

**DESCRIPTION OF THE CHAIRMAN'S MARK REGARDING THE  
EXTENSION OF HIGHWAY TRUST FUND PROVISIONS  
AND THE "VOLUMETRIC ETHANOL EXCISE TAX CREDIT  
ACT OF 2003"**

Scheduled for Markup  
By the  
SENATE COMMITTEE ON FINANCE  
on September 17, 2003

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



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## INTRODUCTION AND LEGISLATIVE BACKGROUND

### Introduction

This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of the present-law Highway Trust Fund excise taxes (Part I), a description of the Code provisions governing the administration of the Highway Trust fund (Part II), and a description of proposals (Part III).

### Legislative Background

Excise taxes and programmatic expenditures related to the Highway Trust Fund involve approval by at least three committees in each House of Congress--the tax-writing committee, one or more authorizing committees, and the appropriations committee. The tax-writing committees determine what revenues will be dedicated to the Trust Fund and review Trust Fund expenditure purposes; the authorizing committees consider competing transportation needs on a detailed level; and, the appropriations committees reconcile transportation spending needs with all other Federal spending needs. Historically, tax provisions and expenditure authorizations generally have been enacted as separate titles of a single Act; appropriations generally have been enacted separately as part of the annual Congressional appropriations process.

The Highway Trust Fund is funded with amounts equivalent to revenues from certain excise taxes on motor fuels and on heavy trucks and tires. These excise taxes currently are scheduled to expire after September 30, 2005. The Internal Revenue Code (the "Code") contains (1) the provisions dedicating the revenues from these excises taxes to the Highway Trust Fund, (2) the relevant expenditure provisions governing the purposes for which Highway Fund monies may be spent, and (3) the period when those expenditures may occur. The Highway Trust Fund expenditure authority currently expires after September 30, 2003. Because the Highway Trust Fund excise taxes, like many other transportation excise taxes, are dedicated to Trust Fund programs, extensions and modifications of the taxes frequently have been considered in conjunction with extensions and revisions of Trust Fund expenditure programs.

The Committee on Finance has scheduled a markup for September 17, 2003, on a five-month extension of the present-law Highway Trust Fund expenditure provisions in the Code. In conjunction with this temporary extension, the Committee also will consider S. 1548, the "Volumetric Ethanol Excise Tax Credit Act of 2003," as modified by the Chairman's mark. S. 1548, as modified, repeals the reduced tax rate on sales of fuel for blending with alcohol and gasohol and imposes the full rate of excise tax on alcohol blended fuels (18.3 cents per gallon on gasoline blends and 24.3 cents per gallon of diesel blended fuel). In place of the reduced rates, the proposal provides per-gallon excise tax credits for alcohol and biodiesel fuel mixtures and provides for outlay payments (as an alternative to tax credits) to producers of alcohol and biodiesel fuel mixtures and users of 100 percent alcohol and 100 percent biodiesel fuels. The

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark Regarding the Extension of Highway Trust Fund Provisions and the "Volumetric Ethanol Excise Tax Credit Act of 2003"* (JCX-75-03), September 15, 2003.

proposal extends the termination date for the income tax credit for alcohol from December 31, 2007, to December 31, 2010, and creates a similar credit for biodiesel fuels that expires December 31, 2005.

## I. PRESENT-LAW HIGHWAY TRUST FUND EXCISE TAXES

### Present Law

#### In general

Six separate excise taxes are imposed to finance the Federal Highway Trust Fund program. Three of these taxes are imposed on highway motor fuels. The remaining three are a retail sales tax on heavy highway vehicles, a manufacturers' excise tax on heavy vehicle tires, and an annual use tax on heavy vehicles. A substantial majority of the revenues produced by the Highway Trust Fund excise taxes are derived from the taxes on motor fuels. The six taxes are summarized below.

Except for 4.3 cents per gallon of the Highway Trust Fund fuels tax rates, all of these taxes are scheduled to expire after September 30, 2005. The 4.3-cents-per-gallon portion of the fuels tax rates is permanent.<sup>2</sup> Highway Trust Fund expenditure authority is scheduled to expire after September 30, 2003. The two-year delay in scheduled expiration of the excise taxes from the 2003 expiration of expenditure authority reflects the operation of an anti-deficit provision (the so-called "Harry Byrd Rule") that governs Highway Trust Fund expenditures.<sup>3</sup>

#### Highway motor fuels taxes

The Highway Trust Fund motor fuels tax rates are as follows:<sup>4</sup>

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<sup>2</sup> This portion of the tax rates was enacted as a deficit reduction measure in 1993. Receipts from it were retained in the General Fund until 1997 legislation provided for their transfer to the Highway Trust Fund.

<sup>3</sup> This rule limits Highway Trust Fund obligations generally to the current year's ending balance plus two years projected revenues (sec. 9503(d)).

<sup>4</sup> These fuels also are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank ("LUST") Trust Fund (secs. 4041(d) and 4081(a)(2)(B)).

Gasoline	18.3 cents per gallon
Diesel fuel and kerosene	24.3 cents per gallon
Special motor fuels	18.3 cents per gallon generally <sup>5</sup>

Exemptions

Present law includes numerous exemptions (including partial exemptions) for specified uses of taxable fuels or for specified fuels. Because the gasoline and diesel fuel taxes generally are imposed before the end use of the fuel is known, many exemptions are realized through refunds to end users of tax paid by a taxpayer earlier in the distribution chain. Exempt uses and fuels include:

- (1) use in State and local government and nonprofit educational organization highway vehicles;
- (2) use in buses engaged in transporting students and employees of schools;
- (3) use in local mass transit buses having a seating capacity of at least 20 adults (not including the driver) when the buses operate under contract with (or are subsidized by) a State or local governmental unit to furnish the transportation; and
- (4) use in intercity buses serving the general public along scheduled routes. (Such use is totally exempt from the gasoline excise tax and is exempt from 17 cents per gallon of the diesel fuel tax.)

In addition, fuels used in off-highway business use or on a farm for farming purposes generally are exempt from these motor fuels taxes.<sup>6</sup> The Highway Trust Fund does not receive

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<sup>5</sup> The statutory rate for certain special motor fuels is determined on an energy equivalent basis, as follows:

Liquefied petroleum gas (propane) .....	13.6 cents per gallon
Liquefied natural gas.....	11.9 cents per gallon
Methanol derived from petroleum or natural gas.....	9.15 cents per gallon
Compressed natural gas.....	48.54 cents per MCF

See secs. 4041(a)(2) and (3) and 4041(m).

The compressed natural gas tax rate is equivalent only to 4.3 cents per gallon of the rate imposed on gasoline and other special motor fuels rather than the full 18.3-cents-per-gallon rate. The tax rate for the other special motor fuels is equivalent to the full 18.3-cents-per-gallon gasoline and special motor fuels tax rate.

<sup>6</sup> Diesel fuel is the same fuel (#2 fuel oil) as that commonly used as home heating oil. Fuel oil used as heating oil is not subject to the Federal excise tax.

excise taxes imposed on fuel used in off-highway activities. Rather, when tax is imposed on off-highway use fuel consumption, it is used to finance other Trust Funds (e.g., motorboat gasoline and special motor fuel taxes from non-business off-highway use dedicated to the Aquatic Resources Trust Fund) or is retained in the General Fund (e.g., tax on diesel fuel used in trains).

#### Partial exemptions for alcohol fuels

Partial exemptions from the Highway Trust Fund excise taxes are provided for alcohol fuels that are used as special motor fuels or are blended with gasoline for use as a highway motor fuel (e.g., “gasohol”). In the case of ethanol and renewable source methanol (derived from sources other than petroleum, natural gas, or coal) used as an alcohol special motor fuel, the excise tax exemption is equal to 5.2 cents per gallon (6.0 cents per gallon for methanol) and the same amount per gallon of blended fuels consisting of gasoline or diesel fuel blended with these alcohols in prescribed proportions. The partial exemption for ethanol fuels is scheduled to decline to 5.1 cents per gallon by 2007. This exemption is coordinated with an income tax credit currently equal to 52 cents per gallon (similarly scheduled to decline to 51 cents per gallon) for ethanol and 60 cents per gallon for renewable source methanol, producing a net tax subsidy for these fuels.<sup>7</sup>

Present law allows alcohol blenders (persons that blend ethanol or renewable source methanol with gasoline for use as a highway motor fuel) a choice of three methods of realizing the Code benefits for alcohol fuels. First, the benefit may be realized in whole or in part by the income tax credit described. Second, blenders that register with the Internal Revenue Service (the “IRS”) may purchase gasoline to be blended with alcohol in certain gasoline/alcohol ratios at a special reduced tax rate. Third, blenders purchasing gasoline bearing the full 18.3-cents-per-gallon tax rate and blending the gasoline with alcohol may apply for a refund (on a weekly basis

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<sup>7</sup> The excise tax exemption is scheduled to expire after September 30, 2007; the income tax credit is scheduled to expire after December 31, 2007 (or earlier, if the Highway Trust Fund excise taxes drop to 4.3 cents per gallon before that date).

if at least \$200). Unlike most fuel excise tax refunds, these refunds bear interest unless paid by the IRS within 20 days.<sup>8</sup>

### Biodiesel

No income tax credit or excise tax rate reduction is provided for biodiesel fuels under present law. Subject to certain exemptions, the retail tax on diesel and special motors fuel is imposed by section 4041(a)(1) on biodiesel sold for use or used as a fuel in a diesel-powered highway vehicle or diesel-powered train.<sup>9</sup> Biodiesel not in a blend is not taxable fuel for purposes of the manufacturers excise tax imposed on gasoline, diesel and kerosene. Subject to the certain exemptions, tax is imposed on the removal or sale of blended taxable fuel produced using biodiesel.

### Non-fuel Highway Fund excise taxes

In addition to the highway motor fuels excise tax revenues, the Highway Trust Fund receives revenues produced by three excise taxes imposed exclusively on heavy highway vehicles or tires. These taxes are:

- (1) A 12-percent excise tax imposed on the first retail sale of heavy highway vehicles, tractors, and trailers (generally, trucks having a gross vehicle weight in excess of 33,000 pounds and trailers having such a weight in excess of 26,000 pounds);
- (2) An excise tax imposed at graduated rates on highway tires weighing more than 40 pounds; and
- (3) An annual use tax imposed on highway vehicles having a taxable gross weight of 55,000 pounds or more. (The maximum rate for this tax is \$550 per year, imposed on vehicles having a taxable gross weight over 75,000 pounds.)

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<sup>8</sup> The choice of how the alcohol tax benefit is realized generally depends on the arrangements under which the blender purchases gasoline, the blender's tax circumstances, or proportions of gasoline and alcohol in the blended fuel. For example, reduced tax rate gasoline purchases may be used to realize the full renewable source alcohol fuels tax benefit only on gasoline/alcohol mixtures that meet the requirements for 10 percent gasohol, 7.7 percent gasohol, or 5.7 percent gasohol. The balance of the benefit for alcohol mixtures on mixtures in excess of 10 percent must be claimed through the income tax credit.

Blenders that receive their gasoline pursuant to inventory exchange agreements among suppliers (where one taxpayer-supplier delivers fuel from its terminal to a customer of another such supplier and bills the other supplier rather than the blender) may not purchase gasoline at reduced tax rates. These blenders are eligible for the expedited excise tax refunds.

All taxpayers are eligible for the income tax credit; however, that credit may not be used to offset alternative minimum tax liability and is not refundable.

<sup>9</sup> Rev. Rul. 2002-76, 2002-46 I.R.B. 840.

## **Excise tax revenue**

Historically, approximately 90 percent of the revenues for the Highway Trust Fund have been produced by the motor fuel taxes. For example in Fiscal Year 2000, the motor fuels excise taxes yielded gross receipts of \$30.1 billion. The heavy vehicle retail sales tax produced \$3.1 billion, the tire excise tax yielded \$436 million and the annual use tax yielded \$900 million.

## II. HIGHWAY TRUST FUND EXPENDITURE PROVISIONS

### In general

Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by provisions of the Code (sec. 9503).<sup>10</sup> The Code authorizes expenditures (subject to appropriations) from the Fund through September 30, 2003, for the purposes provided in authorizing legislation, as in effect on the date of enactment of the TEA 21 Restoration Act.

Under present law, revenues from the highway excise taxes, as imposed through September 30, 2005, generally are dedicated to the Highway Trust Fund. However, 2.5 cents per gallon of the tax imposed on gasohol and 2.8 cents per gallon of the tax imposed on fuel to be blended with alcohol are retained in the General Fund. Also, with respect to gasohol, Highway Trust Fund revenues are reduced by the amount of the tax subsidy claimed through the excise tax system, but not for amounts claimed as income tax credits.

### Present-law Highway Trust Fund expenditure purposes

#### Overview

The Highway Trust Fund has a subaccount for Mass Transit. Both the Trust Fund and its subaccount are funding sources for specific programs.

Highway Trust Fund expenditure purposes have been revised with each authorization Act enacted since establishment of the Highway Trust Fund in 1956. In general, expenditures authorized under those Acts (as the Acts were in effect on the date of enactment of the most recent such authorizing Act) are approved by the Code as Highway Trust Fund expenditure purposes.<sup>11</sup> Thus, no Highway Trust Fund monies may be spent for a purpose not approved by the tax-writing committees of Congress. The Code provides that authority to make expenditures from the Highway Trust Fund expires after September 30, 2003. Thus, no Highway Trust Fund expenditures may occur after September 30, 2003, without approval by the tax-writing committees of Congress.

#### Highway Trust Fund expenditure purposes

The Highway Trust Fund receives revenues from all non-fuel highway transportation excise taxes and revenues from all but 2.86 cents per gallon of the highway motor fuels excise

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<sup>10</sup> The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

<sup>11</sup> The authorizing Acts which currently are referenced in the Highway Trust Fund provisions of the Code are the Highway Revenue Act of 1956, Titles I and II of the Surface Transportation Assistance Act of 1982, the Surface Transportation and Uniform Relocation Act of 1987, the Intermodal Surface Transportation Efficiency Act of 1991 and the Transportation Equity Act for the 21<sup>st</sup> Century.

taxes transferred to the Highway Trust Fund. Programs financed from the Highway Trust Fund (excluding the Mass Transit account) include:

- (1) Interstate maintenance program;
- (2) National Highway System;
- (3) The bridge program (bridge replacement and repair);
- (4) Surface transportation programs;
- (5) Congestion mitigation and air quality improvement program;
- (6) Highway safety programs and research and development, including a share of the cost of National Highway Traffic Safety Administration (“NHTSA”) programs and university research centers;
- (7) Appalachian development highway system program;
- (8) Recreational trails program;
- (9) Federal lands highways program;
- (10) National corridor planning and development and coordinated border infrastructure programs;
- (11) Construction of ferry boats and ferry terminal facilities;
- (12) National scenic byways program;
- (13) Value pricing pilot program;
- (14) High priority projects program;
- (15) Highway use tax evasion projects;
- (16) Commonwealth of Puerto Rico highway program; and
- (17) Certain administrative costs of the Federal Highway Administration and NHTSA.

Mass Transit Account expenditure purposes

The Highway Fund’s Mass Transit Account receives revenues equivalent to 2.86 cents per gallon of the highway motor fuels excise taxes. Mass Transit Account monies are available through September 30, 2003, for capital and capital-related expenditures under sections 5338(a)(1) and (b)(1) of Title 49, United States Code, the Intermodal Surface Transportation Efficiency Act of 1991 or the Transportation Equity Act for the 21<sup>st</sup> Century as those provisions were in effect on the date of enactment of the TEA 21 Restoration Act.

### **Anti-deficit provisions (the “Harry Byrd rule”)**

Highway Trust Fund spending is limited by anti-deficit provisions internal to the Highway Trust Fund, the so-called “Harry Byrd rule”. The rule requires the Treasury Department to determine, on a quarterly basis, the amount (if any) by which unfunded highway authorizations exceed projected net Highway Trust Fund tax receipts for the 24-month period beginning at the close of each fiscal year (sec. 9503(d)). Similar rules apply to unfunded Mass Transit Account authorizations. If unfunded authorizations exceed projected 24-month receipts, apportionments to the States for specified programs funded by the relevant Trust Fund Account are to be reduced proportionately. Because of the Harry Byrd rule, taxes dedicated to the Highway Trust Fund typically are scheduled to expire at least two years after current authorizing Acts.

### **Limitations on transfers to the highway trust fund (the “Basso rule”)**

The Code also contains a special enforcement provision, the so-called “Basso rule”, to prevent expenditure of Highway Trust Fund monies for purposes not authorized in section 9503 (i.e., not approved by the tax-writing committees of Congress) (sec. 9503(b)(5)). Should such unapproved expenditures occur, no further excise tax receipts will be transferred to the Highway Trust Fund. Rather, the taxes will continue to be imposed with receipts being retained in the General Fund. This enforcement provision provides specifically that it applies not only to unauthorized expenditures under the current Code provisions, but also to expenditures pursuant to future legislation that does not amend section 9503's expenditure authorization provisions or otherwise authorize the expenditure as part of a revenue Act.

### **Interrelationship of the Highway Trust Fund and the Aquatic Resources Trust Fund**

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 (sec. 9503(c)(4) and 9503(c)(5)).

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 cents per gallon from the Highway Trust Fund to the Aquatics Resources Trust Fund and Land and Water Conservation Fund.<sup>12</sup> The remainder, 5.3 cents per gallon, is retained in the General Fund.

The Aquatic Resources Trust Fund is comprised of two accounts, the Boat Safety Account and the Sport Fish Restoration Account. Transfers to the Boat Safety Account are limited to amounts not exceeding \$70 million per year. In addition, these transfers are subject to

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<sup>12</sup> This amount increases to 13.5 cents between October 1, 2003, and September 1, 2005. No transfers from the Highway Trust Fund to the Aquatics Resources Trust Fund are provided for after 2005.

an overall annual limit equal to an amount that will not cause the Account to have an unobligated balance in excess of \$70 million. To the extent there is any excess, the Code transfers the next \$1 million of motorboat fuel taxes from the Highway Trust Fund to the Land and Water Conservation Fund provided for in title I of the Land and Water Conservation Fund Act of 1965.

The Sport Fish Restoration Account receives the balance of the motorboat gasoline and special motor fuels receipts from the Highway Trust Fund. In addition, the Sport Fish Restoration Account receives 13 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 equipment. This Account also is funded with receipts from an *ad valorem* manufacturer's excise tax on sport fishing equipment.

The expenditure authority for the Aquatic Resources Trust Fund expires after September 30, 2003.

### **III. DESCRIPTION OF PROPOSALS**

#### **A. Extension and Modification of Highway Trust Fund Provisions**

The current September 30, 2003, expiration date of authority to spend monies from the Highway Trust Fund is extended for five months, through February 29, 2004. The Code provisions governing the purposes for which monies in the Highway Fund may be spent is updated to include the extension bill. Provisions governing the expenditure authority for the Aquatic Resources Trust Fund are extended for five months, through February 29, 2004. The purposes for which monies in the Aquatic Resources Trust Fund may be spent are similarly updated as provided by the extension bill.

The proposal creates a temporary rule for purposes of the anti-deficit provisions of the Highway Trust Fund. For purposes of determining 24 months of projected revenues for the anti-deficit provisions, the Secretary of the Treasury is instructed to treat each expiring provision relating to appropriations and transfers to the Highway Trust Fund to have been extended through the end of the 24-month period and to assume that the rate of tax during such 24-month period remains at the same rate in effect on the date of enactment of the proposal.

#### **B. Volumetric Ethanol Excise Tax Credit**

##### **Overview**

The proposal eliminates reduced rates of excise tax for most alcohol-blended fuels and imposes the full rate of excise tax on alcohol blended fuels (18.3 cents per gallon on gasoline blends and 24.3 cents per gallon of diesel blended fuel). In place of reduced rates, the proposal creates two new excise tax credits: the alcohol fuel mixture credit and the biodiesel mixture credit. The sum of these credits may be taken against the tax imposed on taxable fuels (by section 4081). The proposal allows taxpayers to file a claim for payment equal to the amount of these credits. A person must first apply the excise tax credit against excise tax liability, if any, before making any claim for payment. The proposal also eliminates the General Fund retention of certain taxes on alcohol fuels, and credits these taxes to the Highway Trust Fund and extends the present-law alcohol fuels credit through December 31, 2010.

##### **Alcohol fuel mixture excise tax credit**

The proposal eliminates the reduced rates of excise tax for most alcohol-blended fuels.<sup>13</sup> Under the proposal, 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.

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<sup>13</sup> The proposal does not change the present-law treatment of alcohol aviation fuels, fuels blended with alcohol derived from natural gas (under sec. 4041(m)), or alcohol derived from coal or peat (under sec. 4041(b)(2)). The proposal does not change the taxes imposed to fund the Leaking Underground Storage Tank Trust Fund.

In lieu of the reduced excise tax rates, the proposal provides for an excise tax credit, the alcohol fuel mixture credit. The alcohol fuel mixture credit is 52 cents for each gallon of alcohol used by a person in producing an alcohol fuel mixture. 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.

For purposes of the alcohol fuel mixture credit, an “alcohol fuel mixture” is a mixture of alcohol and a taxable fuel that is (1) sold for use or used as a fuel by the taxpayer producing the mixture or (2) removed from the refinery by a person 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). Taxable fuel is gasoline, diesel, and kerosene.<sup>14</sup>

The excise tax credit is coordinated with the alcohol fuels income tax credit and is available through December 31, 2010.

### **Biodiesel mixture excise tax credit**

Biodiesel is monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet (1) the registration requirements established by the Environmental Protection Agency under section 211 of the Clean Air Act and (2) the requirements of the American Society of Testing and Materials D6751. Agri-biodiesel is derived from virgin oils including esters derived from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, or animal fats.

The proposal provides an excise tax credit for biodiesel mixtures. The credit is 50 cents for each gallon of biodiesel used by the taxpayer in producing a qualified biodiesel mixture. A qualified biodiesel mixture is a mixture of biodiesel and diesel fuel that is (1) sold for use or used by the taxpayer producing such mixture as a fuel, or (2) removed from the refinery by a person producing the mixture. The sale or use must be in the trade or business of the taxpayer and is to be taken into account for the taxable year in which such sale or use occurs. No credit is allowed with respect to any casual off-farm production of a qualified biodiesel mixture. In the case of agri-biodiesel, the amount of the credit is \$1.00 per gallon and applies only if the taxpayer obtains a certification from the registered producer of the agri-biodiesel which identifies the product produced.

The credit is not available for any sale or use for any period after December 31, 2005. This excise tax credit is coordinated with income tax credit for biodiesel such that credit for the same biodiesel cannot be claimed for both income and excise tax purposes.

### **Registration requirements**

Under the proposal, the Secretary may require registration of every person that produces biodiesel or alcohol.

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<sup>14</sup> Sec. 4083(a)(1).

## **Payments with respect to qualified mixtures and 100 percent alcohol and 100 percent biodiesel used as fuel**

If any person produces a qualified alcohol or biodiesel fuel mixture in such person's trade or business, the Secretary is to pay such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such mixture. If 100 percent alcohol (neat excluding denaturant), biodiesel, or agri-biodiesel not mixed with a taxable fuel is (i) used by any person as a fuel in a trade or business or (ii) sold by any person at retail to another person and placed in the fuel tank of such person's vehicle, the Secretary is to pay such person an amount equal to the alcohol credit (as determined under section 40) or the biodiesel credit with respect to such fuel. The provision is coordinated with other refund/payment provisions and the excise tax credits for alcohol fuel mixtures and biodiesel mixtures. A person must first apply the excise tax credit against excise tax liability, if any, before making any claim for payment. The proposal does not apply with respect to alcohol fuel or alcohol fuel mixtures sold or used after December 31, 2010. It does not apply to biodiesel, agri-biodiesel or qualified biodiesel mixtures sold or used after December 31, 2005.

### **Electronic claims**

If such claims are not paid within 45 days, the claim is to be paid with interest. The proposal 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. Filing requirements will be simplified under the proposal. The Secretary is to describe the electronic format for filing claims by October 31, 2003.

## **Highway Trust Fund**

The proposal 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 proposal 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 biodiesel mixtures.

## **Alcohol fuels income tax credit**

The proposal extends the alcohol fuels credit (sec. 40) through December 31, 2010.

### **C. Biodiesel Income Tax Credit**

The proposal provides a new income tax credit for qualified biodiesel and biodiesel mixtures, the biodiesel fuels credit.<sup>15</sup> The biodiesel fuels credit is the sum of the biodiesel mixture credit plus the biodiesel credit and is treated as a general business credit. The amount of the biodiesel fuels credit is includable in gross income. The biodiesel fuels credit is coordinated to take into account benefits from the biodiesel excise tax credit and payment provisions discussed above. The credit may not be carried back to a taxable year ending before or on the effective date of the proposal. The proposal does not apply to fuel sold after December 31, 2005.

Agri-biodiesel may be taken into account for purposes of the credit only if the taxpayer obtains a certification from the registered producer of the agri-biodiesel which identifies the product produced.

#### **Biodiesel mixture credit**

The biodiesel mixture credit is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture. For agri-biodiesel, the credit is \$1.00 per gallon. A qualified biodiesel mixture is a mixture of biodiesel and diesel fuel that is (1) sold by the taxpayer producing such mixture to any person for use as a fuel, (2) is used as a fuel by the taxpayer producing such mixture or (3) removed from the refinery by the person producing such mixture. The sale or use must be in the trade or business of the taxpayer and is to be taken into account for the taxable year in which such sale or use occurs. No credit is allowed with respect to any casual off-farm production of a qualified biodiesel mixture.

#### **Biodiesel credit**

The biodiesel credit is 50 cents for each gallon of 100 percent biodiesel which is not in a mixture with diesel fuel and which during the taxable year is (1) used by the taxpayer as a fuel in a trade or business or (2) sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle. For agri-biodiesel, the credit is \$1.00 per gallon.

### **D. Effective Dates**

The extension of Highway Trust Fund proposals are effective upon date of enactment.

These volumetric ethanol excise tax credit and related proposals generally are effective for fuel sold or used after December 31, 2003. The repeal of the General Fund retention of the 2.5/2.8 cents per gallon regarding alcohol fuels is effective October 1, 2003. The Secretary is to provide electronic filing instructions by October 31, 2003.

The biodiesel income tax proposal is effective for fuel sold after December 31, 2003.

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<sup>15</sup> The income tax credit uses the same definitions of biodiesel, agri-biodiesel, and qualified biodiesel mixture as the excise tax credit.