (l)(6),

(ii) which is not less than 1 week, and

(iii) which is for not more than 250 gallons for each farmer for which there is a claim.

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under the preceding sentence.

(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.

(j) APPLICABLE LAWS.—

(1) IN GENERAL.—All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4041[, 4081, and 4091] *and 4081* shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

* * * * * * *

(l) NONTAXABLE USES OF DIESEL FUEL, KEROSENE, AND AVIATION FUEL.—

[(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if—

[(A) any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081, or

[(B) any aviation fuel on which tax has been imposed by section 4091,

is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041, 4081, or 4091, as the case may be.]

(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any payment made to the ultimate vendor under paragraph (4)(B).

(2) NONTAXABLE USE.—For purposes of this subsection, the term "nontaxable use" means—

(A) * * *

[(B) in the case of aviation fuel, any use which is exempt from the tax imposed by section 4041(c)(1) other than by reason of a prior imposition of tax.**]**

(B) in the case of aviation-grade kerosene—

(i) any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax, or

(ii) any use in commercial aviation (within the meaning of section 4083(b)).

* * * * * * *

[(4) NO REFUND OF CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of fuel used in commercial aviation (as defined in section 4092(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to—

[(A) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

[(B) in the case of fuel purchased after September 30, 1995, so much of the rate of tax specified in section 4091(b)(1) as does not exceed 4.3 cents per gallon.**]**

(4) REFUNDS FOR AVIATION-GRADE KEROSENE.—

(A) NO REFUND OF CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene used in commercial aviation (as defined in section 4083(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4081 as is attributable to—

(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

(ii) so much of the rate of tax specified in section 4081(a)(2)(A)(iv) as does not exceed 4.3 cents per gallon.

(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—With respect to aviation-grade kerosene, if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

(i) is registered under section 4101, and

(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

(5) REGISTERED VENDORS TO ADMINISTER CLAIMS FOR REFUND OF DIESEL FUEL OR KEROSENE SOLD TO [FARMERS AND] STATE AND LOCAL GOVERNMENTS.—

[(A) IN GENERAL.—Paragraph (1) shall not apply to diesel fuel or kerosene used—

[(i) on a farm for farming purposes (within the meaning of section 6420(c)), or

[(ii) by a State or local government.]

(A) IN GENERAL.—Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.

(B) SALES OF KEROSENE NOT FOR USE IN MOTOR FUEL.—[Paragraph (1)(A) shall not apply to kerosene] *Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)* sold by a vendor—

(i) * * *

* * * * * * *

(C) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—The amount which would (but for subparagraph (A) or (B)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

(i) is registered under section 4101, and

(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

For purposes of this subparagraph, if the sale of diesel fuel or kerosene is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.

(6) REGISTERED VENDORS PERMITTED TO ADMINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL FUEL AND KEROSENE SOLD TO FARMERS.—

(A) IN GENERAL.—In the case of diesel fuel or kerosene used on a farm for farming purposes (within the meaning of section 6420(c)), paragraph (1) shall not apply to the aggregate amount of such diesel fuel or kerosene if such amount does not exceed 250 gallons (as determined under subsection (i)(5)(A)(iii)).

(B) PAYMENT TO ULTIMATE VENDOR.—The amount which would (but for subparagraph (A)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

(i) is registered under section 4101, and

(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter B—Assessable Penalties

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PART I—GENERAL PROVISIONS

Sec. 6671. Rules for application of assessable penalties.

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Sec. 6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems.

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Sec. 6717. Failure to display tax registration on vessels.
Sec. 6718. Failure to register.

* * * * * * *

SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.

(a) IMPOSITION OF PENALTY—

(1) TAMPERING.—If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, such person shall pay a penalty in addition to the tax (if any).

(2) FAILURE TO MAINTAIN SECURITY REQUIREMENTS.—If any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 fails to maintain the security standards for such system as established by the Secretary, then such operator shall pay a penalty in addition to the tax (if any).

(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

(1) for each violation described in paragraph (1), the greater of—

(A) $25,000, or

(B) $10 for each gallon of fuel involved, and

(2) for each—

(A) failure to maintain security standards described in paragraph (2), $1,000, and

(B) failure to correct a violation described in paragraph (2), $1,000 per day for each day after which such violation was discovered or such person should have reasonably known of such violation.

(c) JOINT AND SEVERAL LIABILITY.—

(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

* * * * * * *

SEC. 6717. FAILURE TO DISPLAY TAX REGISTRATION ON VESSELS.

(a) FAILURE TO DISPLAY REGISTRATION.—Every operator of a vessel who fails to display proof of registration pursuant to section 4101(a)(2) shall pay a penalty of $500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

(b) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the product of such amount and the aggregate number of penalties (if any) imposed with respect to prior months by this section on such person (or a related person or any predecessor of such person or related person).

(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

SEC. 6718. FAILURE TO REGISTER.

(a) FAILURE TO REGISTER.—Every person who is required to register under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

(1) $10,000 for each initial failure to register, and

(2) $1,000 for each day thereafter such person fails to register.

(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

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PART II—FAILURE TO COMPLY WITH CERTAIN INFORMATION REPORTING REQUIREMENTS

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Sec. 6721. Failure to file correct information returns.

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Sec. 6725. Failure to report information under section 4101.

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SEC. 6724. WAIVER; DEFINITIONS AND SPECIAL RULES.

(a) * * *

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(d) DEFINITIONS.—For purposes of this part—

(1) INFORMATION RETURN.—The term "information return" means—

(A) * * *

(B) any return required by—

(i) * * *

* * * * * * *

[(xv) subparagraph (A) or (C) of subsection (c)(4) of section 4093 (relating to information reporting with respect to tax on diesel and aviation fuels),**]**

[(xvi)**]** *(xv)* section 4101(d) (relating to information reporting with respect to fuels taxes),

[(xvii)**]** *(xvi)* subparagraph (C) of section 338(h)(10) (relating to information required to be furnished to the

Secretary in case of elective recognition of gain or loss), or

[(xviii)] *(xvii)* section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts), and

* * * * * * *

(2) PAYEE STATEMENT.—The term "payee statement" means any statement required to be furnished under—

(A) * * *

* * * * * * *

[(W) section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels),]

[(X)] *(W)* section 408(i) (relating to reports with respect to individual retirement plans) to any person other than the Secretary with respect to the amount of payments made to such person,

[(Y)] *(X)* section 6047(d) (relating to reports by plan administrators) to any person other than the Secretary with respect to the amount of payments made to such person,

[(Z)] *(Y)* section 6050S(d) (relating to returns relating to qualified tuition and related expenses),

[(AA)] *(Z)* section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts), or

[(BB)] *(AA)* section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals).

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SEC. 6725. FAILURE TO REPORT INFORMATION UNDER SECTION 4101.

(a) IN GENERAL.—In the case of each failure described in subsection (b) by any person with respect to a vessel or facility, such person shall pay a penalty of $10,000 in addition to the tax (if any).

(b) FAILURES SUBJECT TO PENALTY.—For purposes of subsection (a), the failures described in this subsection are—

(1) any failure to make a report under section 4101(d) on or before the date prescribed therefor, and

(2) any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.

(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

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CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

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Subchapter A—Crimes

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PART II—PENALTIES APPLICABLE TO CERTAIN TAXES

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SEC. 7232. FAILURE TO REGISTER UNDER SECTION 4101, FALSE REPRESENTATIONS OF REGISTRATION STATUS, ETC.

Every person who fails to register as required by section 4101, or who in connection with any purchase of any taxable fuel (as defined in section 4083), or aviation fuel falsely represents himself to be registered as provided by section 4101, or who willfully makes any false statement in an application for registration under section 4101, shall, upon conviction thereof, be fined not more than [$5,000] *$10,000*, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

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Subchapter B—Other Offenses

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SEC. 7272. PENALTY FOR FAILURE TO REGISTER.

(a) IN GENERAL.—Any person (other than persons required to register under subtitle E, or persons engaging in a trade or business on which a special tax is imposed by such subtitle) who fails to register with the Secretary as required by this title or by regulations issued thereunder shall be liable to a penalty of $50 *($10,000 in the case of a failure to register under section 4101)*.

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishment of Trust Funds

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SEC. 9502. AIRPORT AND AIRWAY TRUST FUND.

(a) * * *

(b) TRANSFERS TO AIRPORT AND AIRWAY TRUST FUND.—There are hereby appropriated to the Airport and Airway Trust Fund amounts equivalent to—

(1) the taxes received in the Treasury under—

(A) subsections (c) and (e) of section 4041 (relating to aviation fuels),

(B) sections 4261 and 4271 (relating to transportation by air), *and*

[(C) section 4081 (relating to gasoline) with respect to aviation gasoline,

[(D) section 4091 (relating to aviation fuel), and]

(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and

* * * * * * *

[There shall not be taken into account under paragraph (1) so much of the taxes imposed by sections 4081 and 4091 as are determined at the rates specified in section 4081(a)(2)(B) or 4091(b)(2).] *There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).*

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SEC. 9503. HIGHWAY TRUST FUND.

(a) * * *

(b) TRANSFER TO HIGHWAY TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES *AND PENALTIES*.—

(1) [IN GENERAL] *CERTAIN TAXES*.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the taxes received in the Treasury before October 1, 2005, under the following provisions—

(A) * * *

* * * * * * *

For purposes of this paragraph, the amount of taxes received under section 4081 shall include any amount treated as a payment under section 6427(f)(1)(A) and shall not be reduced by the amount paid under section 6427(f)(1)(B).

* * * * * * *

(4) CERTAIN TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), there shall not be taken into account the taxes imposed by—

(A) section 4041(d),

(B) section 4081 to the extent attributable to the rate specified in section 4081(a)(2)(B), *or*

(C) section 4041 or 4081 to the extent attributable to fuel used in a train[,].

[(D) in the case of gasoline and special motor fuels used as described in paragraph (4)(D) or (5)(B) of subsection (c), section 4041 or 4081 with respect to so much of the rate of tax as exceeds 11.5 cents per gallon,

[(E) in the case of fuels described in section 4041(b)(2)(A), 4041(k), or 4081(c), section 4041 or 4081 before October 1, 2005, with respect to a rate equal to 2.5 cents per gallon, or

[(F) in the case of fuels described in section 4081(c)(2), such section before October 1, 2005, with respect to a rate equal to 2.8 cents per gallon.]

(5) CERTAIN PENALTIES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties paid under sections 6715, 6715A, 6717, 6718, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).

[(5)] *(6)* LIMITATION ON TRANSFERS TO HIGHWAY TRUST FUND.—

(A) * * *

* * * * * * *

(c) EXPENDITURES FROM HIGHWAY TRUST FUND.—

(1) * * *

(2) TRANSFERS FROM HIGHWAY TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

(A) IN GENERAL.—The Secretary shall pay from time to time from the Highway Trust Fund into the general fund of the Treasury amounts equivalent to—

(i) * * *

* * * * * * *

The amounts payable from the Highway Trust Fund under this subparagraph or paragraph (3) shall be determined by taking into account only the portion of the taxes which are deposited into the Highway Trust Fund. *Clauses (i)(III) and (ii) shall not apply to claims under section 6427(f)(1)(B).*

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SEC. 9508. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) * * *

(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

(1) * * *

* * * * * * *

[(3) taxes received in the Treasury under section 4091 (relating to tax on aviation fuel) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section,**]**

[(4)**]** *(3)* taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section, and

[(5)**]** *(4)* amounts received in the Treasury and collected under section 9003(h)(6) of the Solid Waste Disposal Act.

For purposes of this subsection, there shall not be taken into account the taxes imposed by sections 4041 and 4081 on diesel fuel sold for use or used as fuel in a diesel-powered boat.

(c) EXPENDITURES.—

(1) * * *

(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

(i) * * *

* * * * * * *

with respect to the taxes imposed by section 4041(d) or by **[**sections 4081 and 4091**]** *section 4081* (to the extent at-

tributable to the Leaking Underground Storage Tank Trust Fund financing rate under such sections).

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