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HIGHWAY INVESTMENT, JOB CREATION, AND ECONOMIC GROWTH ACT OF 2012

FEBRUARY 27, 2012.—Ordered to be printed

Mr. BAUCUS, from the Committee on Finance, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2132]

The Committee on Finance, having considered original legislation to amend the Internal Revenue Code of 1986 to provide for the exclusion of highway-related taxes and trust fund expenditures, to provide revenues for highway programs, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill, do pass.

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19–010

I. LEGISLATIVE BACKGROUND

The taxes dedicated to the Highway Trust Fund generally do not apply after March 31, 2012. The Highway Trust Fund expenditure authority also terminates on March 31, 2012. On May 17, 2011, the Committee on Finance held a hearing on highway taxes. The Committee heard from a variety of witness regarding the financing for the Highway Trust Fund, including representatives from industry and government. With respect to the Highway Trust Fund, the Committee has been advised that a shortfall of $5.6 billion is forecast for fiscal year 2013.

The Senate Committee on Finance marked up original legislation (the "Highway Investment, Job Creation, and Economic Growth Act of 2012") on February 7, 2012, to be included in S. 1813 (the "Moving Ahead for Progress in the 21st Century Act") and, with a majority and quorum present, ordered the bill favorably reported, with amendments on that date.[1] This report describes the provisions of the bill.

[1] It is the understanding of the Committee that the Chairman will work with Members of the Committee to replace the provisions explained in sections III.B. and III.I (infra) with alternative revenue provisions that are sufficient to meet or exceed the revenue total in the Reported legislation.

II. EXPLANATION OF THE BILL

TITLE I.—EXTENSION OF TAXES AND TRUST FUNDS

A. EXTENSION OF HIGHWAY TRUST FUND EXPENDITURE AUTHORITY AND RELATED TAXES (secs. 101 and 102 of the bill and secs. 4041, 4051, 4071, 4081, 4221, 4481 4483, 6412, 9503, 9504, and 9508 of the Code)

PRESENT LAW HIGHWAY TRUST FUND EXCISE TAXES

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 annual use tax on heavy vehicles expires October 1, 2012. Except for 4.3 cents per gallon of the Highway Trust Fund fuels tax rates, the remaining taxes are scheduled to expire after March 31, 2012. The 4.3-cents-per-gallon portion of the fuels tax rates is permanent.[2] The six taxes are summarized below.

Highway motor fuels taxes

The Highway Trust Fund motor fuels tax rates are as follows:[3]

Gasoline	18.3 cents per gallon
Diesel fuel and kerosene	24.3 cents per gallon
Special motor fuels	18.3 cents per gallon generally[4]

Non-fuel Highway Trust 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);[5]
2. An excise tax imposed on highway tires with a rated load capacity exceeding 3,500 pounds, generally at a rate of 0.945 cents per 10 pounds of excess;[6] and
3. An annual use tax imposed on highway vehicles having a taxable gross weight of 55,000 pounds or more.[7] (The max-

[2] 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.

[3] Secs. 4081(a)(2)(A)(i), 4081(a)(2)(A)(iii), 4041(a)(2), 4041(a)(3), and 4041(m). Some of these fuels also are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund (secs. 4041(d) and 4081(a)(2)(B)).

[4] See secs. 4041(a)(2), 4041(a)(3), and 4041(m).

[5] Sec. 4051.

[6] Sec. 4071.

[7] Sec. 4481.

imum rate for this tax is $550 per year, imposed on vehicles having a taxable gross weight over 75,000 pounds.)

The taxable year for the annual use tax is from July 1st through June 30th of the following year. For the period July 1, 2012, through September 30, 2012, the amount of the annual use tax is reduced by 75 percent.[8]

PRESENT LAW HIGHWAY TRUST FUND EXPENDITURE PROVISIONS

In general

Under present law, revenues from the highway excise taxes, as imposed through March 31, 2012, generally are dedicated to the Highway Trust Fund. Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by the Code.[9] The Code authorizes expenditures (subject to appropriations) from the Highway Trust Fund through March 31, 2012, for the purposes provided in authorizing legislation, as such legislation was in effect on the date of enactment of the Surface Transportation Extension Act of 2011, Part II.

Highway Trust Fund expenditure purposes

The Highway Trust Fund has a separate account for mass transit, the Mass Transit Account.[10] The Highway Trust Fund and the Mass Transit Account 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 specified by the Code as Highway Trust Fund expenditure purposes.[11] The Code provides that the authority to make expenditures from the Highway Trust Fund expires after March 31, 2012. Thus, no Highway Trust Fund expenditures may occur after March 31, 2012, without an amendment to the Code.

As noted above, section 9503 appropriates to the Highway Trust Fund amounts equivalent to the taxes received from the following: the taxes on diesel, gasoline, kerosene and special motor fuel, the tax on tires, the annual heavy vehicle use tax, and the tax on the retail sale of heavy trucks and trailers.[12] Section 9601 provides that amounts appropriated to a trust fund pursuant to sections 9501 through 9511, are to be transferred at least monthly from the General Fund of the Treasury to such trust fund on the basis of estimates made by the Secretary of the Treasury of the amounts

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[8] Sec. 4482(c)(4) and (d).

[9] Sec. 9503. The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

[10] Sec. 9503(e)(1).

[11] The authorizing Acts that 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; the Transportation Equity Act for the 21st Century, the Surface Transportation Extension Act of 2003, the Surface Transportation Extension Act of 2004; the Surface Transportation Extension Act of 2004, Part II; the Surface Transportation Extension Act of 2004, Part III; the Surface Transportation Extension Act of 2004, Part IV; the Surface Transportation Extension Act of 2004, Part V; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; the SAFETEA-LU Technical Corrections Act of 2008; the Surface Transportation Extension Act of 2010; the Surface Transportation Extension Act of 2010, Part II; the Surface Transportation Extension Act of 2011; and the Surface Transportation Extension Act of 2011, Part II.

[12] Sec. 9503(b)(1).

referred to in the Code section appropriating the amounts to such trust fund. The Code requires that proper adjustments be made in amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

S. 1813, MOVING AHEAD FOR PROGRESS FOR THE 21ST CENTURY (MAP–21)

On November 9, 2011, the Senate Environment and Public Works Committee passed MAP–21, a two-year reauthorization of Highway Trust Fund programs. Among other purposes, the bill reauthorizes the Federal highway, public transportation, highway safety, and motor carrier safety programs for fiscal year 2012 through fiscal year 2013.

REASONS FOR CHANGE

Communities and business depend on effective transportation to help them grow. The projects funded by the Highway Trust Fund ensure safety and mobility, sustain and create jobs, reduce traffic congestion, improve air quality and fund infrastructure projects of regional and national significance across the country. Therefore, the Committee believes it is appropriate to reauthorize Highway Trust Fund expenditures through September 30, 2013, and to extend current Federal taxes payable to the Highway Trust Fund.

EXPLANATION OF PROVISION

The expenditure authority for the Highway Trust Fund is extended through September 30, 2013. The Code provisions governing the purposes for which monies in the Highway Trust Fund may be spent are updated to include the reauthorization bill, S. 1813, Moving Ahead for Progress for the 21st Century (MAP–21).[13]

The provision extends the motor fuel taxes, and all three non-fuel excise taxes at their current rates through September 30, 2015.[14] The provision resolves the projected deficit in the Highway Trust Fund, assures a cushion of $2.8 billion in each account of the Highway Trust Fund, and creates a solvency account available for use by either highways or mass transit. Specifically, the Secretary of the Treasury is to transfer the excess of (1) any amount appropriated to the Highway Trust Fund before October 1, 2013, by reason of the provisions of this bill, over (2) the amount necessary to meet the required expenditures from the Highway Trust Fund as authorized in section 9503(c) of the Code (which provides expenditure authority from the Highway Trust Fund) for the period ending before October 1, 2013. Amounts in the solvency account are available for transfers to the Highway Account and the Mass Transit Account in such amounts as determined necessary by the Secretary to ensure that each account has a surplus balance of $2.8 billion on September 30, 2013. The solvency account terminates on September 30, 2013 and any remainder in the solvency account remains in the Highway Trust Fund. The Committee expects that the

[13] The provision also replaces cross-references to the Surface Transportation Extension Act of 2011, Part II, with MAP–21, and replaces April 1, 2012 references with October 1, 2013 in the Code provisions governing the Leaking Underground Storage Tank Trust Fund, and the Sport Fish Restoration and Boating Trust Fund.

[14] The Leaking Underground Storage Tank Trust Fund financing rate of 0.1 cent per gallon also is extended through September 30, 2015.

Secretary of the Treasury will consult with the Secretary of Transportation in making determinations concerning amounts necessary to meet required expenditures and amounts necessary to ensure the cushion of $2.8 billion.

EFFECTIVE DATE

The provision is effective on April 1, 2012.

TITLE II.—OTHER PROVISIONS

A. SMALL ISSUER EXCEPTION TO TAX-EXEMPT INTEREST EXPENSE ALLOCATION RULES FOR FINANCIAL INSTITUTIONS (sec. 201 of the bill and sec. 265 of the Code)

PRESENT LAW

Present law disallows a deduction for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is exempt from tax.[15] In general, an interest deduction is disallowed only if the taxpayer has a purpose of using borrowed funds to purchase or carry tax-exempt obligations; a determination of the taxpayer's purpose in borrowing funds is made based on all of the facts and circumstances.[16]

Financial institutions

In the case of a financial institution, the Code generally disallows that portion of the taxpayer's interest expense that is allocable to tax-exempt interest.[17] The amount of interest that is disallowed is an amount which bears the same ratio to such interest expense as the taxpayer's average adjusted bases of tax-exempt obligations acquired after August 7, 1986, bears to the average adjusted bases for all assets of the taxpayer.

Exception for certain obligations of qualified small issuers

The general rule in section 265(b), denying financial institutions' interest expense deductions allocable to tax-exempt obligations, does not apply to "qualified tax-exempt obligations."[18] Instead, as discussed in the next section, only 20 percent of the interest expense allocable to "qualified tax-exempt obligations" is disallowed.[19] A "qualified tax-exempt obligation" is a tax-exempt obligation that is (1) issued after August 7, 1986, by a qualified small issuer, (2) not a private activity bond, and (3) designated by the issuer as qualifying for the exception from the general rule of section 265(b).

A "qualified small issuer" is an issuer that reasonably anticipates that the amount of tax-exempt obligations that it will issue during the calendar year will be $10 million or less.[20] The Code specifies the circumstances under which an issuer and all subordinate entities are aggregated.[21] For purposes of the $10 million limitation, an

[15] Sec. 265(a).
[16] See Rev. Proc. 72–18, 1972–1 C.B. 740.
[17] Sec. 265(b)(1). A "financial institution" is any person that (1) accepts deposits from the public in the ordinary course of such person's trade or business and is subject to Federal or State supervision as a financial institution or (2) is a corporation described by section 585(a)(2). Sec. 265(b)(5).
[18] Sec. 265(b)(3).
[19] Secs. 265(b)(3)(A), 291(a)(3) and 291(e)(1).
[20] Sec. 265(b)(3)(C).
[21] Sec. 265(b)(3)(E).

issuer and all entities that issue obligations on behalf of such issuer are treated as one issuer. All obligations issued by a subordinate entity are treated as being issued by the entity to which it is subordinate. An entity formed (or availed of) to avoid the $10 million limitation and all entities benefiting from the device are treated as one issuer.

Composite issues (i.e., combined issues of bonds for different entities) qualify for the "qualified tax-exempt obligation" exception only if the requirements of the exception are met with respect to (1) the composite issue as a whole (determined by treating the composite issue as a single issue) and (2) each separate lot of obligations that is part of the issue (determined by treating each separate lot of obligations as a separate issue).[22] Thus a composite issue may qualify for the exception only if the composite issue itself does not exceed $10 million, and if each issuer benefitting from the composite issue reasonably anticipates that it will not issue more than $10 million of tax-exempt obligations during the calendar year, including through the composite arrangement.

Special rules providing modifications to qualified small issuer exception for certain issues in 2009 and 2010

With respect to tax-exempt obligations issued during 2009 and 2010, the special rules increased from $10 million to $30 million the annual limit for qualified small issuers.

In addition, in the case of a "qualified financing issue" issued in 2009 or 2010, the special rules applied the $30 million annual volume limitation at the borrower level (rather than at the level of the pooled financing issuer). Thus, for the purpose of applying the requirements of the section 265(b)(3) qualified small issuer exception, the portion of the proceeds of a qualified financing issue that are loaned to a "qualified borrower" that participates in the issue were treated as a separate issue with respect to which the qualified borrower is deemed to be the issuer.

A "qualified financing issue" was any composite, pooled, or other conduit financing issue the proceeds of which were used directly or indirectly to make or finance loans to one or more ultimate borrowers all of whom are qualified borrowers. A "qualified borrower" meant (1) a State or political subdivision of a State or (2) an organization described in section 501(c)(3) and exempt from tax under section 501(a). Thus, for example, a $100 million pooled financing issue that was issued in 2009 would qualify for the section 265(b)(3) exception if the proceeds of such issue were used to make four equal loans of $25 million to four qualified borrowers. However, if (1) more than $30 million were loaned to any qualified borrower, (2) any borrower were not a qualified borrower, or (3) any borrower would, if it were the issuer of a separate issue in an amount equal to the amount loaned to such borrower, fail to meet any of the other requirements of section 265(b)(3), the entire $100 million pooled financing issue failed to qualify for the exception.

For purposes of determining whether an issuer meets the requirements of the small issuer exception, under the special rules, qualified 501(c)(3) bonds issued in 2009 or 2010 were treated as if they were issued by the 501(c)(3) organization for whose benefit

[22] Sec. 265(b)(3)(F).

they were issued (and not by the actual issuer of such bonds). In addition, in the case of an organization described in section 501(c)(3) and exempt from taxation under section 501(a), requirements for "qualified financing issues" were applied as if the section 501(c)(3) organization were the issuer. Thus, in any event, an organization described in section 501(c)(3) and exempt from taxation under section 501(a) was limited to the $30 million per issuer cap for qualified tax exempt obligations described in section 265(b)(3).

REASONS FOR CHANGE

The Committee believes that it is appropriate to increase the volume limitation for qualified small issuers and make other modifications to the aggregation rules, for several reasons. For example, because the $10 million volume limit was not indexed for inflation when it was enacted in 1986, the real value of $10 million of such bond proceeds is less than half of what it was in 1986. Regarding the aggregation rules, today more borrowers are aggregating their bond issues or issuing bonds through State-wide financing authorities; this pooling increases economic efficiency and decreases borrowing costs for small issuers.

EXPLANATION OF PROVISION

The provision extends the special rules providing modifications to the qualified small issuer exception to bonds issued after the date of enactment and before January 1, 2013.

EFFECTIVE DATE

The provision is effective for obligations issued after the date of its enactment.

B. TEMPORARY MODIFICATION OF ALTERNATIVE MINIMUM TAX LIMITATIONS ON TAX-EXEMPT BONDS (sec. 202 of the bill and secs. 56 and 57 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax ("AMT") on individuals and corporations. AMT is the amount by which the tentative minimum tax exceeds the regular income tax. The tentative minimum tax is computed based upon a taxpayer's alternative minimum taxable income ("AMTI"). AMTI is the taxpayer's taxable income modified to take into account certain preferences and adjustments. One of the preference items is tax-exempt interest on certain tax-exempt bonds issued for private activities.[23] Also, in the case of a corporation, an adjustment based on current earnings is determined, in part, by taking into account 75 percent of certain items, including tax-exempt interest, excluded from taxable income but included in the corporation's earnings and profits.[24]

The American Recovery and Reinvestment Act of 2009 provided that tax-exempt interest on private activity bonds issued in 2009 and 2010 is not an item of tax preference for purposes of the AMTI and interest on tax exempt bonds issued in 2009 and 2010 is not included in the corporate adjustment based on current earnings.

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[23] Sec. 57(a)(5).
[24] Sec. 56(g)(4)(B).

For these purposes, a refunding bond generally is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond). However, the Act provided that tax-exempt interest on private activity bonds issued in 2009 and 2010 to currently refund a private activity bond issued after December 31, 2003, and before January 1, 2009, is not an item of tax preference for purposes of the AMT and is not included in the corporate adjustment based on current earnings.

REASONS FOR CHANGE

The Committee believes that the AMT treatment of interest on tax-exempt bonds restricts the number of persons willing to hold tax-exempt bonds, resulting in higher financing costs. Accordingly, the bill eliminates the AMT adjustments for interest on tax-exempt bonds issued in the portion of calendar year 2012 after the date of enactment.

EXPLANATION OF PROVISION

The provision provides that tax-exempt interest on private activity bonds issued after the date of enactment and before January 1, 2013, is not an item of tax preference for purposes of the AMT and interest on tax exempt bonds issued during this period is not included in the corporate adjustment based on current earnings. For these purposes, a refunding bond is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

EFFECTIVE DATE

The provision applies to interest on bonds issued after the date of enactment.

C. Issuance of TRIP Bonds by State Infrastructure Banks (sec. 203 of the bill)

PRESENT LAW

There are no Code provisions for the issuance of transportation and regional infrastructure project ("TRIP") bonds.

REASONS FOR CHANGE

The Committee believes that this provision, which amends Title 23, provides an opportunity for the Congress to consider, at a later date, the further development of the framework for the TRIP bond program.

EXPLANATION OF PROVISION

The provision amends Title 23 to provide that a State, through a State infrastructure bank, may issue TRIP bonds and deposit the proceeds from such bonds into a TRIP bond account of the bank. A "TRIP bond" means any bond issued as part of an issue if (1) 100 percent of the available project proceeds of such issue are to be used for expenditures incurred after the date of enactment for one or more qualified projects pursuant to an allocation of such proceeds to such project or projects by a State infrastructure bank, (2) the bond is issued by a State infrastructure bank and is in registered form (within the meaning of section 149 of the Internal Revenue Code), (3) the State infrastructure bank designates such bond for purposes of the provision and (4) the term of each bond that is part of such issue does not exceed 30 years. A "qualified project" means the capital improvements to any transportation infrastructure project of any governmental unit or other person, including roads, bridges, rail and transit systems, ports and, inland waterways proposed and approved by a State infrastructure bank, but does not include costs of operations or maintenance with respect to such project.

The provision requires a State to develop a transparent and competitive process for the award of funds deposited into the TRIP bond account that considers the impact of qualified projects on the economy, the environment, state of good repair, and equity. The requirements of any Federal law, including Title 23 and Titles 40 and 49, which would otherwise apply to projects to which the United States is a party or to funds made available under such law and projects assisted with those funds shall apply to (1) funds made available under the TRIP bond account for similar qualified projects and (2) similar qualified projects assisted through the use of such funds.

EFFECTIVE DATE

The provision is effective on the date of enactment.

D. Extension of Parity for Exclusion From Income for Employer-Provided Mass Transit and Parking Benefits (sec. 204 of the bill and sec. 132 of the Code)

PRESENT LAW

Qualified transportation fringe benefits provided by an employer are excluded from an employee's gross income for income tax purposes and from an employee's wages for payroll tax purposes.[25] Qualified transportation fringe benefits include parking, transit passes, vanpool benefits, and qualified bicycle commuting reimbursements. No amount is includible in the income of an employee merely because the employer offers the employee a choice between cash and qualified transportation fringe benefits (other than a qualified bicycle commuting reimbursement). Qualified transportation fringe benefits also include a cash reimbursement by an employer to an employee. In the case of transit passes, however, a cash reimbursement is considered a qualified transportation fringe benefit only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

Prior to February 17, 2009, the amount that could be excluded as qualified transportation fringe benefits was limited to $100 per month in combined vanpooling and transit pass benefits and $175 per month in qualified parking benefits. All limits are adjusted annually for inflation, using 1998 as the base year (for 2012 the limits are $125 and $240, respectively). The American Recovery and Reinvestment Act of 2009,[26] however, provided parity in qualified transportation fringe benefits by temporarily increasing the monthly exclusion for employer-provided vanpool and transit pass benefits to the same level as the exclusion for employer-provided park-

[25] Secs. 132(f), 3121(b)(2), and 3306(b)(16) and 3401(a)(19).
[26] Pub. L. No. 111–5.

ing, effective for months beginning on or after the date of enactment (February 17, 2009) and before January 1, 2011. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010[27] extended the parity in qualified transportation fringe benefits through December 31, 2011.

Effective January 1, 2012, the amount that could be excluded as qualified transportation fringe benefits is limited to $125 per month in combined vanpooling and transit pass benefits and $240 per month in qualified parking benefits.

REASONS FOR CHANGE

Maintaining parity in transportation benefits provides American workers with an incentive to use public transportation and vanpools for their commute rather than driving to work in their personal vehicles. The Committee believes that this provision will help to ease traffic congestion and reduce America's dependence on foreign sources of oil.

EXPLANATION OF PROVISION

The provision extends the parity in qualified transportation fringe benefits for the entire 2012. In order for the extension to be effective retroactive to January 1, 2012, the Committee intends that expenses incurred prior to enactment by an employee for employer-provided vanpool and transit benefits may be reimbursed by employers on a tax free basis to the extent they exceed $125 per month and are less than $240 per month, but only to the extent that such amount has not already been excluded from such employee's taxable compensation.

EFFECTIVE DATE

The provision is effective for months after December 31, 2011.

E. PRIVATE ACTIVITY VOLUME CAP EXEMPTION FOR SEWAGE AND WATER FACILITY BONDS (sec. 205 of the bill and sec. 146(g) of the Code)

In general

Subject to certain Code restrictions, interest on bonds issued by State and local government generally is excluded from gross income for Federal income tax purposes. Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons. For this purpose, the term "nongovernmental person" generally includes the Federal Government and all other individuals and entities other than State or local governments. The exclusion from income for interest on State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds") and other Code requirements are met.

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[27] Pub. L. No. 111–312.

Qualified private activity bonds

Interest on private activity bonds is taxable unless the bonds meet the requirements for qualified private activity bonds. Qualified private activity bonds permit States or local governments to act as conduits providing tax-exempt financing for certain private activities. The definition of qualified private activity bonds includes an exempt facility bond, or qualified mortgage, veterans' mortgage, small issue, redevelopment, qualified 501(c)(3), or student loan bond.[28] The definition of exempt facility bond includes bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); qualified residential rental projects; privately owned and/or operated utility facilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; qualified green building and sustainable design projects; and qualified highway or surface freight transfer facilities.[29]

In most cases, the aggregate volume of these tax-exempt private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. Certain types of private activity bonds are exempted from the annual volume limits.

For calendar year 2012, the State volume cap, which is indexed for inflation, equals $95 per resident of the State, or $284,560,000, whichever is greater.

REASONS FOR CHANGE

The Committee believes that the types of infrastructure projects funded by the proceeds of these bonds are important in the current economic circumstances. It is anticipated that exempting these types of bonds from the volume limitation will encourage issuers to undertake more infrastructure spending for sewage and water facilities.

EXPLANATION OF PROVISION

The provision exempts two types of exempt facility bonds from the annual private activity volume limits. The newly-exempted bonds are exempt facility bonds for sewage and water facilities.

The provision only applies to bonds issued before January 1, 2018.

EFFECTIVE DATE

The provision is effective for bonds issued after the date of enactment.

TITLE III.—REVENUE PROVISIONS

A. LEAKING UNDERGROUND STORAGE TANK TRUST FUND (secs. 301 and 302 of the bill, and secs. 9503 and 9508 of the Code)

PRESENT LAW

Leaking Underground Storage Tank Trust Fund financing rate

Fuels of a type subject to other trust fund excise taxes generally are subject to an add-on excise tax of 0.1-cent-per-gallon to fund

[28] Sec. 141(e).
[29] Sec. 142(a).

the Leaking Underground Storage Tank ("LUST") Trust Fund.[30] For example, the LUST excise tax applies to gasoline, diesel fuel, kerosene, and most alternative fuels subject to highway and aviation fuels excise taxes, and to fuels subject to the inland waterways fuel excise tax. This excise tax is imposed on both uses and parties subject to the other taxes, and to situations (other than export) in which the fuel otherwise is tax-exempt. For example, off-highway business use of gasoline and off-highway use of diesel fuel and kerosene generally are exempt from highway motor fuels excise tax. Similarly, States and local governments and certain other parties are exempt from such tax. Nonetheless, all such uses and parties are subject to the 0.1-cent-per-gallon LUST excise tax.

Liquefied natural gas, compressed natural gas, and liquefied petroleum gas are exempt from the LUST tax. Additionally, methanol and ethanol fuels produced from coal (including peat) are taxed at a reduce rate of 0.05 cents per gallon.

The LUST tax is scheduled to expire after March 31, 2012.[31]

Overview of Leaking Underground Storage Tank Trust Fund expenditure provisions

Amounts in the LUST Trust Fund are available, as provided in appropriations Acts, for purposes of making expenditures to carry out sections 9003(h)–(j), 9004(f), 9005(c), and 9010–9013 of the Solid Waste Disposal Act as in effect on the date of enactment of Public Law 109–168. Any claim filed against the LUST Trust Fund may be paid only out of such fund, and the liability of the United States for claims is limited to the amount in the fund.

The monies in the LUST Trust Fund are used to pay expenses incurred by the Environmental Protection Agency (the "EPA") and the States for preventing, detecting, and cleaning up leaks from petroleum underground storage tanks, as well as programs to evaluate the compatibility of fuel storage tanks with alternative fuels, MTBE additives, and ethanol and biodiesel blends.

The EPA makes grants to States to implement the program, and States use cleanup funds primarily to oversee and enforce corrective actions by responsible parties. States and EPA also use cleanup funds to conduct corrective actions where no responsible party has been identified, where a responsible party fails to comply with a cleanup order, in the event of an emergency, and to take cost recovery actions against parties. In 2005, Congress authorized the EPA and States to use trust fund monies for non-cleanup purposes as well, specifically for administration and enforcement of the leak prevention requirements of the UST program.[32]

REASONS FOR CHANGE

Revenues deposited in the LUST Trust Fund have exceeded outlays and the Fund has a surplus balance. The Highway Trust Fund primarily relies on motor fuel excise taxes for its revenues. The Committee believes that since the LUST tax is collected on motor fuels, it is appropriate to fund highway projects with a portion of such motor fuel tax receipts.

[30] Secs. 4041, 4042, and 4081.
[31] For Federal budget scorekeeping purposes, the LUST Trust Fund tax, like other excise taxes dedicated to trust funds, is assumed to be permanent.
[32] Pub. L. No. 109–58.

EXPLANATION OF PROVISION

The provision transfers $3 billion from the LUST Trust Fund to the Highway Trust Fund. The provision also provides that .033 cent of the 0.1 cent LUST Trust Fund financing rate is dedicated to the Highway Trust Fund.[33]

EFFECTIVE DATE

The provision is effective on the date of enactment.

B. CLAIMS AND CREDIT CARRYOVERS RELATED TO UNPROCESSED AND EXCLUDED FUELS (sec. 303 of the bill and secs. 40(a) and 9503(b) of the Code)

PRESENT LAW

Cellulosic biofuel producer credit

The "cellulosic biofuel producer credit" is a nonrefundable income tax credit for each gallon of qualified cellulosic fuel production of the producer for the taxable year. The amount of the credit is generally $1.01 per gallon.[34]

"Qualified cellulosic biofuel production" is any cellulosic biofuel which is produced by the taxpayer and which is: (1) sold by the taxpayer to another person (a) for use by such other person in the production of a qualified cellulosic biofuel mixture in such person's trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or (c) who sells such cellulosic biofuel at retail to another person and places such cellulosic biofuel in the fuel tank of such other person; or (2) used by the producer for any purpose described in (1)(a), (b), or (c).

"Cellulosic biofuel" means any liquid fuel that (1) is produced in the United States and used as fuel in the United States, (2) is derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and (3) meets the registration requirements for fuels and fuel additives established by the EPA under section 211 of the Clean Air Act. Cellulosic biofuel does not include fuels that (1) are more than four percent (determined by weight) water and sediment in any combination, (2) have an ash content of more than one percent (determined by weight), or (3) have an acid number greater than 25 ("unprocessed or excluded fuels").[35]

The cellulosic biofuel producer credit cannot be claimed unless the taxpayer is registered by the Internal Revenue Service ("IRS") as a producer of cellulosic biofuel. The IRS permits a taxpayer to register as a cellulosic biofuel producer after the cellulosic biofuel has been produced. Thus, a person may register as a cellulosic

[33] As noted above, the Leaking Underground Storage Tank Trust Fund financing rate of 0.1 cent per gallon is also extended through September 30, 2015.

[34] In the case of cellulosic biofuel that is alcohol, the $1.01 credit amount is reduced by the credit amount of the alcohol mixture credit, and for ethanol, the credit amount for small ethanol producers, as in effect at the time the cellulosic biofuel fuel is produced.

[35] Section 40(b)(6)(e)(iii). Water content (including both free water and water in solution with dissolved solids) is determined by distillation, using for example ASTM method D95 or a similar method suitable to the specific fuel being tested. Sediment consists of solid particles that are dispersed in the liquid fuel and is determined by centrifuge or extraction using, for example, ASTM method D1796 or D473 or similar method that reports sediment content in weight percent. Ash is the residue remaining after combustion of the sample using a specified method, such as ASTM D3174 or a similar method suitable for the fuel being tested.

biofuel producer in 2010 for cellulosic biofuel produced in 2009 and then claim the credit.

Cellulosic biofuel eligible for the section 40 credit is precluded from qualifying as biodiesel, renewable diesel, or alternative fuel for purposes of the applicable income tax credit, excise tax credit, or payment provisions relating to those fuels.[36]

Because it is a credit under section 40(a), the cellulosic biofuel producer credit is part of the general business credits in section 38. However, the credit can only be carried forward three taxable years after the termination of the credit. The credit is also allowable against the alternative minimum tax. Under section 87, the credit is included in gross income. The cellulosic biofuel producer credit terminates on December 31, 2012.

The kraft process for making paper produces a byproduct called black liquor, which has been used for decades by paper manufacturers as a fuel in the papermaking process. Black liquor is composed of water, lignin, and the spent chemicals used to break down the wood. The amount of the biomass in black liquor varies. The portion of the black liquor that is not consumed as a fuel source for the paper mills is recycled back into the papermaking process. Black liquor has ash content (mineral and other inorganic matter) significantly above that of other fuels.

In informal guidance, the IRS concluded that black liquor is a liquid fuel from biomass and may qualify for the cellulosic biofuel producer credit, as well as the refundable alternative fuel mixture credit.[37] A taxpayer cannot claim both the alternative fuel mixture credit and the cellulosic biofuel producer credit. The alternative fuel credits and payment provisions expired December 31, 2011.

Alternative fuel mixture credit and payment

The Code provided for a tax credit of 50 cents for each gallon of alternative fuel used to produce an alternative fuel mixture that is used or sold for use as a fuel.[38] Under Notice 2006–92, an alternative fuel mixture is a mixture of alternative fuel and a taxable fuel (such as diesel) that contains at least 0.1 percent taxable fuel. Liquid fuel derived from biomass is an alternative fuel.[39] Diesel fuel has been added to black liquor to qualify for the alternative fuel mixture credit and the mixture is burned in a recovery boiler as fuel. Persons that have an alternative fuel mixture credit amount in excess of their taxable fuel excise tax liability may make a claim for payment from the Treasury in the amount of the excess under section 6427 for black liquor fuel mixtures produced before January 1, 2010.[40] If a timely claim has not been made under section 6427, alternatively, a taxpayer may use section 34 (a refundable income tax credit) to make a claim in the amount of the alternative fuel mixture credit payable under section 6427(e).

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[36] See secs. 40A(d)(1), 40A(f)(3), and 6426(h).

[37] Chief Counsel Advice 200941011 (June 30, 2009).

[38] Sec. 6426(e).

[39] Sec. 6426(d)(2)(G).

[40] For fuel sold or used after December 31, 2009, alternative fuel does not include any fuel derived from the production of paper or pulp. Sec. 6426(d)(2) (flush language).

REASONS FOR CHANGE

The kraft process for making paper produces a byproduct called black liquor, which has been used for more than seven decades by paper manufacturers as a fuel in the papermaking process. Congress's intent in creating the alternative fuel mixture tax credit and the cellulosic biofuels tax credit was to give taxpayers an additional financial incentive to create new fuels, in part to displace imported petroleum. However, in an unintended outcome, black liquor qualified for the alternative fuel mixture tax credit and the cellulosic biofuels tax credit. Congress never intended for black liquor to qualify for these credits and, in 2010, prohibited the credits for black liquor sold or used on or after January 1, 2010. This provision further closes the unintended black liquor loophole by preventing taxpayers from claiming the cellulosic biofuels credit on any new or amended tax returns.

EXPLANATION OF PROVISION

The provision prohibits taxpayers from claiming the cellulosic biofuels credit (including any portion of the unused general business credit carryover attributable to such credit) for unprocessed or excluded fuels, as defined in section 40(b)(6)(e)(iii),[41] such as black liquor, sold or used before January 1, 2010. However, taxpayers will be permitted to claim the 50 cents-per-gallon alternative fuel mixture credit or payment for these fuels sold or used before January 1, 2010. As under present law, a taxpayer may use section 34, in conjunction with section 6427(e) to claim the 50-cents-per-gallon benefit of the alternative fuel mixture credit.

Under the provision, out of money in the Treasury not otherwise appropriated, amounts equivalent to the revenue resulting from the provision are transferred to the Highway Trust Fund.

EFFECTIVE DATE

The provision is effective for claims (including returns and amended returns) filed on or after February 3, 2012.

C. DEDICATION OF GAS GUZZLER TAX TO THE HIGHWAY TRUST FUND (sec. 304 of the bill and sec. 9503 of the Code)

PRESENT LAW

Under present law, the Code imposes a tax ("the gas guzzler tax") on automobiles that are manufactured primarily for use on public streets, roads, and highways and that are rated at 6,000 pounds unloaded gross vehicle weight or less.[42] The tax is imposed on the sale by the manufacturer of each automobile of a model type with a fuel economy of 22.5 miles per gallon or less. The tax range begins at $1,000 and increases to $7,700 for models with a fuel economy less than 12.5 miles per gallon.

[41] Section 1408(a) of the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111–152, added section 40(e)(6)(E)(iii)(I) and (II), excluding from the definition of cellulosic biofuel any fuel having in any combination water and sediment of more than 4 percent of such fuel, and any fuel with an ash content of more than 1 percent. Section 2121(a) of the Small Business Jobs Act of 2010, Pub. L. No. 111–240, added section 40(e)(6)(iii)(III), which excluded any fuel with an acid number greater than 25 from the definition of cellulosic biofuel. Together, these amendments comprise section 40(e)(6)(iii).

[42] Sec. 4064.

Emergency vehicles and non-passenger automobiles are exempt from the tax. The tax also does not apply to non-passenger automobiles. The Secretary of Transportation determines which vehicles are "non-passenger" automobiles, thereby exempting these vehicles from the gas guzzler tax based on regulations in effect on the date of enactment of the gas guzzler tax.[43] Hence, vehicles defined in Title 49 C.F.R. sec. 523.5 (relating to light trucks) are exempt. These vehicles include those designed to transport property on an open bed (e.g., pick-up trucks) or provide greater cargo-carrying than passenger carrying volume including the expanded cargo-carrying space created through the removal of readily detachable seats (e.g., pick-up trucks, vans, and most minivans, sports utility vehicles, and station wagons). Additional vehicles that meet the "non-passenger" requirements are those with at least four of the following characteristics: (1) an angle of approach of not less than 28 degrees; (2) a breakover angle of not less than 14 degrees; (3) a departure angle of not less than 20 degrees; (4) a running clearance of not less than 20 centimeters; and (5) front and rear axle clearances of not less than 18 centimeters each. These vehicles would include many sports utility vehicles.

REASONS FOR CHANGE

The gas guzzler tax serves as a deterrent to purchasing fuel inefficient vehicles, thus encouraging the purchase of more fuel efficient vehicles, which in turn reduces motor fuel tax contributions to the Highway Trust Fund. Thus, to compensate for that underpayment, the Committee believes this tax on automobiles is appropriate to dedicate to the Highway Trust Fund.

EXPLANATION OF PROVISION

The provision requires that amounts equivalent to the gas guzzler taxes received in the Treasury be transferred to the Highway Trust Fund.

EFFECTIVE DATE

The provision is effective on the date of enactment.

D. REVOCATION OR DENIAL OF PASSPORT IN CASE OF CERTAIN UNPAID TAXES (sec. 305 of the bill and new secs. 7345 and 6103(l)(23) of the Code)

PRESENT LAW

The administration of passports is the responsibility of the Department of State.[44] State may refuse to issue or renew a passport if the applicant owes child support in excess of $2,500 or owes certain types of Federal debts, such as expenses incurred in providing assistance to an applicant to return to the United States. The scope of this authority does not extend to rejection or revocation of a passport on the basis of delinquent Federal taxes. Issuance of a passport does not require the applicant to provide a social security number or taxpayer identification number.

Returns and return information are confidential and may not be disclosed by the IRS, other Federal employees, State employees,

[43] Sec. 4064(b)(1)(A).

[44] "Passport Act of 1926," 22 U.S.C. sec. 211a et seq.

and certain others having access to such information except as provided in the Internal Revenue Code.[45] There are a number of exceptions to the general rule of nondisclosure that authorize disclosure in specifically identified circumstances, including disclosure of information about federal tax debts for purposes of reviewing an application for a Federal loan[46] and for purposes of enhancing the integrity of the Medicare program.[47]

REASONS FOR CHANGE

The Committee is aware that the amount of unpaid Federal tax debts continues to present a challenge to the IRS. The Committee is also aware that a significant amount of unpaid Federal tax debt is owed by persons to whom passports have been issued. In 2011, for example, the Government Accountability Office reported that approximately 224,000 persons issued U.S. passports in 2008 owed in aggregate $5.8 billion.[48] Federal law currently permits the Department of State to refuse an application for a passport or revoke a passport based on the existence of certain debts, including delinquent child support, but does not have authority to consider the existence of tax debt. In addition, the IRS is not authorized to provide information to the Department of State about persons who owe tax debts. The Committee believes that tax compliance will increase if issuance of a passport is linked to payment of one's tax debts.

EXPLANATION OF PROVISION

If the Commissioner of Internal Revenue certifies to the Secretary of the Treasury the identity of persons who have seriously delinquent Federal taxes, the Secretary of the Treasury or his delegate is authorized to transmit such certification to the Secretary of State for use in determining whether to issue, renew, or revoke a passport. Applicants whose names are included on the certifications provided to the Secretary of State are ineligible for a passport. The provision bars the Secretary of State from issuing a passport to any individual who has a seriously delinquent tax debt. It also requires revocation of a passport previously issued to any such individual. Exceptions are permitted for emergency or humanitarian circumstances, as well as short term use of a passport for return travel to the United States by the delinquent taxpayer.

A seriously delinquent tax debt generally includes any outstanding debt for Federal tax in excess of $50,000, including interest and any penalties, for which a notice of lien or a notice of levy has been filed. This amount is to be adjusted for inflation annually, using calendar year 2011, and a cost-of-living adjustment. Even if a tax debt otherwise meets the statutory threshold, it may not be considered seriously delinquent if (1) the debt is being paid in a timely manner pursuant to an installment agreement or offer-in-compromise, or (2) collection action with respect to the debt is suspended because a collection due process hearing or innocent spouse relief has been requested or is pending.

[45] Sec. 6103.
[46] Sec. 6103(l)(3).
[47] Sec. 6103(l)(22).
[48] Government Accountability Office, Potential for Using Passport Issuance to Increase Tax Compliance, (GAO–11–272), April, 2011.

EFFECTIVE DATE

The provision is effective on January 1, 2013.

E. 100 Percent Continuous Levy on Payments to Medicare Providers and Suppliers (sec. 306 of the bill and sec. 6331(h) of the Code)

PRESENT LAW

In general

Levy is the administrative authority of the IRS to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.[49] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[50] the property is not exempt from levy,[51] and the IRS has provided both notice of intention to levy[52] and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")[53] at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.[54] A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.[55]

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.[56]

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases, however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.[57]

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997[58] authorized the establishment of the Federal Payment Levy Program ("FPLP"), which allows the IRS to continuously

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[49] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.
[50] Ibid.
[51] Sec. 6334.
[52] Sec. 6331(d).
[53] Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.
[54] Secs. 6331(e) and 6343.
[55] Sec. 6321.
[56] Secs. 6331(d)(3), 6861.
[57] Sec. 6330(f).
[58] Pub. L. No. 105–34.

levy up to 15 percent of certain "specified payments" by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.[59] The levy (either up to 15 percent or up to 100 percent) generally continues in effect until the liability is paid or the IRS releases the levy.

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by the Department of the Treasury's Financial Management Service ("FMS"), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct FMS to levy the taxpayer's Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

Payments to Medicare providers

In 2008, the Government Accountability Office ("GAO") found that over 27,000 Medicare providers (i.e., about six percent of all such providers) owed more than $2 billion of tax debt, consisting largely of individual income and payroll taxes.[60] In one case, a home health company received over $15 million in Medicare payments but did not pay $7 million in federal taxes.[61] As of 2008, the Centers for Medicare & Medicaid Services ("CMS") had not incorporated most of its Medicare payments into the continuous levy program, despite the IRS authority to continuously levy up to 15 percent of these payments. Thus, for calendar year 2006, the government lost the chance to possibly collect over $140 million in unpaid Federal taxes.[62] The GAO noted that CMS officials promised to incorporate about 60 percent of all Medicare fee-for-service payments into the levy program by October 2008 and the remaining 40 percent in the next several years.

Following the GAO study, Congress directed CMS to participate in the FPLP and ensure that all Medicare provider and supplier payments are processed through it, in specified graduated percentages, by the end of fiscal year 2011.[63]

REASONS FOR CHANGE

The Committee believes that the rate of nonpayment of Federal taxes by Medicare providers is not acceptable. The Committee further believes that such payments should be subject to ongoing levy in full. Changing the levy provisions of the Code to ensure that payments to Medicare providers may be fully offset under the FPLP will improve the integrity of the Medicare program and improve tax compliance.

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[59] Sec. 6331(h)(3). The word "property" was added to "goods or services" in section 301 of the "3% Withholding Repeal and Job Creation Act," Pub. L. No. 112–56.

[60] Government Accountability Office, Medicare: Thousands of Medicare Providers Abuse the Federal Tax System, GAO–08–618 (June 13, 2008).

[61] Ibid., p. 4.

[62] Ibid.

[63] Medicare Improvement for Patients and Providers Act of 2008, Pub. L. No. 110–275, sec. 189.

EXPLANATION OF PROVISION

The provision allows Treasury to levy up to 100 percent of a payment to a Medicare provider to collect unpaid taxes.

EFFECTIVE DATE

The provision is effective for payments made after the date of enactment.

F. Appropriation to the Highway Trust Fund of Amounts Attributable to Certain Duties on Imported Vehicles (sec. 307 of the bill)

PRESENT LAW

Customs duties are deposited into the general fund of the Treasury of the United States. This includes customs duties collected on imported vehicles classified under Chapter 87 of the Harmonized Tariff Schedule of the United States.

REASONS FOR CHANGE

The Congressional Budget Office has estimated that the Highway Trust Fund will exhaust its available revenues for highway projects in fiscal year 2013. To assist in keeping the Highway Trust Fund solvent, the Committee believes it is appropriate to dedicate certain customs duties collected on imported vehicles to the Highway Trust Fund.

EXPLANATION OF PROVISION

The provision would appropriate from the General Fund and deposit into the Highway Trust Fund amounts equivalent to amounts received in the General Fund, for fiscal year 2012 through fiscal year 2016, on articles classified under subheadings 8703.22.00 and 8703.24.00 of Chapter 87.

EFFECTIVE DATE

The provision is effective on the date of enactment.

G. Treatment of Securities of a Controlled Corporation Exchanged for Assets in Certain Reorganizations (sec. 308 of the bill and sec. 361 of the Code)

PRESENT LAW

The transfer of assets by a transferor corporation to another corporation, controlled (immediately after the transfer) by the transferor or one or more of its shareholders, qualifies as a tax-free reorganization if the transfer is made by one corporation ("distributing") of a part of its assets consisting of an active trade or business meeting certain requirements to a controlled subsidiary corporation ("controlled"), followed by the distribution of the stock and securities of the controlled subsidiary in a divisive spin-off, split-off, or split-up which was not used principally as a device for the distribution of earnings and profits ("divisive D reorganization").[64]

[64] Secs. 355 and 368(a)(1)(D). Section 355 imposes requirements for a qualified spin-off, split-off, or split-up. Among other requirements, in order for a transaction to qualify under section

Continued

No gain or loss is recognized to a corporation if the corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation that is a party to the reorganization.[65] If property other than stock or securities is received ("other property"), gain is recognized to the extent the other property is not distributed.[66]

In addition, in the case of a transfer to the corporation's creditors of money or other property received in the exchange, in connection with the reorganization, gain is recognized to the extent the sum of the money and the fair market value of the other property exceeds the adjusted bases of the assets transferred (net of liabilities).[67] Such a transfer to creditors is aggregated with other assumptions of the transferor corporation's liabilities by the transferee, which generally cause gain recognition if they exceed the adjusted basis of assets transferred.[68]

For example, if in a divisive D reorganization the controlled corporation either (1) directly assumes the debt of the distributing corporation, or (2) borrows and distributes cash to the distributing corporation to pay the distributing corporation's creditors, such debt assumption or cash distribution is treated as money received by the distributing corporation, and is taxable to the extent it exceeds the distributing corporation's basis in the assets transferred to the controlled corporation. By contrast, if the controlled corporation leverages itself by issuing its debt securities to the distributing corporation, the controlled corporation's debt securities are not treated as money or other property received by the distributing corporation. Thus, the distributing corporation could use the controlled corporation's securities to retire the distributing corporation's own debt, recognize no gain, and be in the same economic position as if its debt had been directly assumed by the controlled corporation or as if it had retired its debt with cash received from the controlled corporation.

REASONS FOR CHANGE

The Committee is concerned that securities of a controlled subsidiary corporation that are exchanged for assets in a divisive D reorganization may be used to provide an economic benefit to the distributing corporation that is equivalent to the subsidiary's direct assumption of the distributing corporation's indebtedness, without subjecting the distributing corporation to tax in the same manner as in the case of such an assumption. For example, securities of the controlled subsidiary corporation may be distributed to creditors of the distributing corporation, effectively relieving the distributing corporation of the obligation to such creditors and shifting the obligation to the controlled entity. Similarly, under present law, securi-

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355, the distributing corporation must either (i) distribute all of the stock and securities of the controlled corporation that it holds, or (ii) distribute at least an amount of stock constituting control under section 368(c) and establish to the satisfaction of the Secretary of the Treasury that the retention of stock (or stock and securities) was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. Sec. 355(a)(1)(D). Section 355 imposes other requirements to avoid gain recognition at the corporate level with respect to the spin-off, split-up, or split-off, e.g., secs. 355(d) and (e).

[65] Sec. 361(a).

[66] Sec. 361(b).

[67] The last sentence of sec. 361(b)(3).

[68] Sec. 357(c).

ties of the controlled corporation might be issued to and in some situations retained by the distributing corporation without treating such securities as equivalent to the receipt of taxable property.

The Committee also is concerned that present law may encourage excessive leverage in some divisive D reorganization situations. For example, a controlled subsidiary could be distributed that is bearing excessive debt through its securities, from which the distributing corporation receives a tax-free economic benefit.

EXPLANATION OF PROVISION

Under the provision, in the case of a divisive D reorganization, no gain or loss is recognized to a corporation if the corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock other than nonqualified preferred stock (as defined in section 351(g)(2)).[69] Thus, under the provision, securities and nonqualified preferred stock are treated as "other property."

Under the provision, the transferor corporation's gain on the exchange is recognized to the extent of the sum of money and the value of other property, including securities and nonqualified preferred stock, not distributed in pursuance of the plan of reorganization. Also, gain on the exchange is recognized to the extent that the sum of money and the value of all property other than stock that is not nonqualified preferred stock which is transferred to creditors exceeds the adjusted bases of the assets transferred (net of liabilities).

For example, under the provision, in a divisive D reorganization, the exchange of the controlled corporation's securities for the distributing corporation's securities would be treated in the same manner as (1) the assumption of the distributing corporation's debt by the controlled corporation, or (2) the use of a cash distribution from the controlled corporation to retire debt of the distributing corporation.

EFFECTIVE DATE

The provision applies to exchanges occurring after the date of enactment.

However, the provision does not apply to any exchange in connection with a transaction which is (1) made pursuant to a written agreement which was binding on February 6, 2012 and at all times

[69] Section 351(g)(2) defines nonqualified preferred stock as preferred stock if (i) the holder has a right to require the issuer or a related person to redeem or purchase the stock, which right may be exercised within the 20-year period beginning on the issue date and is not subject to a contingency which, as of the issue date, makes remote the likelihood of redemption or purchase; (ii) the issuer or a related person is required to redeem or purchase the stock (within such 20-year period and not subject to such a contingency); (iii) the issuer or a related person has the right to redeem or purchase the stock (which right is exercisable within such 20-year period and not subject to such a contingency) and as of the issue date, it is more likely than not that such right will be exercised, or (iv) the dividend on such stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices. There are exceptions for certain rights that are exercisable only on the death, disability or mental incompetency of the holder, or only upon the separation from service of a service provider who received the right as reasonable compensation for services, and for certain situations involving publicly traded stock. Nonqualified preferred stock is treated in the same manner as securities under section 351 and thus is not qualified consideration that may be received tax free by a contributing shareholder. Sections 354(a)(2)(C) and 356(e) treat nonqualified preferred stock as taxable consideration if received in exchange for stock by shareholders of a corporation that itself is a party to a reorganization (except to the extent received in exchange for other nonqualified preferred stock); and section 355 contains a similar rule (sec. 355(a)(3)(D)).

thereafter, (2) described in a ruling request submitted to the IRS on or before such date, or (3) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

H. Internal Revenue Service Levies and Thrift Savings Plan Accounts (sec. 309 of the bill)

PRESENT LAW

In general

Levy is the IRS's administrative authority to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.[70] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[71] the property is not exempt from levy,[72] and the IRS has provided both notice of intention to levy[73] and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")[74] at least 30 days before the levy is made. A levy on salary or wages is generally continuously in effect until released.[75] A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.[76]

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.[77]

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases, however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.[78]

Thrift Savings Plan

Present law includes an anti-alienation rule that provides that the balance of an employee's Thrift Savings Plan ("TSP") Account is subject to taking only for the enforcement of one's obligations to

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[70] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.
[71] *Ibid.*
[72] Sec. 6334.
[73] Sec. 6331(d).
[74] Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.
[75] Secs. 6331(e) and 6343.
[76] Sec. 6321.
[77] Secs. 6331(d)(3) and 6861.
[78] Sec. 6330(f).

provide for child support or alimony payments, restitution orders, certain forfeitures, or certain obligations of the Executive Director.[79] The authority for the IRS to levy an employee's TSP Account to satisfy tax liabilities is not mentioned in the anti-alienation rule; TSP Accounts are not specifically enumerated in the Code provisions identifying property that is exempt from levy.

REASONS FOR CHANGE

This amendment to title 5, United States Code, provides that monies in the Thrift Savings Fund accounts of Federal employees shall be subject to legal process by the IRS for payment of delinquent taxes, thus explicitly allowing the Thrift Investment Board to honor an IRS notice of levy. The Committee is aware that the Thrift Investment Board has previously taken the position that money in the TSP cannot be levied, and that the Thrift Investment Board cites in support an apparent conflict between the TSP authorizing statute and the Internal Revenue Code. The Committee believes that the continuing failure to honor levies on TSP Accounts of Federal employees or retirees after issuance of a legal opinion from the Office of Legal Counsel at the Department of Justice in May of 2010,[80] concluding that TSP accounts are subject to levy, undermines the program integrity of tax administration generally and has an adverse affect on tax compliance. The Committee believes that this amendment resolves the perceived statutory conflict and will enhance respect for tax administration. Because this amendment is intended as a clarification of current law, it should not be interpreted as implying that property rights of taxpayers governed by Federal law are only subject to levy if the statute governing those rights expressly so provides. The Committee believes that Section 6334 of title 26 contains the exclusive list of exemptions from the federal tax levy.

EXPLANATION OF PROVISION

The provision amends the statutory provisions governing the TSP to clarify that the anti-alienation provisions therein do not bar the IRS from issuing a notice of levy on a TSP Account.

EFFECTIVE DATE

The provision is effective upon date of enactment.

I. MODIFICATION OF REQUIRED DISTRIBUTION RULES FOR PENSION PLANS (sec. 310 of the bill and sec. 401(a)(9) of the Code)

PRESENT LAW

Minimum distribution rules apply to employer-sponsored tax-favored retirement plans and individual retirement arrangements ("IRA").[81] In general, under these rules, distribution of minimum benefits must begin no later than the required beginning date and

[79] 5 U.S.C. sec. 8437(e)(3).

[80] Office of Legal Counsel, Dept. of Justice, "Applicability of Tax Levies under 26 U.S.C. § 6334 To Thrift Savings Plan Accounts," Opinions of Office of Legal Counsel, Vol. 34 (May 3, 2010), reprinted, Tax Analysts, Doc. 2012–2479.

[81] There are two types of IRA, Roth and traditional. The lifetime and after-death minimum distribution requirements apply to traditional IRAs. Only the after-death requirements apply to Roth IRAs.

a minimum amount must be distributed each year. Minimum distribution rules also apply to benefits payable with respect to an employee or IRA owner who has died. The regulations under section 401(a)(9) provide a methodology for calculating the required minimum distribution from an individual account under a defined contribution plan or from an IRA. In the case of annuity payments under a defined benefit plan or an annuity contract, the regulations provide requirements that the annuity stream of payments must satisfy. Failure to comply with the minimum distribution requirement results in an excise tax imposed on the individual who was required to be the distributee equal to 50 percent of the required minimum distribution not distributed for the year. The excise tax may be waived in certain cases.

Required beginning date

For traditional IRAs, the required beginning date is April 1 following the calendar year in which the employee or IRA owner attains age 70½. For employer-sponsored tax-favored retirement plans, for an employee other than an employee who is a five-percent owner in the year the employee attains age 70½, the employee's required beginning date is April 1 after the later of the calendar year in which the employee attains age 70½ or retires. For an employee who is a five-percent owner under an employer-sponsored tax-favored retirement plan in the year the employee attains age 70½, the required beginning date is the same as for IRAs even if the employee continues to work past age 70½.

Lifetime rules

While an employee or IRA owner is alive, distributions of the individual's interest are required to be made (in accordance with regulations) over the life or life expectancy of the employee or IRA owner, or over the joint lives or joint life expectancy of the employee or IRA owner and a designated beneficiary.[82] For defined contribution plans and IRAs, the required minimum distribution for each year is determined by dividing the account balance as of the end of the prior year by a distribution period which, while the employee or IRA owner is alive, is the factor from the uniform lifetime table included in the regulations.[83] This table is based on the joint life and last survivor expectancy of the individual and a hypothetical beneficiary 10 years younger.

Distributions after death

Payments over a distribution period

The after death rules vary depending on (1) whether an employee or IRA owner dies on or after the required beginning date or before the required beginning date, and (2) whether there is a designated beneficiary for the benefit.[84] Under the regulations, a designated

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[82] Sec. 401(a)(9)(A).

[83] Treas. Reg. sec. 1.401(a)(9)–5. For an individual with a spouse as designated beneficiary who is more than 10 years younger (and thus the number of years in the couple's joint life and last survivor expectancy is greater than the uniform lifetime table), the joint life expectancy and last survivor expectancy of the couple (calculated using the table in the regulations) is used.

[84] Special rules apply if the beneficiary of the employee or IRA owner is the individual's surviving spouse. In that case, for example, distributions are not required to commence until the year in which the employee or IRA owner would have attained age 70½. Similarly, if the surviving spouse dies before the employee or IRA owner would have attained age 70½, the after-

beneficiary is an individual designated as a beneficiary under the plan.[85] Similar to the lifetime rules, for defined contribution plans and IRAs, the required minimum distribution for each year after the death of the employee or IRA owner is generally determined by dividing the account balance as of the end of the prior year by a distribution period.

Under the Code, if an employee or IRA owner dies on or after the required beginning date, the remaining interest must be distributed at least as rapidly as under the minimum distribution method being used as of the date of death.[86] Under the regulations, for individual accounts, if there is a designated beneficiary, the distribution period is the beneficiary's life expectancy calculated using the life expectancy table in the regulations, calculated in the year after the year of the death.[87] If there is no designated beneficiary, the distribution period is equal to the remaining years of the employee or IRA owner's life, as of the year of death.[88]

If an employee or IRA owner dies before the required beginning date and any portion of the benefit is payable to a designated beneficiary, distributions are permitted to begin within one year of the employee's (or IRA owner's) death (or such later date as prescribed in regulations) and to be paid (in accordance with regulations) over the life or life expectancy of the designated beneficiary. Under the regulations, for individual accounts, the distribution period is measured by the designated beneficiary's life expectancy, calculated in the same manner as if the individual dies on or after the required beginning date.[89]

In all cases where distribution after death is based on life expectancy (either the remaining life expectancy of the employee or IRA owner or a designated beneficiary), the distribution period generally is fixed at death and then reduced by one for each year that elapses after the year in which it is calculated. If the designated beneficiary dies during the distribution period, distributions continue to the subsequent beneficiaries over the remaining years in the distribution period.[90]

Five-year rule

If an employee or IRA owner dies before the required beginning date and there is no designated beneficiary, then the entire remaining interest of the employee or IRA owner must generally be

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death rules for death before distributions have begun are applied as though the spouse were the employee or IRA owner. Further, there are rules that allow a surviving spouse to treat an IRA as the spouse's own IRA or roll over an amount received as a beneficiary to an IRA established in the spouse's own name.

[85] Treas. Reg. sec. 1.401(a)(9)–4, A–1. The individual need not be named as long as the individual is identifiable under the terms of the plan. There are special rules for multiple beneficiaries and for trusts named as beneficiary (where the beneficiaries of the trust are individuals). However, if an individual is named as beneficiary through the employee or IRA owner's will or the estate is named as beneficiary, there is no designated beneficiary for purposes of the minimum distribution requirements.

[86] Sec. 401(a)(9)(B)(i)

[87] Treas. Reg. sec. 1.401(a)(9)–5, A–5(b).

[88] Treas. Reg. sec. 1.401(a)(9)–5, A–5(a).

[89] Treas. Reg. sec. 1.401(a)(9)–5, A–5(b).

[90] If the distribution period is based on the surviving spouse's life expectancy (whether the employee or IRA owner's death is before or after the required beginning date), the spouse's life expectancy generally is recalculated each year while the spouse is alive and then fixed the year after the spouse's death.

distributed by the end of the fifth year following the individual's death.[91]

Defined benefit plans and annuity distributions

The regulations provide rules for annuity distributions from a defined benefit plan or an annuity purchased from an insurance company paid over life or life expectancy. Annuity distributions generally are required to be nonincreasing with certain exceptions, which include, for example, increases to the extent of certain specified cost of living indexes, a constant percentage increase (for a qualified plan, the constant percentage cannot exceed five percent per year), certain accelerations of payments, increases to reflect when an annuity is converted to a single life annuity after the death of the beneficiary under a joint and survivor annuity or after termination of the survivor annuity under a qualified domestic relations order.[92] If distributions are in the form of a joint and survivor annuity and the survivor annuitant both is not the surviving spouse and is younger than the employee or IRA owner, the survivor annuitant is limited to a percentage of the life annuity benefit for the employee or IRA owner.[93] The survivor benefit as a percentage of the benefit of the primary annuitant is required to be smaller (but not required to be less than 52 percent) as the difference in the ages of the primary annuitant and the survivor annuitant become greater.

REASONS FOR CHANGE

The Committee believes that it is appropriate to allow extended distributions after the death of the employee or IRA owner only to certain types of beneficiaries, such as the employee's spouse (or other beneficiary close to the same age as the employee or IRA owner) or a beneficiary who is disabled or chronically ill. The Committee believes that, for other beneficiaries, tax deferral of benefits should not continue for an extended period after the death. Thus, it is appropriate for the benefits to be paid out within five years of the employee or IRA owner's death. Similarly, after the death of the beneficiary, any interest remaining should be paid out within five years of the beneficiary's death.

EXPLANATION OF PROVISION

Required beginning date

Under the provision, if an employee becomes a five-percent owner after age 70½, but before retiring and thus before the employee's required beginning date with respect to tax favored retirement plans of the employee's employer, the required beginning date for that employee becomes April 1 following the year that the employee becomes a five-percent owner.

Other than the modification to the required beginning date for five-percent owners, the provision makes no change to the rules for required minimum distributions during the lifetime of the employee or IRA owner. Thus, for example, the provision is not expected to result in a change in the regulations for required min-

[91] Treas. Reg. sec. 1.401(a)(9)–3, A–2.
[92] Treas. Reg. sec. 1.401(a)(9)–6, A–14.
[93] Treas. Reg. sec. 1.401(a)(9)–6, A–2.

imum distributions during the lifetime of the employee or IRA owner under which the required minimum distribution for each year generally is determined by dividing the account balance as of the end of the prior year by a distribution period which is the number corresponding to the employee or IRA owner's age for the year from the uniform lifetime table included in the regulations.

After-death rules

Under the provision, the five-year rule is the general rule for all distributions after death (regardless of whether the employee or IRA owner dies before, on, or after the required beginning date) unless the beneficiary is an eligible beneficiary as defined in the provision. Eligible beneficiaries include any beneficiary who, as of the date of death, is the surviving spouse of the employee or IRA owner, is disabled, is a chronically ill individual, is an individual who is not more than 10 years younger than the employee or IRA owner, or is a child who has not reached the age of majority.[94] For these beneficiaries, the exception to the five-year rule (for death before the required beginning date) applies whether or not the IRA owner or employee dies before or after the required beginning date. That rule allows distributions over the life or life expectancy of the beneficiary beginning in the year following the year of death.

However, unlike present law, under the provision, the five-year rule applies after the death of the eligible beneficiary. Thus, for example, if a disabled child is an eligible beneficiary of a parent who dies when the child is age 20 and the child dies at age 30, even though 52.1 years remain in the life expectancy of the child calculated for the child's age (21) in the year after the employee's death, the disabled child's remaining beneficiary interest must be distributed by the end of the fifth year following the death of the disabled child. If a child is an eligible beneficiary based on having not reached the age of majority before the employee or IRA owner's death, the five-year rule applies beginning with the date that the child reaches the age of majority. Thus the child's entire interest must be distributed by the end of the fifth year following that date.

Definition of disabled and chronically ill individual

Under the provision, disabled means unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to end in death or to be for long-continued and indefinite duration.[95] Further, an individual is not considered to be disabled unless proof of the disability is furnished in such form and manner as the Secretary may require.

Under the provision, a chronically ill individual is any individual who (1) is unable to perform (without substantial assistance from another individual) at least two activities of daily living for an indefinite period (expected to be lengthy in nature) due to a loss of functional capacity, (2) has a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the level

[94] The provision does not change the rules that allow a surviving spouse to treat an IRA as the spouse's own IRA or roll over an amount received as a beneficiary to an IRA established in the spouse's own name.

[95] This is the definition under section 72(m)(7), which the provision incorporates by reference.

of disability described above requiring assistance with daily living based on loss of functional capacity, or (3) requires substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.[96] The activities of daily living for which assistance is needed for purposes of determining loss of functional capacity are eating, toileting, transferring, bathing, dressing, and continence.

EFFECTIVE DATE

Required beginning date change for five-percent owners

For the provision changing the definition of required beginning date for employees who become five-percent owners after age 70½, if an employee became a five-percent owner with respect to a plan year ending before January 1, 2012, and the employee has not retired before 2013, the employee is treated as having become a five-percent owner in 2013. Thus, the employee's required beginning date is April 1, 2014. Otherwise, the provision is effective upon date of enactment without regard to whether the employee became a five-percent owner before, on, or after the date of enactment.

Required distributions after death

For determining minimum required distributions after the death of an employee or IRA owner, the provision is generally effective for distributions with respect to employees or IRA owners who die after December 31, 2012.

In the case of an employee who dies before January 1, 2013, if the designated beneficiary of the employee or IRA owner dies after December 31, 2012, the provision applies to any beneficiary of the designated beneficiary as though the designated beneficiary were an eligible beneficiary. Thus, the entire interest must be distributed by the end of the fifth year after the death of the designated beneficiary.

In the case of an employee who dies after December 31, 2012, the provision does not apply to a qualified annuity which is a binding annuity contract in effect on the date of the enactment and at all times thereafter. To be a qualified annuity, the annuity must be a commercial annuity (as defined in section 3405(e)(6)) or an annuity payable by a defined benefit plan, and (2) an annuity under which the annuity payments are substantially equal periodic payments (not less frequently than annually) over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary) in accordance with the required minimum distribution regulations for annuity payments (as in effect before enactment of this provision). In addition to these requirements, to be a qualified annuity, annuity payments to the employee (or IRA owner) must have begun before January 1, 2013, and the employee (or IRA owner) must have made an irrevocable election before that date as to the method and amount of the annuity payments to the employee or any designated beneficiaries. Alternatively, if an annuity is not a qualified annuity solely based on

[96] This is generally the definition under section 7702B(c)(2), which the provision incorporates by reference, except that section 7702B(c)(2)(A)(i) requires the period for which an individual is unable to perform at least two activities of daily living to be at least 90 days.

annuity payments not having begun irrevocably before January 1, 2013, an annuity can be a qualified annuity if the employee or IRA owner has made an irrevocable election before the date of enactment as to the method and amount of the annuity payments to the employee or any designated beneficiaries.

J. DEPRECIATION AND AMORTIZATION RULES FOR HIGHWAY AND RELATED PROPERTY SUBJECT TO LONG-TERM LEASES (sec. 311 of the bill and secs. 168, 197, and 147 of the Code)

PRESENT LAW

Depreciation and amortization for highways and related property

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property.[97] The alternative depreciation system ("ADS") applies with respect to tangible property used predominantly outside the United States during the taxable year, tax-exempt use property, tax-exempt bond financed property, and certain other property. ADS generally requires the use of the straight-line method without regard to salvage value, and requires longer recovery periods than MACRS.

Under MACRS, the cost of land improvements (such as roads and fences) is recovered over 15 years.[98] Land improvements subject to ADS are recovered over 20 years using the straight-line method.[99]

Amortization of intangible property

The cost recovery of many intangible assets is governed by the rules of section 197. In particular, section 197 provides that any amortizable section 197 intangible, including rights granted by a governmental unit and franchise rights, is amortized over a 15-year period.[100]

Private activity bond financing for highways

In general, interest on a private activity bond that is a qualified bond is excludable from taxable income.[101] Under present law, a private activity bond is not a qualified bond, interest on which is tax-exempt, if any portion of the proceeds of the issue of which the bond is a part is used to provide any airplane, skybox, or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.[102]

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[97] Sec. 168.

[98] Rev. Proc. 87–56, 1987–42 I.R.B. 4.

[99] *Ibid*. The longest MACRS recovery period is 50 years and applies to railroad gradings and tunnel bores. Sec. 168(c).

[100] Secs. 197(d)(1)(D) and (F). The 15-year amortization provision does not apply to various types of rights, including any interest in land. Sec. 197(e)(2).

[101] Sec. 141.

[102] Sec. 147(e).

REASONS FOR CHANGE

The Committee is concerned that, under present law, accelerated cost recovery methods provide a tax benefit to the private purchaser of a public road or highway which was originally financed and built with taxpayer money.[103] To eliminate the Federal subsidy for public roads or highways that are privatized through a long-term lease, the Committee believes that the appropriate recovery period for the leased property is 45 years, using the straight-line method.

The Committee also is concerned that the current amortization period for amounts paid or incurred for the right to operate and maintain the public road or highway and collect tolls (i.e., 15 years) does not relate to, and is frequently significantly shorter than, the term of the lease or arrangement under which the right is exercised. The Committee believes that the taxpayer who acquires the right to operate and maintain the public road or highway and collect tolls should recover the costs incurred for such rights over the term of the lease.

Further, the Committee is concerned that tax-exempt private activity bonds might be issued to assist the private purchaser in acquiring the public road or highway. Thus, the Committee believes that the private activity bonds, any portion of the proceeds which is used to privatize the public road or highway, should not be tax-exempt.

EXPLANATION OF PROVISION

Under this provision, the depreciation for applicable leased highway property is determined under ADS with a statutory 45-year recovery period and requirement to use the straight-line method. Further, this provision requires that any amortizable section 197 intangible acquired in connection with an applicable lease must be recovered over a period not less than the term of the applicable lease.

Under this provision, private activity bonds are not qualified bonds, interest on which is tax-exempt, if the bonds are part of an issue, any portion of the proceeds of which is used to finance any applicable leased highway property.

For purposes of this provision, applicable leased highway property is defined as property subject to an applicable lease and placed in service before the date of such lease. An applicable lease is defined as an arrangement between the taxpayer and a State or political subdivision thereof, or any agency or instrumentality of either, under which the taxpayer leases a highway and associated improvements, receives a right-of-way on the public lands underlying such highway and improvements, and receives a grant of a franchise or other intangible right permitting the taxpayer to receive funds relating to the operation of such highway. As under present law, a contract that purports to be a service contract or other arrangement (including a partnership or other passthrough entity) is treated as a lease if the contract or arrangement is properly treated as a lease.[104]

[103] In practice, the privatization of public roads is often referred to as a "brownfield" project.
[104] Sec. 7701(e).

EFFECTIVE DATE

The provision is effective for leases entered into, and private activity bonds issued, after the date of enactment.

K. TRANSFER OF EXCESS PENSION ASSETS (secs. 312 and 313 of the bill and sec. 420 of the Code)

PRESENT LAW

Defined benefit pension plan reversions

Defined benefit plan assets generally may not revert to an employer prior to termination of the plan and satisfaction of all plan liabilities.[105] Upon plan termination, the accrued benefits of all plan participants are required to be 100-percent vested. A reversion prior to plan termination may constitute a prohibited transaction and may result in plan disqualification. Any assets that revert to the employer upon plan termination are includible in the gross income of the employer and subject to an excise tax. The excise tax rate is 20 percent if the employer maintains a replacement plan or makes certain benefit increases in connection with the termination; if not, the excise tax rate is 50 percent. Medical benefits and life insurance benefits provided under a pension plan

Retiree medical accounts

A pension plan may provide medical benefits to retired employees through a separate account that is part of a defined benefit plan ("retiree medical accounts").[106] Medical benefits provided through a retiree medical account are generally not includible in the retired employee's gross income.[107]

Transfers of excess pension assets

In general

A qualified transfer of excess assets of a defined benefit plan, including a multiemployer plan,[108] to a retiree medical account within the plan may be made in order to fund retiree health benefits.[109] A qualified transfer does not result in plan disqualification, is not a prohibited transaction, and is not treated as a reversion. Thus, transferred assets are not includible in the gross income of the employer and are not subject to the excise tax on reversions. No more than one qualified transfer may be made in any taxable year. No qualified transfer may be made after December 31, 2013.

Excess assets generally means the excess, if any, of the value of the plan's assets[110] over 125 percent of the sum of the plan's funding target and target normal cost for the plan year. In addition, excess assets transferred in a qualified transfer may not exceed the amount reasonably estimated to be the amount that the employer

[105] In addition, a reversion may occur only if the terms of the plan so provide.
[106] Sec. 401(h) and Treas. Reg. sec. 1.401–1(b).
[107] Treas. Reg. sec. 1.72–15(h).
[108] The Pension Protection Act of 2006 ("PPA"), Pub. L. No. 109–280, extended the application of the rules for qualified transfers to multiemployer plans with respect to transfers made in taxable years beginning after December 31, 2006. However, the rules for qualified future transfers and collectively bargained transfers do not apply to multiemployer plans.
[109] Sec. 420.
[110] The value of plan assets for this purpose is the lesser of fair market value or actuarial value.

will pay out of such account during the taxable year of the transfer for qualified current retiree health liabilities. No deduction is allowed to the employer for (1) a qualified transfer, or (2) the payment of qualified current retiree health liabilities out of transferred funds (and any income thereon). In addition, no deduction is allowed for amounts paid other than from transferred funds for qualified current retiree health liabilities to the extent such amounts are not greater than the excess of (1) the amount transferred (and any income thereon), over (2) qualified current retiree health liabilities paid out of transferred assets (and any income thereon). An employer may not contribute any amount to a health benefits account or welfare benefit fund with respect to qualified current retiree health liabilities for which transferred assets are required to be used.

Transferred assets (and any income thereon) must be used to pay qualified current retiree health liabilities for the taxable year of the transfer. Transferred amounts generally must benefit pension plan participants, other than key employees, who are entitled upon retirement to receive retiree medical benefits through the separate account. Retiree health benefits of key employees may not be paid out of transferred assets.

Amounts not used to pay qualified current retiree health liabilities for the taxable year of the transfer are to be returned to the general assets of the plan. These amounts are not includible in the gross income of the employer, but are treated as an employer reversion and are subject to a 20-percent excise tax.

In order for the transfer to be qualified, accrued retirement benefits under the pension plan generally must be 100-percent vested as if the plan terminated immediately before the transfer (or in the case of a participant who separated in the one-year period ending on the date of the transfer, immediately before the separation).

In order for a transfer to be qualified, there is a maintenance of effort requirement under which, the employer generally must maintain retiree health benefits at the same level for the taxable year of the transfer and the following four years.

In addition, the Employee Retirement Income Security Act of 1974 ("ERISA")[111] provides that, at least 60 days before the date of a qualified transfer, the employer must notify the Secretary of Labor, the Secretary of the Treasury, employee representatives, and the plan administrator of the transfer, and the plan administrator must notify each plan participant and beneficiary of the transfer.[112]

Qualified future transfers and collectively bargained transfers

If certain requirements are satisfied, transfers of excess pension assets under a single-employer plan to retiree medical accounts to fund the expected cost of retiree medical benefits are permitted for the current and future years (a "qualified future transfer") and such transfers are also allowed in the case of benefits provided under a collective bargaining agreement (a "collectively bargained

[111] Pub. L. No. 93–406.
[112] ERISA sec. 101(e). ERISA also provides that a qualified transfer is not a prohibited transaction under ERISA or a prohibited reversion.

transfer").[113] Transfers must be made for at least a two-year period. An employer can elect to make a qualified future transfer or a collectively bargained transfer rather than a qualified transfer. A qualified future transfer or collectively bargained transfer must meet the requirements applicable to qualified transfers, except that the provision modifies the rules relating to: (1) the determination of excess pension assets; (2) the limitation on the amount transferred; and (3) the maintenance of effort requirement. The general sunset applicable to qualified transfer applies (i.e., no transfers can be made after December 31, 2013).

Qualified future transfers and collectively bargained transfers can be made to the extent that plan assets exceed 120 percent of the sum of the plan's funding target and the normal cost for the plan year. During the transfer period, the plan's funded status must be maintained at the minimum level required to make transfers. If the minimum level is not maintained, the employer must make contributions to the plan to meet the minimum level or an amount required to meet the minimum level must be transferred from the health benefits account. The transfer period is the period not to exceed a total of ten consecutive taxable years beginning with the taxable year of the transfer. As previously discussed, the period must be not less than two consecutive years.

Employer provided group-term life insurance

Group-term life insurance coverage provided under a policy carried by an employer is includible in the gross income of an employee (including a former employee) but only to the extent that the cost exceeds the sum of the cost of $50,000 of such insurance plus the amount, if any, paid by the employee toward the purchase of such insurance.[114] Special rules apply for determining the cost of group-term life insurance that is includible in gross income under a discriminatory group-term life insurance plan.

A pension plan may provide life insurance benefits for employees (including retirees) but only to the extent that the benefits are incidental to the retirement benefits provided under the plan.[115] The cost of term life insurance provided through a pension plan is includible in the employee's gross income.[116]

REASONS FOR CHANGE

The Committee believes that it is appropriate to provide a temporary extension of the present law rules permitting an employer to make a qualified transfer, a qualified future transfer, or a collectively bargained transfer of excess pension assets to a retiree medical account as long as the security of employees' pensions is not threatened. The Committee also believes it is appropriate to permit an employer to make such a transfer to a separate account under a defined benefit plan to fund group-term life insurance and, for group-term life insurance policies purchased with transferred assets, to provide the same tax treatment for the life insurance benefits as is provided under the plan.

[113] The rules for qualified future transfers and collectively bargained transfers were added by the PPA and apply to transfers after the date of enactment (August 17, 2006).
[114] Sec. 79.
[115] Treas. Reg. sec. 1.401–1(b).
[116] Secs. 72(m)(3) and 79(b)(3).

EXPLANATION OF PROVISION

Extension of existing provisions

The provision allows qualified transfers, qualified future transfers, and collectively bargained transfers to retiree medical accounts to be made through December 31, 2021. No transfers are permitted after that date.

Transfers to fund retiree group-term life insurance permitted

The provision allows qualified transfers, qualified future transfers, and collectively bargained transfers to be made to fund the purchase of retiree group-term life insurance. The assets transferred for the purchase of group-term life insurance must be maintained in a separate account within the plan ("retiree life insurance account"), which must be separate both from the assets in the retiree medical account and from the other assets in the defined benefit plan.

Under the provision, the general rule that the cost of group-term life insurance coverage provided under a defined benefit plan is includable in gross income of the participant does not apply to group-term life insurance provided through a retiree life insurance account. Instead, the general rule for determining the amount of employer-provided group-term life insurance that is includible in gross income applies. However, group-term life insurance coverage is permitted to be provided through a retiree life insurance account only to the extent that it is not includible in gross income. Thus, generally, only group-term life insurance not in excess of $50,000 may be purchased with such transferred assets.

Generally, the present law rules for transfers of excess pension assets to retiree medical accounts to fund retiree health benefits also apply to transfers to retiree life insurance accounts to fund retiree group-term life. However, generally, the rules are applied separately. Thus, for example, the one-transfer-a-year rule generally applies separately to transfers to retiree life insurance accounts and transfers to retiree medical accounts. Further, the maintenance of effort requirement for qualified transfers applies separately to life insurance benefits and health benefits. Similarly, for qualified future transfers and collectively bargained transfers for retiree group-term life insurance, the maintenance of effort and other special rules are applied separately to transfers to retiree life insurance accounts and retiree medical accounts.

Reflecting the inherent differences between life insurance coverage and health coverage, certain rules are not applied to transfers to retiree life insurance accounts, such as the special rules allowing the employer to elect to the determine the applicable employer cost for health coverage during the cost maintenance period separately for retirees eligible for Medicare and retirees not eligible for Medicare. However, a separate test is allowed for the cost of retiree group-term life insurance for retirees under age 65 and those retirees who have reached age 65.

The provision makes other technical and conforming changes to the rules for transfers to fund retiree health benefits and removes certain obsolete ("deadwood") rules.

The same sunset applicable to qualified transfers, qualified future transfers, and collectively bargained transfers to retiree medical accounts applies to transfers to retiree life insurance accounts (i.e., no transfers can be made after December 31, 2021).

EFFECTIVE DATE

The provision applies to transfers made after the date of enactment.

III. BUDGET EFFECTS OF THE BILL

A. Committee Estimates

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the revenue provisions of the "Highway Investment, Job Creation, and Economic Growth Act of 2012" as reported.

JOINT COMMITTEE ON TAXATION
February 7, 2012
JCX-14-12

ESTIMATED GENERAL FUND AND TRUST FUND EFFECTS OF THE REVENUE PROVISIONS CONTAINED IN THE CHAIRMAN'S MODIFICATION TO S. ____, [1] THE "HIGHWAY INVESTMENT, JOB CREATION AND ECONOMIC GROWTH ACT OF 2012," SCHEDULED FOR MARKUP BY THE COMMITTEE ON FINANCE ON FEBRUARY 7, 2012

Fiscal Years 2012 - 2022

[Millions of Dollars]

Provision	Effective	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-17	2012-22
I. Extension of Taxes and Trust Funds														
A. Extension of Highway-Related Taxes (sunset 9/30/15)														
1. General Fund	4/1/12							*No Effect*						
2. Highway Trust Fund	4/1/12							*No Effect*						
3. Leaking Underground Storage Tank ("LUST") Trust Fund	4/1/12							*No Effect*						
B. Extension of Highway Trust Fund Expenditure Authority (sunset 9/30/13)														
1. General Fund	4/1/12							*No Effect*						
2. Highway Trust Fund	4/1/12							*No Effect*						
3. Leaking Underground Storage Tank ("LUST") Trust Fund	4/1/12							*No Effect*						
II. Revenue Provisions														
A. Leaking Underground Storage Tank ("LUST") Trust Fund														
1. Transfer $3 billion from the LUST Fund to the Highway Trust Fund [2]														
a. General Fund [2]	DOE							*No Effect*						
b. Highway Trust Fund [2]	DOE	3,000	---	---	---	---	---	---	---	---	---	---	3,000	3,000
c. Leaking Underground Storage Tank ("LUST") Trust Fund [2]	DOE	-3,000	---	---	---	---	---	---	---	---	---	---	-3,000	-3,000
2. Transfer 0.033 cpg of the 0.1cpg LUST financing rate to the Highway Trust Fund, remainder to the LUST Trust Fund														
a. General Fund	DOE							*No Effect*						
b. Highway Trust Fund	DOE	31	62	63	64	65	66	66	66	66	67	67	352	685
c. Leaking Underground Storage Tank ("LUST") Trust Fund	DOE	-31	-62	-63	-64	-65	-66	-66	-66	-66	-67	-67	-352	-685

Provision	Effective	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-17	2012-22
B. Claims and Credit Carryovers Related to Unprocessed and Excluded Fuels														
1. General Fund	2/3/12							*No Effect*						
2. Highway Trust Fund	2/3/12	268	413	444	357	106	---	---	---	---	---	---	1,588	1,588
3. Leaking Underground Storage Tank ("LUST") Trust Fund	2/3/12							*No Effect*						
C. Dedication of the Gas Guzzler Tax to the Highway Trust Fund														
1. General Fund	DOE	-66	-65	-64	-64	-65	-64	-64	-63	-62	-61	-60	-388	-697
2. Highway Trust Fund	DOE	66	65	64	64	65	64	64	63	62	61	60	388	697
3. Leaking Underground Storage Tank ("LUST") Trust Fund	DOE							*No Effect*						
D. Revocation or Denial of Passport in Case of Certain Tax Delinquencies														
1. General Fund	1/1/13	---	69	169	159	96	64	43	34	34	36	39	556	743
2. Highway Trust Fund	1/1/13							*No Effect*						
3. Leaking Underground Storage Tank ("LUST") Trust Fund	1/1/13							*No Effect*						
E. Increase Levy Authority for Payments to Medicare Providers with Delinquent Tax Debt														
1. General Fund	pma DOE	36	73	75	76	78	80	81	83	84	86	88	418	841
2. Highway Trust Fund	pma DOE							*No Effect*						
3. Leaking Underground Storage Tank ("LUST") Trust Fund	pma DOE							*No Effect*						
F. Appropriation to the Highway Trust Fund of Certain Import Tariffs (sunset 9/30/16) [2]														
1. General Fund [2]	DOE	-780	-815	-880	-975	-1,070	---	---	---	---	---	---	-4,520	-4,520
2. Highway Trust Fund [2]	DOE	780	815	880	975	1,070	---	---	---	---	---	---	4,520	4,520
3. Leaking Underground Storage Tank ("LUST") Trust Fund [2]	DOE							*No Effect*						
G. Treatment of Securities of a Controlled Corporation Exchanged for Assets in Certain Reorganizations														
1. General Fund	gea DOE	4	8	17	24	26	26	27	28	28	28	28	105	244
2. Highway Trust Fund	gea DOE							*No Effect*						
3. Leaking Underground Storage Tank ("LUST") Trust Fund	gea DOE							*No Effect*						

Provision	Effective	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-17	2012-22
H. Inclusion of Internal Revenue Service Levies as Enforceable Against Thrift Savings Plan Accounts														
1. General Fund	DOE	[3]	2	2	2	2	2	3	3	3	3	3	11	25
2. Highway Trust Fund	DOE							*No Effect*						
3. Leaking Underground Storage Tank ("LUST") Trust Fund	DOE							*No Effect*						
I. Modification of Small Issuer Exception to Tax-Exempt Interest Allocation Rules for Financial Institutions (sunset 12/31/12)														
1. General Fund	bia DOE	-5	-26	-37	-37	-36	-36	-36	-35	-35	-35	-35	-177	-353
2. Highway Trust Fund	bia DOE							*No Effect*						
3. Leaking Underground Storage Tank ("LUST") Trust Fund	bia DOE							*No Effect*						
J. Temporarily Exempt Interest on Tax-Exempt Bonds as a Preference for the AMT (sunset 12/31/12)														
1. General Fund	bia DOE	-11	-23	-23	-23	-23	-22	-20	-19	-18	-17	-16	-125	-215
2. Highway Trust Fund	bia DOE							*No Effect*						
3. Leaking Underground Storage Tank ("LUST") Trust Fund	bia DOE							*No Effect*						
K. Authorize Issuance of TRIP Bonds by State Infrastructure Banks														
1. General Fund	DOE							*No Effect*						
2. Highway Trust Fund	DOE							*No Effect*						
3. Leaking Underground Storage Tank ("LUST") Trust Fund	DOE							*No Effect*						
L. Parity for Exclusion for Employer-Provided Mass Transit and Parking Benefits (sunset 12/31/12) [4]														
1. General Fund	1/1/12	-104	-35	---	---	---	---	---	---	---	---	---	-139	-139
2. Highway Trust Fund	1/1/12							*No Effect*						
3. Leaking Underground Storage Tank ("LUST") Trust Fund	1/1/12							*No Effect*						
M. Modification of Required Minimum Distribution Rules for Pension Plans														
1. General Fund	gda 12/31/12	---	[3]	35	131	243	405	771	823	786	747	706	815	4,648
2. Highway Trust Fund	gda 12/31/12							*No Effect*						
3. Leaking Underground Storage Tank ("LUST") Trust Fund	gda 12/31/12							*No Effect*						

Provision	Effective	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-17	2012-22
General Fund		**-926**	**-812**	**-706**	**-707**	**-749**	**455**	**805**	**854**	**820**	**787**	**753**	**-3,444**	**577**
Highway Trust Fund		**4,145**	**1,355**	**1,451**	**1,460**	**1,306**	**130**	**130**	**129**	**128**	**128**	**127**	**9,848**	**10,490**
Leaking Underground Storage Tank Trust Fund		**-3,031**	**-62**	**-63**	**-64**	**-65**	**-66**	**-66**	**-66**	**-66**	**-67**	**-67**	**-3,352**	**-3,685**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is assumed to be April 1, 2012.

Legend for "Effective" column:

bia = bonds issued after	gda = generally deaths after	pma = payments made after
DOE = date of enactment	gea = generally exchanges after	tyba = taxable years beginning after

[1] Congressional Budget Office baseline projected trust fund receipts:

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-17	2012-22
Leaking Underground Storage Tank Trust Fund	189	189	191	195	198	200	201	201	201	202	202	1,162	2,169
Highway Trust Fund	37,912	37,458	38,024	39,155	40,142	40,790	41,130	41,326	41,580	41,861	42,242	233,481	441,620

[2] Estimate provided by the Congressional Budget Office and is preliminary.

[3] Gain of less than $500,000.

[4] Estimate includes the following off-budget effects:

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-17	2012-22
Total Revenue Effects	-104	-35	---	---	---	---	---	---	---	---	---	-139	-139
On-budget effects	-69	-23	---	---	---	---	---	---	---	---	---	-92	-92
FICA	-35	-12	---	---	---	---	---	---	---	---	---	-47	-47

CBO Estimate for the "Highway Investment, Job Creation and Economic Growth Act of 2012" as ordered reported by the Senate Committee on Finance on February 7, 2012, with language provided to CBO on February 13, 2012

(Millions of dollars, by fiscal year) February 14, 2012

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-2017	2012-2022
						CHANGES IN REVENUES							
Title II - Other Provisions													
Modification of Small Issuer Exception to Tax-Exempt Interest Allocation Rules for Financial Institutions (sunset 12/31/12)	-5	-26	-37	-37	-36	-36	-36	-35	-35	-35	-35	-177	-353
Temporarily Exempt Interest on Tax-Exempt Bonds as a Preference for the AMT (sunset 12/31/12)	-11	-23	-23	-23	-23	-22	-20	-19	-18	-17	-16	-125	-215
Parity for Exclusion for Employer-Provided Mass Transit and Parking Benefits (sunset 12/31/12)[a]	-104	-35	0	0	0	0	0	0	0	0	0	-139	-139
Exempt-facility bonds for sewage and water supply facilities	-1	-4	-9	-17	-26	-38	-42	-42	-42	-42	-42	-95	-305
Title III - Revenue Provisions													
Claims and Credit Carryovers Related to Unprocessed and Excluded Fuels	268	413	444	357	106	0	0	0	0	0	0	1,588	1,588
Revocation or Denial of Passport in Case of Certain Tax Delinquencies	0	69	169	159	96	64	43	34	34	36	39	556	743
Increase Levy Authority for Payments to Medicare Providers with Delinquent Tax Debt	36	73	75	76	78	80	81	83	84	86	88	418	841
Treatment of Securities of a Controlled Corporation Exchanged for Assets in Certain Reorganizations	4	8	17	24	26	26	27	28	28	28	28	105	244
Inclusion of Internal Revenue Service Levies as Enforceable Against Thrift Savings Plan Accounts	*	2	2	2	2	2	3	3	3	3	3	11	25
Modification of Required Minimum Distribution Rules for Pension Plans	0	*	35	131	243	405	771	823	786	747	706	815	4,648
Extension for Transfers of Excess Pension Assets to Retiree Health Accounts (sunset 12/31/21) and Allow Section 420 to Apply to Life Insurance Benefits subject to long-term leases	0	0	19	39	40	41	42	44	45	46	47	139	363
TOTAL CHANGES IN REVENUES[b]	**187**	**477**	**692**	**711**	**506**	**522**	**869**	**919**	**885**	**852**	**818**	**3,096**	**7,440**
on-budget	***222***	***489***	***692***	***711***	***506***	***522***	***869***	***919***	***885***	***852***	***818***	***3,143***	***7,487***
off-budget	***-35***	***-12***	***0***	***0***	***0***	***0***	***0***	***0***	***0***	***0***	***0***	***-47***	***-47***

NET INCREASE OR DECREASE (-) IN DEFICITS FROM REVENUES AND DIRECT SPENDING

NET CHANGES IN DEFICITS[c]	-187	-477	-692	-711	-506	-522	-869	-919	-885	-852	-818	-3,096	-7,440
on-budget	*-222*	*-489*	*-692*	*-711*	*-506*	*-522*	*-869*	*-919*	*-885*	*-852*	*-818*	*-3,143*	*-7,487*
off-budget	*35*	*12*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*47*	*47*

Sources: Congressional Budget Office and the staff of the Joint Committee on Taxation.

Notes: Components may not sum to totals because of rounding.
* indicates an increase in revenues of less than $500,000 dollars
a. Includes on- and off-budget effects.
b. Negative numbers denote a decrease in federal revenues; positive numbers denote an increase in revenues.
c. Positive numbers denote an increase in the budget deficit; negative numbers denote a decrease in the deficit.

JCT has determined that the tax provisions of the bill contain three private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by disallowing certain cellulosic biofuel claims and credit carryovers; revoking or denying passports in cases of certain tax delinquencies; and modifying the required minimum distribution rules for pension plans. CBO has determined that the nontax provisions of the bill would impose one private-sector mandate by expanding a notification requirement on employers. CBO estimates that the cost of this mandate would be small. However, based on information provided by JCT, the cost of all of the mandates in the bill would exceed the annual threshold established in UMRA for private-sector mandates ($146 million in 2012, adjusted annually for inflation).

JCT and CBO have determined that the provisions of the bill contain no intergovernmental mandates as defined in UMRA.

B. Budget Authority and Tax Expenditures

Budget authority

In compliance with section 308(a)(1) of the Budget Act, the Committee states that no provisions of the bill as reported involve new or increased budget authority.

Tax expenditures

In compliance with section 308(a)(2) of the Budget Act, the Committee states that the revenue-reducing provisions of the bill involve increased tax expenditures (see revenue table in Part A., above). The revenue-increasing provisions of the bill involve reduced tax expenditures (see revenue table in part A., above).

C. Consultation with Congressional Budget Office

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a statement on the bill. The letter from the Congressional Budget Office will be provided separately.

IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the standing rules of the Senate, the Committee states that, with a majority and quorum present, the "Highway Investment, Job Creation, and Economic Growth Act of 2012," as amended, was ordered favorably reported on February 7, 2012 as follows:

The Chairman's Mark and Modification were amended as follows:

Amendment #7, Bingaman, #1:
The Transportation Access for All Americans Act (S. 836), as modified
Approved by Voice Vote

Amendment #42, Thune #1:
To ensure the Solvency of the Highway Trust Fund
Failed by roll call vote, 11 ayes, 13 nays.

Ayes: Hatch, Grassley (proxy), Snowe, Kyl (proxy), Crapo (proxy), Roberts (proxy), Enzi, Cornyn (proxy), Coburn, Thune, Burr (proxy)

Nays: Baucus, Rockefeller, Conrad (proxy), Bingaman, Kerry, Wyden (proxy), Schumer, Stabenow, Cantwell, Nelson, Menendez, Carper, Cardin

Amendment #27, Menendez #1:
Sustainable water infrastructure act
Approved by voice vote

Thune #3 (as modified):
To strike tax extender items included in the Chairman's modification to the Mark
Failed, Roll Call Vote, 11 ayes, 13 nays

Ayes: Hatch, Grassley (proxy), Snowe, Kyl (proxy), Crapo (proxy), Roberts (proxy), Enzi, Cornyn (proxy), Coburn (proxy), Thune, Burr (proxy)

Nays: Baucus, Rockefeller, Conrad (proxy), Bingaman, Kerry (Proxy), Wyden, Schumer, Stabenow, Cantwell, Nelson, Menendez, Carper, Cardin

Final Passage of the Highway Investment, Job Creation, and Economic Growth Act of 2012 Approved by Roll Call Vote, 17 ayes, 6 nays, and 1 present

Ayes: Baucus, Rockefeller, Conrad (proxy), Bingaman, Kerry (proxy), Wyden, Schumer, Stabenow, Cantwell, Nelson, Menendez, Carper, Cardin, Snowe, Crapo (proxy), Roberts (proxy), Thune

Nays: Hatch, Grassley (proxy), Enzi, Cornyn (proxy), Coburn (proxy), Burr (proxy)

Present: Kyl (proxy)

V. REGULATORY IMPACT AND OTHER MATTERS

A. Regulatory Impact

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill as amended.

Impact on individuals and businesses, personal privacy and paperwork

The bill extends: (1) the highway motor fuels excise taxes; (2) the 12-percent excise tax imposed on the first retail sale of heavy highway vehicles, tractors, and trailers; (3) the excise tax imposed on highway tires with a rated load capacity exceeding 3,500 pounds, generally at a rate of 0.945 cents per pound of excess; and (4) the annual use tax imposed on highway vehicles having a taxable gross weight of 55,000 pounds or more. For individuals and businesses engaged in activities subject to these taxes, the provisions should not result in additional recordkeeping responsibilities beyond that required for present law. The provisions increasing revenues to the Highway Trust Fund will fund improvements to the nation's highway and mass transit system from which individuals and businesses using such system will benefit. The bill does not have any impact on personal privacy.

B. Unfunded Mandates Statement

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the following tax provisions of the reported bill contain Federal private sector mandates within the meaning of Public Law 104–4, the Unfunded Mandates Reform Act of 1995: (1) claims and credit carryovers related to unprocessed and excluded fuels; (2) revocation or denial of passport in the case of certain tax delinquencies; and (3) modification of required minimum distribution rules for pension plans.

The tax provisions of the reported bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments within the meaning of Public Law 104–4, the Unfunded Mandates Reform Act of 1995.

The costs required to comply with each Federal private sector mandate generally are no greater than the aggregate estimated budget effects of the provision.

C. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Restructuring and Reform 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 the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

VII. ADDITIONAL VIEWS

Additional Views of Senators Hatch, Grassley, Kyl, Roberts, Cornyn, Coburn, Thune, and Burr

We are pleased that the Finance Committee is maintaining its key role in reauthorizing the highway program. It is critical to the functioning of the Senate that its committees be allowed to perform their work. As members of the committee, we fulfill our obligations to our constituents to put all the highway program financing issues on the record. Taking this bill through the Finance Committee process allows for a full examination of the funding stream for the current program. The formality of this process, with the opportunity to debate and amend the Chairman's mark, ensures that the policy is properly vetted for everyone to see.

The authorizing committees' actions place a heavy burden on the Finance Committee. In 2004, the Finance Committee found roughly $24 billion in additional revenue for the next six years of the program. Some of that revenue consisted of permanent policy changes that raised revenue in the trust fund and did not impair the trust fund. Other policy changes grossed up the trust fund and then used unrelated general fund revenue raisers to hold harmless the general fund.

In the meantime, demands on the trust fund grew. What's more, the recession and other factors caused highway revenues to decline. The combination of these events compounded the difficulties the committee experienced in reaching resolution of the funding gap for the trust fund regarding the two year reauthorization bill (2012/2013).

What we found during consideration of the financing title was this: the meeting of the minds that led to the 2005 highway bill—with this committee in the lead—will shortly reach a dead end. Trust fund spending far outpaces trust fund revenues, and there is no getting around the fact that we need to find a new path that directly aligns trust fund revenues and trust fund spending.

A consensus product is not enough if it does not fundamentally address this critical shortcoming with current federal surface transportation financing.

Senator Hatch referred to a quote from former British Prime Minister Margaret Thatcher that bears on the dilemmas this committee faced. This is what Lady Thatcher said:

> For me, pragmatism is not enough. Nor is that fashionable word consensus. . . .
>
> To me consensus seems to be the process of abandoning all beliefs, principles, values and policies in search of something in which no one believes, but to which no one

> objects—the process of avoiding the very issues that have to be solved, merely because you cannot get agreement on the way ahead. . .

For those of us concerned about the integrity of the highway trust fund, consensus on highway funding is not enough unless it addresses costs and benefits in a meaningful way that provides the foundation for lasting and sustainable federal transportation investment policy.

When the Finance Committee last acted on highway funding, in 2005, we reached a basic agreement. Some of us dissented and still others supported it, but with reservations. For a short while that consensus worked. We provided more trust fund revenue for the authorizers to spend. And they spent it. Today, we are maintaining that level of spending and patching the hole that opened in the trust fund.

We fear this committee has strayed from the principles that formed the basis of trust in the highway trust fund. These principles were articulated in a letter sent by Republican members of this committee last year. The amendments we filed follow-up on that letter.

What are the principles Republican members put forward?

- The first principle is that users of the highway trust fund pay for the building and maintenance of the roads.
- The second principle is that revenues and spending should line up on a year-by-year basis.
- The third principle is that we should avoid spending down the balance of the trust fund. That is, we should keep a healthy cushion to ensure against funding crises and disruption.
- The fourth principle is we should provide for as long a multiyear authorization as possible.
- The fifth principle is that since the Finance Committee moved the revenue level up significantly in 2005, we should preserve it and not raise taxes now.

Chairman Baucus worked hard to meet these principles. We appreciate the Chairman's efforts. We also appreciate the commitment he made during the markup to replace two of the more objectionable offsets in the mark with more acceptable ones. The reported bill will include the objectionable offsets. The Chairman, however, has indicated he will replace the objectionable offsets with acceptable ones in the Finance Committee amendment when that amendment is considered by the full Senate. But in our view, we can do better. That is why we filed a few amendments—far fewer than the members on the other side.

One amendment filed on the Republican side and debated in committee was designed to insure that the traditional allocation of funds in the Highway Trust Fund was maintained. Unfortunately, that amendment was rejected on a party-line vote. For us, that action shows a risk of sliding down a slippery slope to a place where the highway trust fund is no longer a trust fund of roads and is further disadvantaged by users who don't contribute to the highway trust fund. We also felt strongly that, given the short window of time to prepare and debate the financing title, the markup should have focused on the shortfall in the trust fund. We did not believe that the financing title of the highways bill was the appropriate place to consider, on a selective basis, proposals such as expired tax provisions. The majority chose to single out for special treatment one traditional tax extender—the tax-free treatment of mass transit benefits—and two expired items from the 2009 stimulus bill. Cherry-picking these three items while ignoring the other 58 extender provisions is bad policy. It was unfortunate that decision was upheld on a party-line vote.

We were glad to debate the merits of the Chairman's mark during the markup. We were not successful in changing the basic direction of the funding proposal. The Finance Committee approved a short-term measure. We look forward to again considering a change in direction in the financing of the highway program. When this committee next considers financing of the highway program, we hope to reach a consensus that will result in a sustainable long-term highway financing system.