Joint Committee on Taxation
September 27, 1994
JCX-20-94

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

## Scheduled for a Markup by the Senate Committee on Finance on September 28, 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. Title IX of 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 Committee on Environment and Public Works on August 3, 1994, and the report was filed on August 19, 1994 (S. Rept. 103-349). Title VIII of the bill would create a new Environmental Insurance Resolution Fund (the "EIRF") to settle disputes between insurers and their policyholders concerning certain environmental cleanup costs. The Committee on Environment and Public Works did not amend Title IX ("Taxes") of the bill.

On August 17, 1994, the Administration submitted to the House Committee on Ways and Means a proposal[1] for funding the EIRF. The 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 property and casualty insurance policies. A special assessment on reinsurers 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 Committee on Finance held a public hearing on the Superfund revenue proposals on September 14, 1994. In connection with that hearing, the Administration submitted to the Committee on Finance a revised funding proposal for the EIRF. Among other

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[1] This proposal was a substitute for a prior Administration proposal that was submitted on May 20, 1994.

things, the revised proposal would eliminate the special assessment on reinsurers, as added by the House Committee on Ways and Means. Subsequent revisions to the proposal were transmitted by the Administration on September 26, 1994.

The Administration intends that the new excise taxes and the special assessment under its proposal be incorporated in Title IX of S. 1834 as the financing source for the new Environmental Insurance Resolution Fund program.

## II. DESCRIPTION OF PROPOSED REVENUE PROVISIONS

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

#### Present Law

Four different taxes are imposed under present law to fund the Hazardous Substance Superfund (the "Superfund") program. These are in general:

(1) An excise tax on certain petroleum products, imposed at a rate of 9.7 cents per barrel;

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

(3) An excise tax on certain imported substances that use as materials in their manufacture or production one or more of the hazardous chemicals subject to tax in (2) above; 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.

Amounts equivalent to the revenues from these taxes are dedicated to the Superfund Trust Fund, established in the Trust Fund Code of the Internal Revenue Code. Amounts in the Superfund Trust Fund may be expended for the purposes provided in present-law authorizing legislation, as that legislation was enacted in 1986.

In general, the Superfund taxes are scheduled to expire after December 31, 1995. However, the taxes would terminate before then if either (1) the unobligated balance in the Superfund exceeds $3.5 billion on December 31, 1994, and the Treasury Department estimates that the unobligated balance will exceed $3.5 billion at the end of 1995 (assuming no Superfund taxes are imposed during 1995), or (2) the Treasury Department estimates that more than $11.97 billion of revenues from these taxes will be credited into the Superfund before January 1, 1996. At the present time, neither of these early expiration events are expected to occur.

#### Administration Proposal

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 terminate before then 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 estimates 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. Also, no further taxes would be imposed if the Treasury Department estimates that more than $22.0 billion of these taxes have been credited into the Superfund before January 1, 2001.

The Administration proposal would conform the Superfund expenditure purposes to the program as modified in S. 1834.

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

### Present Law

No Federal excise tax is imposed on domestic casualty insurance policy premiums. A Federal excise tax is imposed on premiums for certain insurance issued by foreign insurers and reinsurers, including casualty insurance and reinsurance. The rate of tax with respect to casualty insurance is four cents per dollar of premiums paid, and with respect to reinsurance is one cent per dollar of premiums paid (sec. 4371).

Revenues from the present-law excise tax on premiums paid to foreign insurers and reinsurers 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.

### Administration Proposal

#### Overview

S. 1834 would establish a new Environmental Insurance Resolution Fund (the "EIRF") 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. 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 Superfund sites.

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 a new assessment generally imposed with respect to commercial insurance. These taxes would be imposed as follows:

Years 1-4 (1995-1998).--A retrospective excise tax based on certain insurance premiums written during the period 1968 through 1985 would raise approximately 69 percent of projected total revenues during this four-year period. Of this amount, approximately 46 percent of total revenues ($374 million a year) would be collected through a tax based on net direct insurance premiums written and 23 percent of such revenues ($188 million a year) would be collected through a tax based on net reinsurance premiums written. The remaining 31 percent of revenues ($248 million a year) would be raised by a prospective tax on premiums written for direct insurance. Tax rates (described below) would be established in a manner that would raise total revenues of approximately $810 million per year.

The following caps would apply to the taxes imposed during this four-year period: (1) the revenues from the retrospective tax on direct insurance could not exceed $1.496 billion ($374 million times four); (2) the revenues from the retrospective tax on reinsurance premiums could not exceed $752 million ($188 million times four); and (3) the revenues from the prospective tax could not exceed $992 million ($248 million times four).

In addition, separate caps would apply to the retrospective taxes collected on foreign and domestic reinsurance premiums. During this four year period, the revenues collected from the retrospective tax on reinsurance premiums issued by domestic reinsurers could not exceed $444 million ($111 million times four) and the revenues collected from the retrospective tax on reinsurance premiums issued by foreign reinsurers could not exceed $308 million ($77 million times four).[2]

Years 5-10 (1999-2004).--The retrospective tax on direct insurance would be replaced by an assessment on direct insurers designed to raise approximately 11 percent of total revenues ($85 million per year). The retrospective tax on reinsurance would produce 23 percent of total revenues ($188 million a year). The prospective tax rate would be increased to provide the remaining 66 percent of total revenues ($537 million a year). As in the first four years, total projected revenues would be approximately

[2] The caps applicable to domestic and foreign reinsurers were determined by the Administration based on the relative market shares of the domestic and foreign reinsurance premiums during the base-period years. The Administration does not believe that these caps violate the obligations of the United States under any existing tax treaty or trade agreement, or under the proposed General Agreement on Trade in Services.

$810 million per year.

The following caps would apply to the taxes imposed during this six year period: (1) the revenues from the retrospective tax on reinsurance premiums could not exceed $1.128 billion ($188 million times six); and (2) the revenues from the prospective tax could not exceed $3.222 billion ($537 million times six). As in the first four years, a separate cap would apply to the retrospective taxes collected on foreign and domestic reinsurance premiums. During this six year period, the revenues collected from the retrospective tax on reinsurance premiums issued by domestic reinsurers could not exceed $666 million ($111 million times six) and the revenues collected from the retrospective tax on reinsurance premiums issued by foreign reinsurers could not exceed $462 million ($77 million times six).

Tax Rates.--The tax rates required to produce the revenues described above would be --

| | Years 1-4 | Years 5-10 |
|---|---|---|
| Retrospective tax -- | | |
| Direct insurance | 0.22% | N/A |
| Reinsurance | 0.48% | 0.48% |
| Prospective tax -- | 0.37% | 0.69% |

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.

**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) within the United States. 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 or reinsurance policy: (1) with respect to hazards,

risks, losses, or liabilities within the United States;[3] and (2) the premiums for which were reported in the applicable annual statement[4] (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. A qualified commercial policy, however, would 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; however, premiums related to commercial property damage insurance could not be excluded from either the commercial multiple peril or "other liability" line of business.

In the case of direct insurance, the retrospective tax generally would be determined by multiplying (1) a direct insurance funding rate for the calendar year, by (2) the total net direct premiums written by the assessable person (or certain predecessors in interest) during the base period in excess of an exemption amount of $50 million.[5] For reinsurance, the retrospective tax generally would be determined by multiplying a reinsurance funding rate for the calendar year by the total net reinsurance premiums written by the assessable person (or certain

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[3] For purposes of the excise taxes and the assessment under the Administration proposal, the United States generally would include Puerto Rico, and U.S. possessions and territories. The term "United States person", however, would have the meaning in 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, or U.S. possessions and territories.

[4] The annual statement is the financial statement filed for State regulatory purposes, on the form approved by the National Association of Insurance Commissioners.

[5] Certain related parties would be required to share one exemption amount. For this purpose, related parties would include: (1) persons treated as a single employer as of February 2, 1994, under Code sections 52(a) and (b), as determined on a worldwide basis; (2) persons participating in certain joint underwriting operations as of February 2, 1994; and (3) persons participating in a joint underwriting operation that is subject to a closing agreement as of February 2, 1994.

predecessors in interest) during the base period.[6] In making these calculations, the net premiums written in each base-period year would be indexed for inflation and restated in 1985 dollars.

For calendar years 1995 through 1998, the annual funding rate applicable to direct insurance would be .22 percent. After 1998, the tax applicable to direct insurance would expire. For calendar years 1995 through 2004, the annual funding rate applicable to reinsurance would be .48 percent.

Assessable person

An assessable person generally would be defined as any person that has commercial net premiums written during the base period, and that is either (1) a United States person, 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.

Determination of net premiums written

The retrospective tax on direct insurance would be imposed on the net direct premiums written[7] during the base period from any qualified commercial policy providing insurance. The retrospective tax on reinsurance would be imposed on the net premiums written during the base period from allocated

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[6] No exemption amount generally would apply with respect to reinsurance. However, the Treasury Department would have the authority to provide an exception excluding base-period reinsurance premiums of a de-minimis amount.

[7] During the base period, ceded reinsurance was not separately reported on the annual statement for purposes of determining the net direct premiums written and the net premiums written for reinsurance. Accordingly, the Administration intends that taxpayers would reduce premiums for direct insurance by any cession of the directly written insurance and that taxpayers would reduce premiums for reinsurance by any retrocession of the reinsurance. In determining the net premiums written from direct insurance and from allocated reinsurance, actual identification of the insurance to which the ceded premiums relate would be required. However, a reasonable and consistent allocation method acceptable to the Treasury would be permitted if actual identification is not possible.

reinsurance,[8] and 33 percent of the net premiums written during the base period from unallocated reinsurance. For this purpose, premiums from reinsurance between members of certain "controlled groups" would be treated, in certain cases, as direct premiums rather than reinsurance in recognition of the fact that such transactions did not shift risk outside the controlled group.[9] 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.[10] If no annual statement was filed for a given year, the premium information would be determined on a basis consistent with the annual statement requirements applicable to such year. The Treasury Department could accept a reasonable method of premium determination if Treasury determines that adequate records are not reasonably available.

Special rules would apply for determining a person's net premiums written during the base period where the person has engaged in acquisitions or dispositions, assumption reinsurance transactions, commutation of reinsurance, or similar other transactions.

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)

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[8] 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 covered line of business.

[9] This determination would be made as of the time that the relevant premiums were written.

[10] 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.

any reinsurance policy with respect to such an insurance policy.[11] 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 an amount equal to one-half of one percent (0.5%) of the maximum limit of liability of the foreign insurer under the policy. However, the total liability for the alternative foreign excise tax and the prospective tax with respect to a transaction would be limited to the total amount of premiums and other similar consideration related to such transaction.

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 the policy was simultaneously entitled to the maximum recovery allowed under the policy. The maximum limit of liability under a policy would be reduced by any amount for deductibles and self-insured retentions, but would not be reduced by 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 that are not assessable 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.[12] Pending execution of such a closing agreement, the alternative foreign excise tax would not apply to any premium

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[11] The tax, however, would not be imposed on a policy of reinsurance of a risk with respect to which the foreign reinsurer can demonstrate that the tax had been paid previously by or on behalf of the reinsured foreign person.

[12] Foreign insurers and reinsurers that are not subject to U.S. income tax on a net basis and that seek to enter into a closing agreement with respect to the retrospective tax and assessments would be permitted to bring a declaratory judgment action challenging the reasonableness of the position of the Internal Revenue Service with respect to such insurer or reinsurer's retrospective tax, subject to certain conditions.

written by a foreign person if certain conditions are met, including: (1) the foreign person has in effect a binding election (meeting requirements prescribed by the Treasury) to be treated as an assessable person; (2) the person has posted a bond or other security (in the manner and amount required by the Treasury Department); and (3) the person satisfies other requirements imposed by Treasury, such as the waiver of treaty benefits and providing access to books and records. This exception would apply only with respect to premiums written after the date that the foreign person has met the three requirements for the preliminary election described in this paragraph.

If a closing agreement is not finalized in a timely manner, the foreign person would be liable for the alternative foreign excise tax accruing from the date that the preliminary election was effective, together with any interest, penalties and additions to tax.[13] The Treasury may apply any security provided by the foreign person against the liability of the foreign person for such amounts.

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 (1) such person (and related persons) did not have net written premiums (in excess of any applicable exemption amount) during the base period and (2) such person complied with certain expedited procedures.

Anti-abuse rules (including regulatory authority) would be provided to prevent the avoidance of the retrospective tax and the alternative foreign excise tax by foreign insurers and reinsurers in the absence of a closing agreement.

**Prospective tax**

In general, the prospective tax would be imposed on the direct premiums written by an insurer after December 31, 1994, with respect to certain commercial insurance policies that cover hazards, risks, losses, or liabilities within the United States. The tax rate would be .37 percent during the period January 1, 1995 through December 31, 1998, and .69 percent thereafter. The determination of direct premiums written for a year generally would be based on the exhibit of premiums and losses of the

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[13] Withholding agents would not be liable for any amount of the excise taxes under Title IX that may have become due with respect to prior transactions (that occurred after the date the preliminary election was effective) if the foreign insurer or reinsurer fails to conclude a closing agreement.

annual statement for that year.[14] Taxpayers generally would be permitted an exemption amount of $5 million of premiums written per year. However, certain related parties would be entitled to only one exemption amount, which would be allocated among them.

The lines of business that would be subject to tax under the Administration proposal are: fire, allied lines, commercial multiple peril, farmowners multiple peril, ocean marine, inland marine, products liability, other liability, commercial auto no-fault, other commercial auto liability, commercial auto physical damage, aircraft, surety, glass, burglary and theft, and boiler and machinery. Thus, lines of business that would not be subject to the prospective tax (under current annual statement classifications) are: multiple peril crop, homeowners multiple peril, financial guaranty, 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, fidelity and credit.

The lines of business set forth in the preceding paragraph are based on the 1993 form of the annual statement as approved by the National Association of Insurance Commissioners. The Treasury Department generally could not expand the lines of business subject to the prospective tax. The Treasury Department, however, would be granted authority to preserve the inclusion of premiums for types of insurance coverage intended to be subject to the prospective tax. For example, Treasury would have the authority to respond to changes in the construction of the annual statement lines originally covered. This authority would not extend to the inclusion of any reinsurance coverage.

Premiums written for the following types of insurance policies would not be subject to the prospective tax, even though the premiums for such policies are required to be reported on the annual statement as relating to a covered line of business: (1) directors and officers liability, (2) professional liability, (3) fire, other perils, or extended coverage on residential or farm owner-occupied housing units, (4) personal liability umbrella, (5) personal articles, (6) personal owner-used boats, (7) personal owner-piloted aircraft, and (7) property damage and liability coverage for owner-occupied condominium associations.

The taxable period for the prospective tax would be a

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[14] If an annual statement is not filed for such year, the determination of direct premiums written would be made on a basis consistent with the annual statement requirements for such year.

calendar quarter;[15] however, estimated monthly deposits would be required to be made by the 14th day following the end of the month in which the premium is included in direct premiums written. No deposits of tax would be required, however, until such time as, and only to the extent that, the direct premiums written during the calendar year exceed the exemption amount.

A special withholding rule would apply to policies issued by a foreign person unless the income from the premiums (or from other amounts paid for such policies) is effectively connected with a U.S. trade or business and is not exempt from net basis U.S. income tax under a treaty. Under this special rule, the tax generally must be withheld and remitted to the Treasury Department by any person who has control or custody over any payment of any premium or other amount under the policy. A person that fails properly to withhold and remit the tax would be personally liable unless that person can establish to the satisfaction of the Treasury that withholding is not required with respect to the foreign insurer.

The total liability for the prospective tax and the alternative foreign excise tax with respect to a transaction would be limited to the total amount of premiums and other similar consideration related to such transaction.

**Assessment on direct insurers**

Beginning on January 1, 1999, a portion of the EIRF's revenues would be raised by an assessment on direct insurers (imposed as an excise tax under the Internal Revenue Code). The assessment imposed on a particular insurer would be based on the EIRF awards paid with respect to policies issued by the insurer (or certain predecessors in interest) during a prescribed prior period. Each direct insurer's assessment would be determined annually.

The assessment would be determined by multiplying an insurer's annually-determined "EIRF-certified percentage" by $85 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, determined without regard to deductibles or any self-insured retention.

An assessable direct policy would be an insurance contract (1) that has been presented to the EIRF in connection with a

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[15] Quarterly returns would be due no later than the 30th day following each calendar quarter.

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 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 generally would be reduced by 80 percent of the amount of any reinsurance.[16] This reduction also would be reflected in the aggregate limits on all assessable direct policies for purposes of determining the EIRF-certified percentage.

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 to be 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.

The determinations made by the EIRF of EIRF-certified percentages would not be subject to judicial review. Similarly, the EIRF-certified 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. Revenues available to the EIRF for expenditure 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 generally would not be permitted to borrow from the Treasury. The Trust Fund, however, could borrow money as

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[16] This reduction would not be allowed in certain circumstances, such as if the reinsurer and the reinsured were members of the same controlled group.

permitted by the Treasury solely for purposes of short-term cash management if the following conditions are met: (1) the Treasury Department approved the loan, including the rate of interest and the terms and conditions of the loan, (2) the loan did not cause the total outstanding debt of the Trust Fund to exceed $350 million, and (3) the loan was secured solely by the taxes and assessments under Title IX of S. 1834. Any such loan could not remain outstanding after December 31, 2003.

**Effective Dates**

The retrospective tax (other than the alternative foreign excise tax) would be effective on January 1, 1995. The prospective tax on domestic insurers and foreign insurers subject to U.S. income tax on a net basis would apply to policies for which direct premiums were written on or after January 1, 1995. The assessment on insurers would be imposed beginning in calendar years after 1998. The alternative foreign excise tax and the prospective tax on foreign insurers not subject to U.S. income tax on a net basis would apply to policies for which premiums were written after the close of the contingency period specified in section 816 of S. 1834. The contingency period must end no later than 225 days after the date of enactment.

Notwithstanding the preceding paragraph, none of the new excise taxes and assessments would be collected 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. The EIRF program under Title VIII would terminate unless certain minimum participation standards were achieved by the end of the contingency period. 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. These determinations would be required to be made by the end of the contingency period.

All of the new excise taxes (other than the alternative foreign excise tax and the prospective tax on certain foreign insurers) and the assessments would terminate after December 31, 2004. The alternative foreign excise tax and the prospective tax on foreign insurers not subject to U.S. tax on a net basis would terminate 10 years after the date that such taxes first take effect.

As provided in Title VIII, the Federal government would have no liability for obligations incurred by the EIRF that remain unsatisfied after the excise taxes expire and the Trust Fund has no remaining funds. It is the intent of the Administration that sufficient financing be obtained from the property and casualty

insurance industry for the Trust Fund to permit it to satisfy fully any carryover obligations of the EIRF after year ten. No inference is intended by the allocation in any year, or combination of years, between the retrospective tax, the prospective tax, and the assessment on direct insurers with respect to the structure of any tax or assessment that Congress determines necessary to enact in the future. Expenditures, if any, by the Trust Fund after the Trust Fund's tenth year would continue to be limited to no more than $810 million per year.

A Treasury study would be conducted in the eighth year of the Trust Fund to make recommendations to Congress with respect to the insurance industry's financing of the Trust Fund after the tenth year. The study, after consultation with representatives of the insurance industry and its policyholders, would include an analysis of the distribution of the benefits of the Trust Fund as well as an accounting of the various sources of financing for the Trust Fund.

## 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)).

### Administration Proposal

The Administration proposal would provide an exemption from Federal income tax to the Environmental Insurance Resolution Fund.

### Effective Date

The proposal would be effective on January 1, 1995.

## D. Additional Proposals

The following additional matters have also been proposed for markup:

1. The EIRF would be required to publish a biennial report estimating its incurred liabilities for eligible sites by eligible persons that have accepted offers from the EIRF as of the end of the applicable reporting period.

2. The Treasury Department would be required to make public the revenues received from each of the excise taxes and the assessment under Title IX, including a breakdown of the revenues

received from foreign and domestic sources.

3. Under Title VIII of S. 1834, the Environmental Protection Agency ("EPA") would be authorized to accept ownership of certain financial instruments, such as annuities, in connection with settlement procedures. The proposal would require that the terms and conditions of these financial instruments be approved by the Treasury Department before acceptance by EPA.