

REVIEW AND ANALYSIS OF EXCISE TAXES DEDICATED TO HIGHWAY TRUST FUND

Pub. L. 95-599, title V, § 507, Nov. 6, 1978, 92 Stat. 2761, provided that:

“(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Secretary of Transportation and the staff of the Joint Committee on Taxation, shall—

“(1) review and analyze each excise tax now dedicated to the Highway Trust Fund with respect to such factors as ease or difficulty of administration of such tax and the compliance burdens imposed on taxpayers by such tax, and

“(2) on or before April 15, 1982, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate as to the matters set forth in paragraph (1) and other findings, as well as recommendations on—

“(A) improvements in excise taxation which would enhance tax administration, equity, and compliance, or

“(B) a new system of raising revenues to fund the Highway Trust Fund which would meet the objectives set forth in subparagraph (A).

The recommendations described in paragraph (2) shall be formulated in conjunction with the recommendations of the cost allocation study under section 506 set out as note under section 307 of this title of the equitable distribution of the highway excise taxes.

“(b) INTERIM REPORTS.—The Secretary of the Treasury, in consultation with the Secretary of Transportation and the staff of the Joint Committee on Taxation, shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on or before April 15, 1980, and a second interim report on or before April 15, 1981.”

HIGHWAY TRUST FUND

Act June 29, 1956, ch. 462, title II, § 209, 70 Stat. 397, as amended by Pub. L. 86-342, title II, § 202, Sept. 21, 1959, 73 Stat. 615; Pub. L. 86-346, title I, § 104(5), Sept. 22, 1959, 73 Stat. 622; Pub. L. 86-440, § 1(c), Apr. 22, 1960, 74 Stat. 81; Pub. L. 87-61, title II, § 207, June 29, 1961, 75 Stat. 128; Pub. L. 88-578, title II, § 202, Sept. 3, 1964, 78 Stat. 904; Pub. L. 89-44, title II, § 210, title VIII, § 809(e), June 21, 1965, 79 Stat. 144, 168; Pub. L. 91-258, title II, §§ 207(e), 208(g), May 21, 1970, 84 Stat. 249, 252; Pub. L. 91-605, title III, § 301, Dec. 31, 1970, 84 Stat. 1743; Pub. L. 94-273, § 18, Apr. 21, 1976, 90 Stat. 379; Pub. L. 94-280, title III, § 301, May 5, 1976, 90 Stat. 456; Pub. L. 95-599, title V, §§ 503(a), 504(a), Nov. 6, 1978, 92 Stat. 2757; Pub. L. 95-618, title II, § 233(b)(2)(E), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 96-451, title II, § 203(a), Oct. 14, 1980, 94 Stat. 1988; Pub. L. 97-424, title V, § 531(b), Jan. 6, 1983, 96 Stat. 2191; Pub. L. 97-449, § 2(a), Jan. 12, 1983, 96 Stat. 2439, provided that:

“(a) [Repealed. Pub. L. 97-424, title V, § 531(b), Jan. 6, 1983, 96 Stat. 2191. Subsec. (a) provided for the creation of a Highway Trust Fund.]

“(b) DECLARATION OF POLICY.—It is hereby declared to be the policy of the Congress that if it hereafter appears—

“(1) that the total receipts of the Trust Fund (exclusive of advances under subsection (d) will be less than the total expenditures from such Fund (exclusive of repayments of such advances); or

“(2) that the distribution of the tax burden among the various classes of persons using the Federal-aid highways, or otherwise deriving benefits from such highways, is not equitable, the Congress shall enact legislation in order to bring about a balance of total receipts and total expenditures, or such equitable distribution, as the case may be.

“(c) to (g) [Repealed. Pub. L. 97-424, title V, § 531(b), Jan. 6, 1983, 96 Stat. 2191. Subsecs. (c) to (g) provided generally for the transfer of the equivalent of the receipts of certain taxes to the Fund, for additional appropriations to the Fund, for its management, methods and purposes of expenditures, and for adjustment of apportionments regarding the Fund.]”

Pub. L. 96-451, title II, § 203(b), Oct. 14, 1980, 94 Stat. 1988, provided that: “The amendment made by subsection (a) [amending former subsec. (f)(5) of section 209 of Act June 29, 1956] shall apply to taxes received on or after October 1, 1980.”

Pub. L. 95-599, title V, § 504(b), Nov. 6, 1978, 92 Stat. 2758, provided that: “The amendment made by subsection (a) [amending former subsec. (g) of section 209 of Act June 29, 1956] shall apply to fiscal years beginning after September 30, 1978.”

Pub. L. 91-258, title II, § 208(g), May 21, 1970, 84 Stat. 252, which added subsec. (c)(5) of section 209 of the Act of June 29, 1956, ch. 462, title II, 70 Stat. 397, was repealed by Pub. L. 97-248, title II, § 281(b), Sept. 3, 1982, 96 Stat. 566.

PERCENTAGE OF FUNDS CONTRIBUTED BY ALASKA

Pub. L. 86-70, § 21(d)(4), June 25, 1959, 73 Stat. 145, which repealed subsec. (h) of this section, provided in part that the provisions of subsec. (h) relating to the percentage of funds to be contributed by Alaska shall continue to apply to funds apportioned to Alaska for fiscal year 1960 and prior fiscal years.

§ 121. Payment to States for construction

(a) IN GENERAL.—The Secretary, from time to time as the work progresses, may make payments to a State for costs of construction incurred by the State on a project (including payments made pursuant to a long-term concession agreement, such as availability payments). Such payments may also be made for the value of the materials—

(1) that have been stockpiled in the vicinity of the construction in conformity to plans and specifications for the projects; and

(2) that are not in the vicinity of the construction if the Secretary determines that because of required fabrication at an off-site location the material cannot be stockpiled in such vicinity.

(b) PROJECT AGREEMENT.—No payment shall be made under this chapter except for a project covered by a project agreement. After completion of the project in accordance with the project agreement, a State shall be entitled to payment out of the appropriate sums apportioned or allocated to the State of the unpaid balance of the Federal share payable for such project.

(c) Such payments shall be made to such official or officials or depository as may be designated by the State transportation department and authorized under the laws of the State to receive public funds of the State.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 899; Pub. L. 88-157, § 7(b), Oct. 24, 1963, 77 Stat. 278; Pub. L. 93-87, title I, § 117, Aug. 13, 1973, 87 Stat. 259; Pub. L. 94-280, title I, § 118(a), May 5, 1976, 90 Stat. 437; Pub. L. 100-17, title I, § 133(b)(6), Apr. 2, 1987, 101 Stat. 171; Pub. L. 102-240, title I, § 1018(b), Dec. 18, 1991, 105 Stat. 1948; Pub. L. 105-178, title I, §§ 1212(a)(2)(A)(i), 1302, June 9, 1998, 112 Stat. 193, 226; Pub. L. 114-94, div. A, title II, § 2002(a), Dec. 4, 2015, 129 Stat. 1446.)

Editorial Notes

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-94 inserted “(including payments made pursuant to a long-term concession agreement, such as availability payments)” after “a project” in introductory provisions.

1998—Subsec. (a). Pub. L. 105-178, §1302(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “The Secretary may, in his discretion, from time to time as the work progresses, make payments to a State for costs of construction incurred by it on a project. These payments shall at no time exceed the Federal share of the costs of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project. Such payments may also be made in the case of any such materials not in the vicinity of such construction if the Secretary determines that because of required fabrication at an off-site location the materials cannot be stockpiled in such vicinity.”

Subsec. (b). Pub. L. 105-178, §1302(1), added subsec. (b) and struck out former subsec. (b) which read as follows: “After completion of a project in accordance with the plans and specifications, and approval of the final voucher by the Secretary, a State shall be entitled to payment out of the appropriate sums apportioned to it of the unpaid balance of the Federal share payable on account of such project.”

Subsec. (c). Pub. L. 105-178, §1302(2), (3), redesignated subsec. (e) as (c) and struck out former subsec. (c) which read as follows: “No payment shall be made under this chapter, except for a project located on a Federal-aid system and covered by a project agreement. No final payment shall be made to a State for its costs of construction of a project until the completion of the construction has been approved by the Secretary following inspections pursuant to section 114(a) of this title.”

Subsec. (d). Pub. L. 105-178, §1302(2), struck out subsec. (d) which read as follows: “In making payments pursuant to this section, the Secretary shall be bound by the limitations with respect to the permissible amounts of such payments continued in sections 106(c), 120, and 130 of this title.”

Subsec. (e). Pub. L. 105-178, §1302(3), redesignated subsec. (e) as (c).

Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

1991—Subsec. (d). Pub. L. 102-240 substituted “106(c), 120,” for “120” and struck out at end “Payments for construction engineering on any project financed with Federal-aid highway funds shall not exceed 15 percent of the Federal share of the cost of construction of such project after excluding from the cost of construction the costs of rights-of-way, preliminary engineering, and construction engineering.”

1987—Subsec. (d). Pub. L. 100-17 substituted “15 percent” for “10 per centum” and struck out at end “However, this limitation shall be 15 per centum in any State with respect to which the Secretary finds such higher limitation to be necessary.”

1976—Subsec. (d). Pub. L. 94-280 substituted “Federal-aid highway funds” for “Federal-aid primary, secondary, or urban funds” and struck out 10 per centum limitation provision for any project financed with interstate funds.

1973—Subsec. (a). Pub. L. 93-87 authorized payments to be made for materials not in the construction vicinity where the Secretary determines that because of required fabrication at an off-site location the materials cannot be stockpiled in such vicinity.

1963—Subsec. (d). Pub. L. 88-157 substituted “any project financed with Federal-aid primary, secondary, or urban funds” for “any one project” and provided for limitation, on payments for construction engineering on projects financed with Federal-aid primary, secondary, or urban funds, of 15 percent of Federal share of cost of construction of the project where found by the Secretary to be necessary and for 10-percent limitation on projects financed with interstate funds.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

AT-RISK PROJECT PREAGREEMENT AUTHORITY

Pub. L. 114-94, div. A, title I, §1440, Dec. 4, 2015, 129 Stat. 1434, provided that:

“(a) DEFINITION OF PRELIMINARY ENGINEERING.—In this section, the term ‘preliminary engineering’ means allowable preconstruction project development and engineering costs.

“(b) AT-RISK PROJECT PREAGREEMENT AUTHORITY.—A recipient or subrecipient of Federal-aid funds under title 23, United States Code, may—

“(1) incur preliminary engineering costs for an eligible project under title 23, United States Code, before receiving project authorization from the State, in the case of a subrecipient, and the Secretary [of Transportation] to proceed with the project; and

“(2) request reimbursement of applicable Federal funds after the project authorization is received.

“(c) ELIGIBILITY.—The Secretary may reimburse preliminary engineering costs incurred by a recipient or subrecipient under subsection (b)—

“(1) if the costs meet all applicable requirements under title 23, United States Code, at the time the costs are incurred and the Secretary concurs that the requirements have been met;

“(2) in the case of a project located within a designated nonattainment or maintenance area for air quality, if the conformity requirements of the Clean Air Act (42 U.S.C. 7401 et seq.) have been met; and

“(3) if the costs would have been allowable if incurred after the date of the project authorization by the Department.

“(d) AT-RISK.—A recipient or subrecipient that elects to use the authority provided under this section shall—

“(1) assume all risk for preliminary engineering costs incurred prior to project authorization; and

“(2) be responsible for ensuring and demonstrating to the Secretary that all applicable cost eligibility conditions are met after the authorization is received.

“(e) RESTRICTIONS.—Nothing in this section—

“(1) allows a recipient or subrecipient to use the authority under this section to advance a project beyond preliminary engineering prior to the completion of the environmental review process;

“(2) waives the applicability of Federal requirements to a project other than the reimbursement of preliminary engineering costs incurred prior to an authorization to proceed in accordance with this section; or

“(3) guarantees Federal funding of the project or the eligibility of the project for future Federal-aid highway funding.”

SUBMISSION OF RECOMMENDATIONS TO CONGRESS FOR REIMBURSEMENT OF STATES FOR CERTAIN HIGHWAYS

Pub. L. 85-845, Aug. 28, 1958, 72 Stat. 1083, required Secretary of Commerce, within ten days after first day of first session of Eighty-sixth Congress, to submit to Congress recommendations for legislation for purpose of assisting Congress to determine whether or not to reimburse each State of any portion of a toll or free highway (1) which was on National System of Inter-

state and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways], (2) which met standards required by Federal-Aid Highway Act of 1956 for such System of Interstate and Defense Highways, and (3) construction of which had been completed since Aug. 2, 1947, or which had been in actual use or under construction by contract, for completion, awarded not later than June 30, 1957.

§ 122. Payments to States for bond and other debt instrument financing

(a) DEFINITION OF ELIGIBLE DEBT FINANCING INSTRUMENT.—In this section, the term “eligible debt financing instrument” means a bond or other debt financing instrument, including a note, certificate, mortgage, or lease agreement, issued by a State or political subdivision of a State or a public authority, the proceeds of which are used for an eligible project under this title.

(b) FEDERAL REIMBURSEMENT.—Subject to subsections (c) and (d), the Secretary may reimburse a State for expenses and costs incurred by the State or a political subdivision of the State and reimburse a public authority for expenses and costs incurred by the public authority for—

- (1) interest payments under an eligible debt financing instrument;
- (2) the retirement of principal of an eligible debt financing instrument;
- (3) the cost of the issuance of an eligible debt financing instrument;
- (4) the cost of insurance for an eligible debt financing instrument; and
- (5) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).

(c) CONDITIONS ON PAYMENT.—The Secretary may reimburse a State or public authority under subsection (b) with respect to a project funded by an eligible debt financing instrument after the State or public authority has complied with this title with respect to the project to the extent and in the manner that would be required if payment were to be made under section 121.

(d) FEDERAL SHARE.—The Federal share of the cost of a project payable under this section shall not exceed the Federal share of the cost of the project as determined under section 120.

(e) STATUTORY CONSTRUCTION.—Notwithstanding any other provision of law, the eligibility of an eligible debt financing instrument for reimbursement under subsection (b) shall not—

- (1) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principal or interest on the eligible debt financing instrument; or
- (2) create any right of a third party against the United States for payment under the eligible debt financing instrument.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 900; Pub. L. 95-599, title I, §115(b), Nov. 6, 1978, 92 Stat. 2698; Pub. L. 97-424, title I, §107(f), Jan. 6, 1983, 96 Stat. 2103; Pub. L. 100-17, title I, §133(b)(7), Apr. 2, 1987, 101 Stat. 171; Pub. L. 104-59, title III, §311(a), Nov. 28, 1995, 109 Stat. 583.)

Editorial Notes

AMENDMENTS

1995—Pub. L. 104-59 amended section generally, substituting present provisions for provisions which au-

thorized States to use portion of Federal highway payments to retire principal of bonds proceeds of which were used for certain Federal highway projects.

1987—Pub. L. 100-17 inserted “or for substitute highway projects approved under section 103(e)(4) of this title” before “and the retirement” in first sentence.

1983—Pub. L. 97-424 inserted “or for substitute highway projects approved under section 103(e)(4) of this title,” after “highway systems in urban areas,” and “or on highway projects approved under section 103(e)(4) of this title” after “expenditure on such system”.

1978—Pub. L. 95-599 inserted provisions relating to the retirement of bonds the proceeds of which were used for program projects, provisions that section was not to be construed as a commitment on the part of the United States to pay the principal of any such bonds, and provisions prohibiting inclusion of interest and incidental costs of bonds in estimated cost of completion.

Statutory Notes and Related Subsidiaries

PAYMENT OF INTEREST ON BONDS ISSUED PRIOR TO AND AFTER NOVEMBER 6, 1978

Pub. L. 95-599, title I, §115(c), Nov. 6, 1978, 92 Stat. 2698, provided that: “No interest shall be paid under authority of section 122 of title 23, United States Code, on any bonds issued prior to the date of enactment of this Act [Nov. 6, 1978], unless such bonds were issued for projects which were under construction on January 1, 1978. Interest on bonds issued in any fiscal year by a State after the date of enactment of this Act may be paid under authority of section 122 of title 23, United States Code, only if (1) such State was eligible to obligate funds of another State under subsection (a) of this section during such fiscal year and (2) the Secretary of Transportation certifies that such eligible State utilized, or will utilize, to the fullest extent possible during such fiscal year its authority to obligate funds under such subsection (a) of this section [amending section 118(b) of this title]. No interest shall be paid under section 122 of title 23, United States Code, on that part of the proceeds of bonds issued after the date of enactment of this Act used to retire or otherwise refinance bonds issued prior to such date.”

§ 123. Relocation of utility facilities

(a) DEFINITIONS.—In this section:

(1) COST OF RELOCATION.—The term “cost of relocation” includes the entire amount paid by a utility properly attributable to the relocation of a utility facility, minus any increase in the value of the new facility and any salvage value derived from the old facility.

(2) EARLY UTILITY RELOCATION PROJECT.—The term “early utility relocation project” means utility relocation activities identified by the State for performance before completion of the environmental review process for the transportation project.

(3) ENVIRONMENTAL REVIEW PROCESS.—The term “environmental review process” has the meaning given the term in section 139(a).

(4) TRANSPORTATION PROJECT.—The term “transportation project” means a project.

(5) UTILITY FACILITY.—The term “utility facility” means any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, stormwater not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, that directly or indirectly serves the public.