# REVENUE-RELATED PROVISIONS OF S. 1834
# (SUPERFUND REFORM ACT OF 1994)

Scheduled for a Hearing

by the

SENATE COMMITTEE ON FINANCE

on September 14, 1994


Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION



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**INTRODUCTION**

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the revenue provisions of S. 1834 (Title IX of the "Superfund Reform Act of 1994"), which are scheduled for a public hearing before the Senate Committee on Finance on September 14, 1994. S. 1834 contains the Administration's Superfund reauthorization proposal. The Administration also separately submitted a proposal on May 20, 1994, and modifications thereto on August 17, 1994, to provide revenues for a proposed "Environmental Insurance Resolution Fund." That proposal was subsequently ordered reported on August 19, 1994, by the House Committee on Ways and Means (with further modifications) to be incorporated into H.R. 3800 (See H. Rept. 103-582, Part 3, August 26, 1994). The Administration's Environmental Insurance Resolution Fund revenue proposal is intended to be incorporated into Title IX of S. 1834.

Part I of the document is the legislative background of S. 1834. Part II is a summary of present-law Superfund tax provisions and the Administration's proposed Superfund revenue provisions. Part III is a description of the Administration's proposed Superfund tax extensions and the Environmental Insurance Resolution Fund and accompanying revenue provisions, which are the same as the provisions reported by the House Committee on Ways and Means as an amendment to be incorporated into H.R. 3800. (Appendix A shows the excise tax rates on certain chemicals currently subject to the Superfund tax, and Appendix B lists the taxable substances currently subject to the excise tax on imported chemicals.)

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[1] This document may be cited as follows: Joint Committee on Taxation, Revenue-Related Provisions of S. 1834 (Superfund Reform Act of 1994), (JCX-18-94), September 13, 1994.

## I. LEGISLATIVE BACKGROUND

S. 1834 (the "Superfund Reform Act of 1994"), the Administration's Superfund reauthorization proposal, was introduced (by request) by Senators Baucus and Lautenberg, on February 7, 1994. The bill was jointly referred to the Committee on Environment and Public Works and the Committee on Finance for matters under their respective committee jurisdiction. S. 1834, as introduced, would extend the four present-law Superfund excise taxes through December 31, 2000, and would make conforming amendments to the Superfund Trust Fund expenditure purposes to allow financing of the revised Superfund program.

S. 1834 was ordered favorably reported, with amendments, by the Senate Committee on Environment and Public Works on August 3, 1994, and the report was filed on August 19, 1994 (S. Rept. 103-349). The Committee on Environment and Public Works did not amend Title IX ("Taxes") of the bill.

On May 20, 1994, the Administration separately submitted a proposal for the imposition of two new insurance-related "fees" (drafted as excise taxes imposed and collected under the Internal Revenue Code). On August 17, 1994, the Administration submitted to the House Committee on Ways and Means a substitute proposal for funding a proposed Environmental Insurance Resolution Fund. The substitute proposal would impose two new excise taxes and a special assessment (also imposed as an excise tax under the Internal Revenue Code) on persons issuing or bearing risks under certain insurance policies. A second special assessment was substituted for a portion of the excise taxes on reinsurers by the House Committee on Ways and Means in its amendment to Title IX of H.R. 3800 as approved on August 19, 1994. (See H. Rept. 103-582, Part 3, August 26, 1994.) The Administration intends that these new excise taxes and special assessments be incorporated in Title IX of S. 1834 as the financing source for the new Environmental Insurance Resolution Fund program.

## II. SUMMARY

### A. Extension of Current Superfund Taxes and Trust Fund

The Internal Revenue Code imposes four different Superfund taxes. These are--

(1) An excise tax on petroleum, imposed at a rate of 9.7 cents per barrel, on domestic or imported crude oil or refined products;

(2) An excise tax on listed hazardous chemicals, imposed at a rate that varies from $0.22 to $4.87 per ton (see Appendix A);

(3) An excise tax on imported substances that use as materials in their manufacture one or more of the hazardous chemicals described in (2) above (see Appendix B); and

(4) A corporate environmental income tax equal to 0.12 percent of the amount of modified alternative minimum taxable income of a corporation that exceeds $2 million.

The revenues from these taxes are deposited in the Hazardous Substance Superfund. These taxes generally are scheduled to expire after December 31, 1995, unless (a) the unobligated Superfund balance exceeds $3.5 billion, or (b) total Superfund tax revenues exceed $11.97 billion, at specified times before that date.

The Administration has proposed extending these taxes through December 31, 2000. The Administration also has proposed modifying the purposes for which the funds in the Hazardous Substance Superfund may be spent.

### B. Proposed Environmental Insurance Resolution Fund and Excise Taxes

S. 1834 would create a new Environmental Insurance Resolution Fund program to resolve disputes between potentially responsible parties (persons potentially liable for cleanup of Superfund sites) and their insurers regarding liability for cleanup of Superfund sites. Under this program, awards would be made to potentially responsible parties in an amount generally equal to a statutory percentage of eligible cleanup costs actually incurred. In exchange, claims against insurance companies would be extinguished.

The new Environmental Insurance Resolution Fund program to be created under the bill would be financed by new excise taxes and special assessments (imposed as excise taxes) on insurance

companies. The Administration proposed the taxes in a separate transmittal to the House Committee on Ways and Means on August 17, 1994. The taxes were ordered reported by the House Committee on Ways and Means (with modifications) on August 19, 1994. (See H. Rept. 103-582, Part 3, August 26, 1994.) These taxes are as follows:

Years 1-4.--A retrospective excise tax calculated by reference to insurance premiums written during the period 1968 through 1985 would raise approximately 70 percent of projected revenues, with approximately 45 percent of total revenues coming from a tax based on net direct insurance premiums written and 25 percent of such revenues coming from a tax based on net reinsurance premiums written. The remaining 30 percent of revenues would be raised by a prospective tax on premiums written for direct insurance. Tax rates would be set to raise approximately $810 million per year.

Years 5-10.--The prospective tax rate would be increased to provide approximately 65 percent of total revenues. The retrospective tax on direct insurance would be replaced by a claims-based special assessment on direct insurers designed to raise 10 percent of total revenues ($81 million per year). The retrospective tax on reinsurance would be continued at a reduced rate of 0.14 percent, and a special assessment structured identically to that imposed on direct insurers would be imposed. These two taxes would produce the remaining 25 percent of the revenues. As in the first four years, total projected revenues would be approximately $810 million per year.

The new tax provisions would be effective on January 1, 1995, and generally would expire after December 31, 2004.

### C. Tax Exemption for Environmental Insurance Resolution Fund

The Administration proposal would provide an exemption from Federal income tax to the Environmental Insurance Resolution Fund under section 501(*l*) of the Code.

# III. DESCRIPTION OF PROPOSED REVENUE PROVISIONS

## A. Extension of Current Superfund Taxes and Trust Fund

### Present Law

Four different Superfund taxes are imposed under the Internal Revenue Code. These are in general:

(1) An excise tax on petroleum, imposed at a rate of 9.7 cents per barrel, on domestic or imported crude oil or refined products;

(2) An excise tax on listed hazardous chemicals, imposed at a rate that varies from $0.22 to $4.87 per ton (see Appendix A);

(3) An excise tax on imported substances that use as materials in their manufacture or production one or more of the hazardous chemicals described in (2) above (see Appendix B); and

(4) A corporate environmental income tax equal to 0.12 percent of the amount of modified alternative minimum taxable income[2] of a corporation that exceeds $2 million.

The Treasury Department is required to add to the list of imported taxable substances any substance if it determines that taxable chemicals constitute more than 50 percent of the weight or value of the materials used to produce such substance (determined on the basis of the predominant method of production). The Treasury may remove from the list only those substances which meet neither test.

No tax is imposed on the sale of any taxable chemical for export. In addition, if tax was paid with respect to a taxable chemical and the chemical is used as a material in the manufacture of a taxable substance which is exported, a credit or refund (without interest) is allowed to the person who paid the initial tax.

The revenues from these taxes are deposited in the Hazardous Substance Superfund (the "Superfund"). Amounts in the Superfund generally are available for expenditures incurred in connection with releases or threats of releases of hazardous substances into

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[2] Modified alternative minimum taxable income is a person's alternative minimum taxable income, but determined without regard to the alternative tax net operating loss deduction and the deduction for the corporate environmental tax (sec. 56(d)).

the environment as described in paragraphs (1), (2), (5), and (6) of section 111(a), section 111(c) (other than paragraphs (1) and (2)), and section 111(m) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986).

Spending from the Superfund is discretionary spending and is subject to the discretionary spending limits established in the Budget Enforcement Act of 1990.

In general, the Superfund taxes are scheduled to expire after December 31, 1995. However, the taxes would cease to be imposed earlier if either (1) (a) the unobligated balance in the Superfund exceeds $3.5 billion on December 31, 1994, and (b) the unobligated balance is estimated to exceed this amount at the end of 1995 (assuming no Superfund taxes were imposed during 1995), or (2) if the Treasury Department estimates that more than $11.97 billion of revenues from these taxes has been credited into the Superfund before January 1, 1996.[3]

## Administration Proposal

### Superfund taxes

In general, the Administration proposal would extend the present-law Superfund excise taxes on petroleum, chemicals, and imported substances through December 31, 2000, and the present-law corporate environmental income tax through taxable years beginning before January 1, 2001. However, these taxes would cease to be imposed earlier if the unobligated balance in the Trust Fund exceeds $3.5 billion on December 31, 1998, or December 31, 1999, and if the Treasury Department estimated that the unobligated balance would exceed this amount at the end of December 31, 1999 or December 31, 2000, respectively, if no Superfund taxes were imposed during such year. Alternatively, no further taxes would be imposed if the Treasury Department estimated that more than $22.0 billion of these taxes had been credited into the Superfund before January 1, 2001.

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[3] Cumulative Superfund tax receipts through December 31, 1993, totaled $8.939 billion.

In consultation with the Environmental Protection Agency, the Treasury Department determined that the unobligated balance in the Superfund Fund as of September 30, 1993, was $1.625 billion.

Superfund spending purposes

The Administration proposal would conform the Superfund expenditure purposes to the program as modified in S. 1834. Additionally, in provisions outside the jurisdiction of the Committee on Finance, the Administration proposal would amend the current "joint and several" liability standards for potentially responsible parties (persons liable for cleanup of pollution at Superfund sites). Under the Administration's proposed changes, the liability of parties agreeing to an arbitration proceeding established under S. 1834 would be limited based on their contribution to pollution of the site to be restored. Liability for pollution by parties from whom no recovery is possible (e.g., persons no longer in existence with no successor in interest), so-called "orphan shares," would be satisfied by the Superfund through a new direct spending program (see sec. 412 of S. 1834).[4]

## B. Proposed Environmental Insurance Trust Fund and Excise Taxes

### Present Law

No excise tax is imposed on domestic casualty insurance policy premiums. An excise tax is imposed on premiums for certain foreign-based casualty insurance and reinsurance. The rate of tax is four cents per dollar of premiums paid with respect to casualty insurance and one cent per dollar of premiums paid with respect to reinsurance (sec. 4371).

Revenues from the present-law excise tax on foreign insurance are deposited in the General Fund of the Treasury. There is no trust fund or other fund for Federally sponsored settlement of private environmental insurance claims.

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[4] Under the 1990 Budget Act, new direct spending is "pay as you go" spending and is separate from spending subject to the annual discretionary spending limits. New direct spending may be offset by new revenues.

The Budget Act assumes, for purposes of determining the base line of Federal receipts, that the Superfund excise taxes are permanent, notwithstanding their current 1995 scheduled expiration. Therefore, no new revenues are recorded for extension of these excise taxes. On the other hand, the corporate environmental income tax is not assumed to be permanent for purposes of determining the baseline of Federal receipts. In the Administration proposal, a portion of the revenues from extension of this tax would be used in part to offset the cost of the new orphan share direct spending program.

## Administration Proposal

### Overview

S. 1834, as reported by the Committee on Environment and Public Works, would establish a new Environmental Insurance Resolution Fund (the "EIRF") to resolve disputes about insurance coverage related to cleanup of superfund sites. EIRF awards generally would consist of statutorily prescribed reimbursement percentages of eligible cleanup costs incurred by potentially responsible parties. The percentages would vary from 20 percent to 60 percent, depending on the State in which the sites were located and the litigation venue for the various sites.

Potentially responsible parties electing to receive payments from the EIRF would waive all claims against insurance companies with respect to cleanup of sites for which payments from the EIRF were made. These parties would be required to submit to the EIRF all claims related to all sites (past, present, and future) with respect to which they were potentially liable for cleanup.

The EIRF would be established as a new, tax-exempt organization,[5] and its board members would be appointed by the President.

S. 1834, as reported by the Committee on Environment and Public Works, does not include funding provisions for the EIRF; the Administration, however, has proposed that the EIRF be funded with two new excise taxes and two new assessments generally imposed with respect to commercial liability insurance, as described below. The gross revenues from these excise taxes and assessments would be deposited in the Environmental Insurance Resolution Trust Fund (the "Trust Fund"), a new trust fund established for this purpose in the Trust Fund Code of the Internal Revenue Code.

Under the Administration proposal, the EIRF and the new excise taxes and assessments would terminate unless minimum participation standards were achieved. Insurers would be required to submit to the EIRF a list of all potentially responsible parties who had filed claims against the insurer as of the date of enactment within 30 days of that date. Insurers would also be required to notify all such parties of their eligibility for resolution of their claims by the EIRF.

Each eligible party so identified would have to respond in either of two ways: (1) file a declaration of intent within 90 days of the date of enactment indicating whether it intends to

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[5] See discussion of Federal tax exemption in Part III.C., below.

accept or reject a resolution offer from the EIRF,[6] or (2) file a request with the EIRF for its applicable reimbursement percentage within 60 days of enactment. In the latter case, the EIRF would be required to respond to such requests within 150 days from the date of enactment. Parties would then be required to accept or reject participation in the EIRF within 180 days of date of enactment. If more than 20 percent of all eligible potentially responsible parties reject participation in the EIRF, the EIRF and the imposition of the excise taxes would terminate. If the rejection rate is between 15 and 20 percent of all eligible potentially responsible parties, the chairperson of the EIRF, in consultation with the EIRF board, could elect to continue or to terminate the EIRF. This determination would be required to be made within 225 days from the date of enactment.

**Excise taxes and assessments**

The Administration has proposed to impose two new excise taxes: a retrospective tax (including an alternative foreign excise tax) and a prospective tax. In addition, the Administration has proposed two assessments (imposed as excise taxes)--one on insurers and the other on reinsurers.[7] The retrospective tax generally would be imposed on persons that wrote certain types of commercial liability insurance during the 18-year period from 1968 through 1985 and that are engaged in any trade or business (whether or not related to the current issuance of insurance) after December 31, 1994. The tax generally would be based on the aggregate net premiums written for these types of insurance during the 18-year period. The prospective tax would be imposed on direct premiums written on or after January 1, 1995, with respect to certain insurance policies in predominantly commercial lines of business.

The assessment on direct insurers generally would be imposed on any insurer if (1) a valid insurance contract (as determined by the EIRF) issued by the insurer had been submitted by an eligible person to the EIRF, and (2) the eligible person had received a resolution payment from the EIRF during the prior four year period. The assessment on reinsurers would be imposed on any person that reinsured an assessable direct policy. Each of these taxes and assessments is described in more detail below.

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[6] If an eligible person did not respond to the first notification, the EIRF would be required to provide a second notification. If such person did not respond to this second notification within 120 days of the date of enactment, the person would be deemed to have accepted participation in the EIRF.

[7] The assessment on reinsurers was added as an amendment by the House Committee on Ways and Means. This amendment was endorsed at such time by the Administration.

**Retrospective tax**

In general

The retrospective tax would be imposed on any "assessable person" that engages in a trade or business (whether or not related to the current issuance of insurance). The retrospective tax would be based on the net premiums written for direct insurance and reinsurance by the assessable person (or certain predecessors in interest) during the 18-year period from January 1, 1968 through December 31, 1985 (the "base period"), with respect to certain "qualified commercial policies".

In general, a qualified commercial policy would mean any insurance policy: (1) with respect to hazards, risks, losses, or liabilities within the United States[8]; and (2) the premiums for which were reported in the applicable annual statement (or would have been reported had an annual statement been filed) as relating to the commercial multiple peril, or the "other liability" lines of business.[9]

In the case of direct insurance, the retrospective tax generally would equal the amount determined by applying an "applicable funding rate" for the calendar year to the assessable person's "adjusted base-period commercial direct premiums". For reinsurance, the retrospective tax would be determined in the same manner as for direct insurance, except that the applicable funding rate would be different. Each insurer generally would be allowed an exemption amount of $50 million,[10] which would be subtracted in determining the insurer's adjusted base-period commercial premiums.

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[8] For purposes of the excise taxes and assessments under the Administration proposal, the United States generally would include Puerto Rico, and any U.S. possessions and territories. The term "United States person", however, would have the meaning in current Code section 7701. Thus, for purposes of determining whether a person was a "United States person", the term "United States" would not include Puerto Rico, and U.S. possessions and territories.

[9] A qualified commercial policy, however, does not include any policy for which premiums were required to be reported as relating to the "other liability" line of business, if the policy either (1) did not provide any commercial coverage, or (2) did not provide any comprehensive general liability coverage or any environmental liability coverage. For example, premiums related to medical malpractice coverage would be excluded.

[10] Certain related parties would be required to share one exemption amount.

For calendar years 1995 through 1998, the annual funding rate applicable to direct insurers would be 0.22 percent and the annual funding rate applicable to reinsurers would be 0.83 percent. For calendar years after 1998, the annual funding rate applicable to reinsurers would decrease to 0.14 percent and the tax applicable to direct insurers would expire.

Assessable person

An assessable person would be defined as any person that has "commercial net premiums" (as defined below), and that is either (1) a United States person,[11] or (2) any other person that (a) is engaged in a trade or business within the United States during the calendar year; (b) has taxable income effectively connected with such trade or business; and (c) is not exempt from net basis U.S. income tax under a treaty. For example, an assessable person would include a resident of a treaty country that has a permanent establishment in the United States.

Adjusted base-period commercial premiums

An assessable person's adjusted base-period commercial direct premiums would be defined as the excess of the total commercial net premiums for direct insurance written by the person (or by certain predecessors in interest) during the base period, over an allocable portion of the exemption amount.[12] Adjusted base-period commercial reinsurance premiums would be the excess of the total commercial net premiums written for reinsurance by the assessable person during the base period, over an allocable portion of the exemption amount. These determinations would be made after the commercial net premiums from each base-period year were indexed for inflation and restated in 1985 dollars.

"Commercial net premiums" would mean the aggregate of the net premiums written from any qualified commercial policy providing insurance or allocated reinsurance,[13] and 21 percent of

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[11] See footnote 8 above.

[12] For insurers with both direct insurance and reinsurance premiums during the base period, the exemption amount is allocated between direct insurance and reinsurance based upon the proportion that the inflation-adjusted commercial net premiums for each bear to the total of such premiums.

[13] Allocated reinsurance is any reinsurance for which the net premiums written were reported on the underwriting and investment exhibit of the annual statement (or would have been reported had an annual statement been filed) as relating to a specific line of business.

the net premiums written from unallocated reinsurance.[14] Net premiums written would only be subject to tax to the extent that they are attributable to the coverage of United States risks.

The determination of the net premiums written for a year generally would be based on the underwriting and investment exhibit of the annual statement filed for that year.[15] If no annual statement is filed for a given year, the premium information would be determined on a basis consistent with the annual statement requirements applicable to such year.

**Alternative tax on foreign insurance**

A foreign person that is not an assessable person, and that therefore would not be liable for the retrospective tax, generally would be subject to an alternative excise tax imposed on a prospective basis (herein referred to as the "alternative foreign excise tax"). The alternative foreign excise tax generally would be imposed as a withholding tax on (1) any casualty insurance policy that covers hazards, risks, losses, or liabilities wholly or partly within the United States, and (2) any reinsurance policy with respect to such an insurance policy. For this purpose, a casualty insurance policy would be any insurance policy other than any "policy of life, sickness, or accident insurance, or annuity contract" as defined in Code section 4372(e).

The alternative foreign excise tax would be equal to one-half of one percent (0.5%) of the maximum limit of liability of the foreign insurer under the policy. The term "maximum limit of liability" generally would be defined as the total amount for which the foreign insurer (or reinsurer) would be liable if each person entitled to recover from the insurer (or reinsurer) under

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[14] Unallocated reinsurance is any reinsurance other than allocated reinsurance. During the base period, insurers could report net premiums written from reinsurance on a separate line for reinsurance and were not required to allocate such premiums by lines of business on the annual statement. The Administration has stated that the 21-percent rule is intended to approximate the amount of unallocated reinsurance attributable to the commercial multiple peril and other liability lines of business.

[15] The annual statement is the financial statement filed for State regulatory purposes, on the form approved by the National Association of Insurance Commissioners. If more than one annual statement were filed in a given year, the determination would be based on the annual statement filed with any state that reports and identifies the relevant premiums most specifically by line of business.

the policy was simultaneously entitled to the maximum recovery allowed under the policy. The maximum limit of liability under a policy would not be reduced by (1) any amount for deductibles and self-insured retentions, or (2) the amount of any reinsurance.

All persons having control, receipt, custody, disposal, or payment of any premium or other amount under the policy subject to the tax would be personally liable for withholding and remitting the tax to the Treasury Department.

Foreign persons could elect to be subject to the retrospective tax in the same manner as an assessable person (see discussion above), instead of the alternative foreign excise tax. Electing parties generally would be required to enter into a closing agreement with the Treasury Department to ensure proper computation and payment of the retrospective tax and the assessments imposed on insurers and reinsurers.[16]

**Prospective tax**

In general, the prospective tax would be imposed on the direct premiums written after December 31, 1994, in excess of an annual exemption amount, with respect to certain commercial insurance policies that cover hazards, risks, losses, or liabilities within the United States. The tax rate would be 0.33 percent during the period January 1, 1995 through December 31, 1998, and 0.63 percent thereafter. The determination of direct premiums written for a year generally would be based on the exhibit of premiums and losses of the annual statement for that year. The exemption amount generally would be $5 million per year. However, certain related parties would be entitled to only one exemption amount, which would be allocated among them.

The lines of business identified in the 1993 form of the annual statement approved by the National Association of Insurance Commissioners ("NAIC") that would be subject to tax under the Administration proposal are: fire, allied lines, farmowners multiple peril, commercial multiple peril, ocean marine, inland marine, financial guaranty, products liability, other liability, commercial auto no-fault, other commercial auto liability, commercial auto physical damage, aircraft, fidelity,

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[16] The House Committee on Ways and Means adopted a special rule applicable to certain foreign persons that had no adjusted base-period commercial premiums. Under this rule, a foreign person generally would not be required to enter into a closing agreement (and would not be subject to the retrospective tax or the alternative foreign excise tax) if such person filed a statement certifying to the Treasury under penalties of perjury that it had no adjusted base-period commercial premiums. Adoption of this rule has been endorsed by the Administration.

surety, glass, burglary and theft, and boiler and machinery.[17] Thus, as shown on the exhibit of premiums and losses on the 1993 NAIC annual statement form, lines of business that would not be subject to the prospective tax are: multiple peril crop, homeowners multiple peril, mortgage guaranty, medical malpractice, earthquake, accident and health, workers' compensation, private passenger auto no-fault, other private passenger auto liability, private passenger auto physical damage, and credit.

Premiums written for directors and officers liability insurance, professional liability insurance, and fire insurance on residential or farm owner-occupied housing units would not be subject to the prospective tax, even though those premiums are required to be reported on the annual statement as relating to a listed line of business.

**Assessments on direct insurers and reinsurers**

Beginning on January 1, 1999, a portion of the EIRF's revenues would be raised by assessments imposed on direct insurers and reinsurers. The assessments would be imposed by reference to EIRF awards paid with respect to policies issued during prescribed prior periods by the insurer (or certain predecessors in interest). Each direct insurer's or reinsurer's assessment would be determined annually. These assessments would be imposed as excise taxes under the Internal Revenue Code.

Assessment on direct insurers

The assessment on direct insurers would be determined by multiplying an insurer's annually-determined "EIRF-certified percentage" by $81 million. The EIRF-certified percentage of each insurer would be determined by dividing the coverage limits on all assessable direct policies of that insurer by the aggregate coverage limits of all such policies of all direct insurers. Generally, the coverage limit of an assessable direct policy would be the aggregate limit on coverage under the policy.

An assessable direct policy would be an insurance contract (1) that has been presented to the EIRF in connection with a claim for an award, (2) that the EIRF has determined to be a valid contract, and (3) with respect to which the EIRF has made

[17] These lines of business and those listed in the following sentence are based on the 1993 form of the annual statement as approved by the NAIC. The Treasury Department would be granted authority to designate additional lines of direct insurance business, on a prospective basis, to be subject to the tax in order to preserve the inclusion of premiums for types of insurance coverage intended to be subject to the prospective tax.

one or more resolution payments to an eligible party (e.g., a potentially responsible party) during any of the four calendar years preceding the year in which the assessment is imposed.

The EIRF would be required to identify to each insurer its assessable direct policies for each year, and to permit the insurer to identify which, if any, of those policies was reinsured. The coverage limit of any assessable direct policy would be reduced by 80 percent of the amount of any reinsurance.[18] This reduction also would be reflected in the aggregate limits on all assessable direct policies for purposes of determining the EIRF-certified percentage.

Assessment on reinsurers

The assessment on reinsurers would be determined by multiplying each reinsurer's annually-determined "EIRF-certified percentage" by $167 million. The EIRF-certified percentage for each reinsurer would be determined by dividing the coverage limits on all assessable reinsurance policies of that reinsurer by the aggregate coverage limits on all such policies of all reinsurers.

An assessable reinsurance policy would be any reinsurance policy issued by an assessable person and identified by an insurer as reinsuring an assessable direct policy. As with assessable direct policies, the EIRF would be required to identify to each reinsurer its assessable reinsurance policies for each year, and to afford the reinsurer an opportunity to contest whether the policy was reinsured and to identify which, if any, of those contracts was the subject of further reinsurance. An 80-percent deduction for reinsurance similar to that provided under the assessment on direct insurers would be provided.

Administrative matters; judicial review

The EIRF would be required to determine the EIRF-certified percentages and to report them to the Treasury Department no later than August 1 of each calendar year in which the assessments were imposed. The Treasury Department then would be required to notify insurers of the amount of their assessments, which would be payable no later than September 30 of each year.

Consistent with the provisions of Title VIII of S. 1834, the determinations made by the EIRF of EIRF-certified percentages would not be subject to judicial review. Similarly, the final

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[18] This reduction would not be allowed if the reinsurer and the reinsured were members of the same controlled or commonly managed group.

percentages would not be subject to review by the Department of the Treasury in any administrative proceeding.

**Establishment of Environmental Insurance Resolution Trust Fund**

The Administration proposal would establish a new Environmental Insurance Resolution Trust Fund (the "Trust Fund") in the Trust Fund Code of the Internal Revenue Code. The Trust Fund would receive deposits of the gross receipts from the new excise taxes (including the assessments), as well as any regulatory filing fees authorized under Title VIII of S. 1834 and recoveries of certain amounts by the EIRF.

Amounts in the Trust Fund would be used to fund the new direct spending authorized for the EIRF by Title VIII. The liability of the United States for all obligations under the EIRF would be limited to an amount equal to the excise taxes, assessments, and other revenues deposited in the Trust Fund. Also, the Trust Fund would be the sole source of payment for all activities of the EIRF. The Trust Fund would not be permitted to borrow from the Treasury.

**Effective Dates**

The retrospective tax (other than the alternative foreign excise tax) would be effective on January 1, 1995. The prospective tax would apply to policies for which direct premiums were written on or after January 1, 1995. The assessment on insurers and reinsurers would be imposed beginning in calendar years after 1998. The alternative foreign excise tax would apply to policies for which premiums were written after the close of the contingency period specified in section 816 of S. 1834 (i.e., 225 days after the date of enactment).

Notwithstanding the preceding paragraph, the imposition of all of the new excise taxes and assessments would not take effect unless the EIRF program under Title VIII of S. 1834 is in effect on August 15, 1995, and the contingency period has expired by such date. As discussed above, the EIRF program under Title VIII would terminate if certain minimum levels of participation by potentially responsible parties in the EIRF program were not achieved by the end of the contingency period.

All of the new excise taxes (other than the alternative foreign excise tax) and the assessments would terminate after December 31, 2004. The alternative foreign excise tax would terminate 10 years after the date that such tax first takes effect.

## C. Tax Exemption for Environmental Insurance Resolution Fund

### Present Law

Federal tax exemption for an instrumentality of the United States that is organized on or after July 18, 1984, may be provided only by an amendment to the Internal Revenue Code or by a provision enacted as part of a revenue act (sec. 501(c)(1)). Tax-exempt status has previously been granted to the following U.S. instrumentalities: (1) the Central Liquidity Facility; (2) the Resolution Trust Corporation; and (3) the Resolution Funding Corporation (sec. 501(*l*)).

### Administration Proposal

The Administration proposal would provide an exemption from Federal income tax to the Environmental Insurance Resolution Fund under section 501(*l*) of the Code.

### Effective Date

The proposal would be effective on January 1, 1995.

# APPENDICES

**Appendix A.--Present-Law Excise Tax Rates on Certain Chemicals for the Hazardous Substance Superfund**

| Feedstock chemical (sec. 4661) | Tax per ton |
|---|---|
| Acetylene | $4.87 |
| Benzene | 4.87 |
| Butane | 4.87 |
| Butylene | 4.87 |
| Butadiene | 4.87 |
| Ethylene | 4.87 |
| Methane | 3.44 |
| Naphthalene | 4.87 |
| Propylene | 4.87 |
| Toluene | 4.87 |
| Xylene | 4.87 |
| Ammonia | 2.64 |
| Antimony | 4.45 |
| Antimony trioxide | 3.75 |
| Arsenic | 4.45 |
| Arsenic trioxide | 3.41 |
| Barium sulfide | 2.30 |
| Bromine | 4.45 |
| Cadmium | 4.45 |
| Chlorine | 2.70 |
| Chromium | 4.45 |
| Chromite | 1.52 |
| Potassium dichromate | 1.69 |
| Sodium dichromate | 1.87 |
| Cobalt | 4.45 |
| Cupric sulfate | 1.87 |
| Cupric oxide | 3.59 |
| Cupruous oxide | 3.97 |
| Hydrochloric acid | 0.29 |
| Hydrogen fluoride | 4.23 |
| Lead oxide | 4.14 |
| Mercury | 4.45 |
| Nickel | 4.45 |
| Phosphorus | 4.45 |
| Stannous chloride | 2.85 |
| Stannic chloride | 2.12 |
| Zinc chloride | 2.22 |
| Zinc sulfate | 1.90 |
| Potassium hydroxide | 0.22 |
| Sodium hydroxide | 0.28 |
| Sulfuric acid | 0.26 |
| Nitric acid | 0.24 |

**Appendix B.--List of Taxable Substances Subject to the Excise Tax on Certain Imported (Chemical) Substances (Secs. 4671-4672)**

| Taxable substance | Taxable substance |
| --- | --- |

**Initial Items Listed**

Cumene
Styrene
Ammonium nitrate
Nickel oxide
Isopropyl alcohol
Ethylene glycol
Vinyl chloride
Polyethylene resins, total
Polybutadiene
Styrene-butadiene, latex
Styrene-butadiene, snpf
Synthetic rubber, not containing fillers
Urea
Ferronickel
Ferrochromium nov 3 pct.
Ferrochrome ov 3 pct. carbon
Unwrought nickel
Nickel waste and scrap
Wrought nickel rods and wire
Nickel powders
Phenolic resins
Polyvinylchloride resins
Polystyrene resins and copolymers
Ethyl alcohol for nonbeverage use
Ethylbenzene
Methylene chloride
Polypropylene
Propylene glycol
Formaldehyde
Acetone
Acrylonitrile
Methanol
Propylene oxide
Polypropylene resins
Ethylene oxide
Ethylene dichloride
Cyclohexane
Isophtalic acid
Maleic anhydride
Phtalic anhydride
Ethyl methyl ketone
Chloroform
Carbon tetrachloride
Chromic acid
Hydrogen peroxide
Polystyrene homopolymer resins
Melamine
Acrylic and methacrylic acid resins
Vinyl resins
Vinyl resins, NSPF

**Appendix B.--List of Taxable Substances Subject to the Excise Tax on Certain Imported (Chemical) Substances (Secs. 4671-4672)--Continued**

**Taxable substance** | **Taxable substance**

**Additional Items Listed**[1]

1,3 butylene glycol
1,4 butanediol
2-ethyl hexanol
2-ethythexyl acrylate
2,2,4-trimethyl-1,3-pentanediol diisobutyrate
2,2,4-trimethyl-1,3-pentanediol monoisobutyrate
Acetic acid
Acetylene black
Adipic acid
Alpha-methylstyrene
Allyl chloride
Aniline
Benzaldehyde
Benzoic acid
Bisphenol-A
Butanol
Butyl acrylate
Decabromodiphenyl oxide
Dimethyl terephthalate
Diphenyl oxide
Diphenylamine
Di-n-hexyl adipate
Di-2 ethyl hexyl phthalate
Epichlorohydrin
Ethyl acrylate
Ethyl chloride
Ethylene dibromide
Formic acid
Glycerine
Hexamethylenediamine
Isobutyl acetate
Isopropyl acetate
Linear alpha olefins
Methyl acrylate
Methyl chloroform
Methyl isobutyl ketone
Monochlorobenzene
Normal butyl acetate
Normal propyl acetate
Ortho-dichlorobenzene
Ortho-nitrochlorobenzene
Para-dichlorobenzene
Para-nitrochlorobenzene
Para-nitrophenol
Parformaldehyde
Pentaerythritol
Perchloroethylene
Phenol
Poly (69/31 ethylene/cyclohexylenedimethylene terephthalate)
Poly (96.5/3.5 ethylene/cyclohexylenedimethylene terephthalate)
Poly (98.5/1.5 ethylene/cyclohexylenedimethylene terephthalate)
Polyalphaolefins
Polybutene
Polycarbonate
Polyethylene terephtalate pellets
Propanol
Sodium nitriolotriacetate monohydrate
Tetrachlorophthalic anhydride
Tetrahydrofuran
Terephthalic acid
Tetrabromobisphenol-A
Trichloroethylene
Trimethylolpropane
Vinyl acetate

1 Items listed after enactment of the tax on imported chemical substances. The "initial" chemicals are specified in the Internal Revenue Code. The "additional" chemicals have been added to the list of taxable imported substances pursuant to the Treasury Secretary's authority.