[JOINT COMMITTEE PRINT]

PRESENT LAW AND BACKGROUND INFORMATION ON FEDERAL TRANSPORTATION EXCISE TAXES AND TRUST FUND EXPENDITURE PROGRAMS

PREPARED FOR THE USE

OF THE

HOUSE COMMITTEE ON WAYS AND MEANS

BY THE STAFF

of the

JOINT COMMITTEE ON TAXATION

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INTRODUCTION

Chairman Bill Archer of the House Committee on Ways and Means has appointed a bipartisan task force of Members of that Committee to advise him on transportation excise tax issues. The task force will focus on the current structure of Federal excise taxes imposed on all transportation sectors—aviation, highway, water, and rail—and the reasons for that structure. Both the highway and aviation Trust Fund excise taxes or programs are scheduled to expire within the next year; future funding of the Trust Fund programs financed with the excise taxes is dependent on action by the Committee on Ways and Means within that period. Further, an appeal is pending of a decision of the United States Court of International Trade that the harbor maintenance excise tax is unconstitutional as applied to exports. If that decision is upheld on appeal, funds available to the Harbor Maintenance Trust Fund could be reduced significantly.

By letter of October 2, 1996 (included in Appendix D), Chairman Archer requested the staff of the Joint Committee on Taxation to assist the task force on a continuing basis by developing information needed for the task force's work. This document [1] provides an initial response to Chairman Archer's request for continuing assistance to the task force. Part I of the document is an overview of the current transportation excise taxes and Trust Funds, the budget scorekeeping rules governing those taxes and Trust Fund expenditure programs, and of general issues that arise in structuring dedicated excised taxes to reflect the benefits received from programs financed with those revenues. Part II provides more detailed background information on the structure and history of the present-law Federal transportation excise taxes. Part III provides information on the expenditure purposes of the transportation Trust Funds and certain General Fund transportation programs. Part IV discusses the budget scorekeeping rules generally applicable to dedicated excise taxes and Trust Funds and the jurisdictional issues presented by enactment of dedicated excise tax and Trust Fund expenditure legislation. Part V provides background data on current transportation excise tax revenues and transportation Trust Fund expenditures and balances. Part VI provides a status report on current cost allocation studies of the Federal aviation and highway programs being developed by the Department of Transportation. Part VII discusses general issues involved in structuring dedicated excise taxes to allocate the burdens of the Trust Fund excise taxes among the beneficiaries of the programs financed with the dedicated taxes, and the effect that different structures may have on the role of

[1] This document may be cited as follows: Joint Committee on Taxation, *Present Law and Background Information on Federal Transportation Excise Taxes and Trust Fund Expenditure Programs* (JCS–10–96), November 14, 1996.

Congress generally (and of specific Committees) in oversight of these taxes and programs.

Appendix A presents a table of Federal motor fuels excise tax rates currently imposed on various transportation sectors. Appendix B presents a table of present-law non-motor fuels Federal transportation excise tax rates. Appendix C provides information (prepared by the Congressional Research Service ("CRS")) on certain non-tax Federal fees imposed on transportation providers. Appendix D contains certain correspondence related to preparation of materials by the staff of the Joint Committee on Taxation.

I. OVERVIEW OF FEDERAL TRANSPORTATION EXCISE TAXES AND TRUST FUNDS

Unlike most tax issues, Federal transportation excise taxes require the House Committee on Ways and Means and the Senate Committee on Finance to coordinate tax structure and rate decisions with actions of other Congressional committees that set specific rules governing the level and types of expenditures for which the tax revenues are dedicated. Because the management of, and authority to spend monies deposited in, the transportation Trust Funds is contained in provisions of the Internal Revenue Code (the "Code"), the tax-writing committees also exercise more direct oversight of these programs than is true of many other Federal expenditure programs with respect to which primary jurisdiction lies in other Congressional committees (and which programs typically are financed with general revenues).

Historically, the portions of the transportation excise taxes that are dedicated to Trust Funds have been imposed on the industry sectors judged to create at least some of the costs associated with the programs financed with the tax revenues. Because excise taxes generally are assumed to flow through to consumers in prices for goods and services, the structure of these sector-specific taxes has a unique effect on structure of the transportation industry—both among the different sectors (i.e., aviation, highway, water, and rail) of the industry and among segments of each sector (e.g., hub-and-spoke and point-to-point commercial airlines).

A. Excise Taxes Imposed on and Trust Funds Benefiting the Transportation Industry, by Sector

Excise taxes are imposed on each major sector of the transportation industry. A majority of these excise taxes is dedicated to Trust Funds established to finance Federal expenditure programs benefiting the transportation sector subject to tax. The tax rates and mix of taxes imposed on each transportation sector are influenced by analyses of the costs expected to be incurred by the Federal Government in providing services to different segments of the sector. In addition to excise taxes dedicated to Trust Funds, each transportation sector currently is subject to an excise tax on the motor fuels it uses, with revenues from this tax being retained in the General Fund of the Treasury. Certain water transportation also is subject to a $3 per passenger General Fund excise tax.

In addition to excise taxes imposed to finance Federal transportation Trust Fund programs, administrative agencies may impose non-tax fees on certain segments of the transportation industry to offset the costs of specific services provided by the agencies. These fees are limited to recovery of the cost of providing the service to which the charge relates. The fees, and the services with respect to which they are assessed, are distinct from the dedicated excise

taxes and transportation Trust Fund programs. Appendix C provides a summary of various non-tax Federal fees-for-service imposed on the transportation industry.

Viewed from a revenue perspective, excise taxes on motor fuels are the dominant source of transportation excise taxation for all transportation sectors except aviation and international shipping. Aviation user excise taxes imposed on passenger tickets and freight waybills comprise the primary funding source for the Airport and Airway Trust Fund (the "Airport Trust Fund"). An *ad valorem* excise tax on the value of cargo (and passenger fares) processed through United States harbors is the primary revenue source for the Harbor Maintenance Trust Fund. The following discussion summarizes the excise taxes imposed on the transportation industry, by sector.

1. Air transportation excise taxes

Excise taxes are imposed on commercial air passenger and freight transportation and on fuels used in general aviation (e.g., corporate aircraft) to fund the Airport Trust Fund. In addition, like other transportation sectors, the aviation sector is subject to a 4.3-cents-per-gallon excise tax on aviation fuel, revenues from which are retained in the General Fund for deficit reduction.[2] The Airport Trust Fund was established in 1970 to finance a portion of the costs of Federal Aviation Administration ("FAA") services and grant programs for airports. Before establishment of the Airport Trust Fund, Federal aviation expenditures were financed from general revenues; General Fund domestic air passenger and fuels taxes were imposed during this period. The structure of the Airport Trust Fund excise taxes has remained generally unchanged, except for rates, since 1970.

The current Airport Trust Fund excise taxes include three taxes on commercial air transportation:

(1) a 10-percent tax on domestic air passenger transportation;

(2) a $6-per-person tax on international air passenger departures; and

(3) a 6.25-percent tax on domestic air freight.

General aviation is subject to Airport Trust Fund excise taxes on the fuels it uses rather than to the commercial aviation passenger ticket and freight excise taxes. The Airport Trust Fund rates for these excise taxes are 17.5 cents per gallon for jet fuel and 15 cents per gallon for aviation gasoline.

The Airport Trust Fund excise taxes are scheduled to expire after December 31, 1996; the 4.3-cents-per-gallon General Fund transportation motor fuels excise tax is permanent. Current Airport Trust Fund program expenditure authority is scheduled to expire after September 30, 1998.

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[2] The 4.3-cents-per-gallon transportation motor fuels excise tax was enacted by the Omnibus Budget Reconciliation Act of 1993 (the "1993 Act"). Fuels used in commercial aviation were exempt for a period of approximately two years (through September 30, 1995) when the tax initially was imposed.

2. Highway transportation excise taxes

Excise taxes are imposed on fuels and heavy vehicles (including certain parts and accessories therefor) used in highway transportation. Between 1956 when the Highway Trust Fund was established and 1991, all revenues from these taxes were dedicated to funding for the programs financed by that Trust Fund. Beginning in 1983, the Highway Trust Fund financed certain mass transit programs as well as traditional highway construction and maintenance programs. Since 1991, a portion of the motor fuels excise tax revenues also has been dedicated to the General Fund of the Treasury for deficit reduction. The articles subject to tax and the Trust Fund tax rates generally have been structured to produce financial contributions from different highway transportation segments, determined in part by reference to past studies of relative Federal program costs created by those segments. A majority of the revenues produced by highway transportation excise taxes is derived from the taxes on motor fuels.

The current highway transportation excise taxes consist of:

(1) taxes on gasoline, diesel fuel, and special motor fuels;

(2) a retail sales tax imposed on trucks and trailers having gross vehicle weights in excess of prescribed thresholds;

(3) a tax on manufacturers of tires designed for use on heavy highway vehicles; and

(4) an annual use tax imposed on trucks and tractors having taxable gross weights in excess of prescribed thresholds.

The Trust Fund components of the highway motor fuels excise taxes and the non-fuels highway excise taxes are scheduled to expire after September 30, 1999; the General Fund component of the highway motor fuels excise taxes is permanent. Highway Trust Fund expenditure authority is scheduled to expire after September 30, 1997.

3. Water transportation excise taxes

Six excise taxes are imposed on four segments of the water transportation sector: shipping on designated inland and intracoastal waterways, domestic and international shipping through United States ports, recreational motorboat transportation, and certain commercial passenger water transportation. In the case of the first three segments, at least a portion of the taxes imposed is dedicated to financing of Federal Trust Fund programs benefiting the transportation segments subject to tax. The tax on commercial passenger water transportation is exclusively a General Fund tax.

The water transportation excise taxes, and the Trust Funds, if any, to which the revenues are dedicated, consist of:

(1) a permanent 20-cents-per-gallon excise tax on fuels used on commercial cargo vessels traveling on a designated system of United States inland and intracoastal waterways, revenues from which are dedicated to the Inland Waterways Trust Fund;

(2) a permanent harbor maintenance excise tax imposed on the loading and unloading of commercial cargo and passengers at all publicly navigable U.S. ports (other than ports that are part of the inland or intracoastal waterway system, above), revenues from which are dedicated to the Harbor Maintenance Trust Fund;

(3) through September 30, 1999, a 14-cents-per-gallon excise tax imposed on gasoline used in recreational motorboats, revenues from 11.5 cents per gallon of which are dedicated to the Aquatic Resources Trust Fund and the Land and Water Conservation Fund ($1 million per year);

(4) after December 31, 1997 and through December 31, 1999, a 24.3-cents-per-gallon General Fund excise tax on diesel fuel used in recreational motorboats; and

(5) a permanent $3 General Fund excise tax imposed on passengers traveling on commercial vessel voyages extending one or more nights, or on voyages on which gambling occurs beyond the territorial waters of the United States; and

(6) a permanent 4.3-cents-per-gallon General Fund transportation fuels excise tax imposed on inland and intracoastal waterway fuels and on motorboat gasoline.

4. Rail transportation excise taxes

There is no Federal rail transportation trust fund. Instead, railroads generally construct and maintain railways using their own capital. Thus, there are no Federal rail transportation trust fund excise taxes. Diesel motor fuel used in trains is, however, subject to a General Fund excise tax of 5.55 cents per gallon. After September 30, 1999, this rate is scheduled to decline to 4.3 cents per gallon. The 4.3-cents-per-gallon rate is permanent.

Limited amounts of Federal General Fund expenditures finance rail programs such as operating assistance for Amtrak and safety-related expenditures by the Federal Rail Administration.

B. Budgetary Treatment of Transportation Excise Tax Revenues and Trust Fund Expenditures

Because most transportation excise taxes are dedicated to Trust Fund programs, extensions and modifications of the taxes frequently have been considered in conjunction with extensions and revisions of Trust Fund expenditure programs. Viewed in their totality, the excise taxes and programmatic expenditures require approval of at least three legislative components, by at least three committees in each House of Congress—the tax-writing committee, one or more authorizing committees, and the appropriations committee. The tax-writing committees ensure adequate revenues and review Trust Fund expenditure purposes; the authorizing committees consider competing transportation needs on a detailed level; and, the appropriations committees reconcile transportation spending needs with all other Federal spending needs. Historically, Trust Fund tax provisions and expenditure authorizations generally have been enacted as separate titles of a single Act; appropriations generally have been enacted separately as part of the annual Congressional appropriations process.

The Budget Enforcement Act of 1990 and related legislation (collectively the "1990 Budget Act") include two provisions that are central to the operation of the Federal transportation Trust Fund programs: an assumption that dedicated excise taxes are imposed permanently (even if statutorily they are scheduled to expire) and classification of Trust Fund spending as discretionary spending

subject to aggregate annual caps that apply to all discretionary spending (both for transportation and other programs).

The effect of these rules is that under the 1990 Budget Act, there is no budget scorekeeping link between the revenues raised by the transportation excise taxes and the spending from the transportation Trust Funds. The Trust Fund balances similarly have no effect in a broader budgetary sense on the amount that can be obligated for transportation program expenditures.[3] If Trust Fund excise taxes and programs are extended and reauthorized before expiration of the taxes, there is neither a revenue nor a spending budget score from the legislation. Further, because transportation Trust Fund spending is classified as discretionary spending, if a dedicated excise tax is reimposed after the tax has expired (and has been removed from the CBO revenue baseline), the resulting revenue increases may be scored under the Budget Act to offset the revenue loss from enactment of other tax provisions without affecting the Trust Fund to which the revenues are dedicated.

C. Status of Current Department of Transportation Aviation and Highway Cost Allocation Studies

The goods or services subject to excise tax and rates of certain transportation excise taxes historically have been based in part on the findings of cost allocation studies by the Department of Transportation ("DOT"). Past studies have reviewed the costs expected to be associated with expenditure programs of a transportation Trust Fund administered by the Department and have assigned those costs (pursuant to methodology developed by DOT) to different segments (e.g., automobiles v. trucks) of the transportation sector that will benefit from the Trust Fund programs.

The DOT last issued comprehensive cost allocation studies in 1992 (aviation) and 1982 (highway). During the past year, DOT has been engaged in updates of the 1992 and 1982 studies. To date, neither of the updated studies has been issued. Further, work has been suspended on the aviation cost allocation study as of this date because of a provision of the Federal Aviation Reauthorization Act of 1996 which mandates the appointment of an independent commission to review both expenditure needs and funding sources for the FAA.

D. Issues Relating to Transportation Excise Taxes and the Funding of Federal Transportation Trust Fund Programs

Effect on Congressional oversight and Committee roles

Since 1956 (for highways) and 1970 (for aviation), Federal transportation spending (and the financing therefor) has been provided through Trust Funds financed with dedicated excise taxes. Previously, General Fund financing and appropriated expenditures were used to deliver the Federal contribution. Currently, and in large part because of spending constraints related to Congressional budgetary decisions to reduce Federal deficits, numerous proposals have been advanced to modify this structure: (1) privatizing Fed-

[3] Unrelated to this general budgetary result, some transportation Trust Funds have internal anti-deficit provisions that limit amounts that can be authorized and appropriated *from the Trust Funds*.

eral transportation programs (and funding for those programs) in Federally chartered entities; (2) returning some or all of the expenditure program (and required financing) responsibility to the States; (3) reclassifying current Federal spending from discretionary spending to direct (entitlement) spending, or (4) removing Trust Fund spending from budget deficit calculations (i.e., taking the Trust Funds "off budget").

As described above, the present system of financing transportation programs and delivering services requires action by at least three Congressional committees in each of the House and Senate. Each of the committees that currently has oversight responsibility has a distinct role in ensuring the effectiveness of these Federal programs. The oversight roles of these respective committees are affected significantly by the various proposals to change either the financing of or spending for these programs. For example, complete privatization, or return to the States, of a program and associated financing would eliminate (or significantly reduce) the roles not only of the committees that currently oversee the programs, but of the Congress as a whole. Maintaining the current program and excise tax structure while reclassifying transportation spending as direct spending under the Budget Act would eliminate the current role of the appropriations committees. A financing change from excise taxes to non-tax, or true, user fees could eliminate the role of the House Committee on Ways and Means and the Senate Committee on Finance.

While reducing the roles of some committees, certain proposed changes could increase the responsibility for and control over programs by other committees. For example, a Federal transportation program provided through Federal direct (or off-budget) spending and financed entirely with true user fees could consolidate all Congressional committee oversight of the program into the current authorizing committees. (If user fees were determined to be "revenue measures," the tax-writing committees would retain jurisdiction under current House and Senate rules.)

Tax design

In current discussions of transportation excise taxes and the provision of transportation services, much emphasis is placed on "cost allocation." Cost allocation refers to attempts to divide the total Government costs incurred in the provision of a service across all the beneficiaries of that service. Thus, cost allocation is a method to obtain Government cost recovery. Recovery of costs is one factor that policy makers examine when determining the merits of undertaking certain transportation infrastructure projects or when contemplating imposing taxes that might fall on the transportation industry.

Tax proposals generally are judged in terms of efficiency, equity, and administrability. An outcome is considered economically *efficient* if it produces the greatest benefit from a given amount of resources. Taxes can be designed to promote efficient use of resources. When a tax is used in lieu of price in the provision of a service, efficient use of resources is assured if the tax is equal to the incremental, or marginal, cost of providing the service. *Equity* involves an assessment of the "fairness" of a tax. To determine fair-

ness it is necessary to look beyond the statutory incidence of a tax to its economic incidence, or market effect. When analyzing taxes earmarked for specific Government expenditures, some suggest that the benefit principle is an equitable basis of taxation and others suggest cost recovery or cost allocation is an equitable basis of taxation. *Administrability* involves an assessment of the expense to the Government and the taxpayer of imposing and collecting the tax imposed. In evaluating a tax, tradeoffs must be made among the three goals. Rarely is a tax that is deemed most equitable the most efficient or most administrable tax. Likewise, the most administrable tax may not be the most efficient or most equitable.

Effect of transportation excise taxes on the market for transportation services

The design of a system of transportation excise taxes can be expected to affect the market for transportation. The present-law transportation excise taxes generally are imposed on the inputs of transportation service providers (e.g., taxes on fuels or equipment) or are imposed on the purchase of the transportation service (e.g., the air transportation excise taxes). In either case, it generally is assumed that market forces will cause the burden of these excise taxes to flow through to consumers. Thus, the present-law excise taxes may be expected to alter the prices that individuals pay for transportation services.

The tax burdens imposed may cause consumers to choose one mode of transportation over another mode. Thus, if an excise tax is imposed on one sector of the transportation industry (e.g., highway) at a higher rate than on another sector with which that sector competes (e.g., rail or aviation), consumers may find it more cost effective to ship by rail than by truck or to travel by airplane rather than by automobile, bus, or rail. The analysis is complicated by current expenditure policy that ties the Federal Government's provision of certain services (e.g., highway construction and maintenance) to specific taxes collected. For example, under present law, the highway transportation excise taxes generally are dedicated to road construction and maintenance, services that are used by highway users, while rail transportation, which is subject to lower transportation excise taxes, receives relatively few Government-provided services.

Similar questions arise within an industry sector. For example, the current domestic air passenger transportation excise tax is imposed on the value of the ticket. The revenues from this excise tax generally are used to fund FAA operations, airport grants, and airway facilities and equipment. The *ad valorem* character of the tax will cause a traveler flying first class to pay more in tax than a traveler flying coach on the same flight, despite the fact that all travelers on a plane receive the same services from the FAA. Likewise, on a comparable flight, customers of a discount air carrier will pay less tax than customers of a higher fare air carrier.[4]

[4] This does not mean, however, that the discount carrier's flight pays less for air traffic control services than does the higher fare carrier's flight. A discount carrier with all seats occupied might generate more tax revenue than a partially occupied higher fare air carrier flight on a comparable route even though both flights receive the same FAA services.

Assessing changes in the present transportation excise tax structure requires an analysis of the questions of efficiency, equity, and administrability. For example, a recent proposal by a group of seven major commercial air carriers would convert the present-law *ad valorem* air passenger transportation excise tax into three "taxes" or "fees" with rates set at flat amounts based on three factors: revenue passengers, seats filled, and mileage. Such a change would involve substantially greater administrative cost for the airlines and the IRS than the current excise tax does. However, depending on how the tax factors (e.g., mileage) were measured, the system might more appropriately assign costs of FAA services to air travelers if it more closely approximated the marginal costs of services provided by the FAA for each flight.

The burden across different sectors of the flying public would change, however, if the excise tax system were changed. The FAA has estimated that, if flying patterns did not change, one air carrier, and ultimately its passengers, would experience approximately a 60-percent increase in tax burden if the seven airlines' proposal were adopted while the tax burdens of the seven proponents, and ultimately their passengers, all would decline.[5] Adoption of such a proposal, through the resulting changes in fares charged for air transportation by the proponents and the air carriers whose tax burden increased, could alter the share of the air transportation market held by each.

[5] See, letter and accompanying materials to the staff of the Aviation Subcommittee of the House Committee on Transportation and Infrastructure from Charles A. Hunnicutt, Assistant Secretary of Transportation for Aviation and International Affairs, June 7, 1996.

II. PRESENT LAW AND BACKGROUND OF FEDERAL TRANSPORTATION EXCISE TAXES[6]

A. Air Transportation Excise Taxes

1. In general

Excise taxes are imposed on commercial air passenger and freight transportation and on fuels used in general aviation (i.e., transportation that is not for hire) to fund the Airport Trust Fund. In addition, like other transportation sectors, the aviation sector generally is subject to a 4.3-cents-per-gallon excise tax on fuel used in aviation, revenues from which are retained in the General Fund for deficit reduction.[7] The Airport Trust Fund was established in 1970 to finance a portion of the costs of FAA services and grant programs for airports. Before establishment of the Airport Trust Fund, Federal aviation expenditures were financed from general revenues; General Fund domestic air passenger and fuels taxes were imposed during this period. The structure of the Airport Trust Fund excise taxes has remained generally unchanged, except for rates, since 1970.

The current Airport Trust Fund excise taxes include three taxes on commercial air transportation:

(1) a 10-percent excise tax on domestic air passenger transportation;

(2) a $6-per-person tax on international air passenger departures; and

(3) a 6.25-percent tax on domestic air freight.

General aviation (e.g., corporate aircraft) is subject to Airport Trust Fund excise taxes on the fuels it uses rather than to the commercial aviation passenger ticket and freight excise taxes.[8] The Airport Trust Fund rates for these excise taxes are 17.5 cents per gallon for jet fuel and 15 cents per gallon for aviation gasoline.

The Airport Trust Fund excise taxes are scheduled to expire after December 31, 1996; the 4.3-cents-per-gallon General Fund transportation motor fuels excise tax is permanent. Each of these taxes is described in more detail below. Current Airport Trust Fund pro-

[6] In addition to the motor fuels excise taxes currently imposed on the transportation industry, Superfund excise taxes were imposed before 1996 and Oil Spill Trust Fund excise taxes were imposed before 1995, both on crude oil received at U.S. refineries and on imported refined petroleum products. These expired excise taxes are not discussed in this document because they were not imposed directly on transportation providers.

[7] Fuels used in commercial aviation were exempt from this tax for a period of approximately two years (through September 30, 1995) when the tax initially was imposed.

[8] It is possible for specific aircraft to be used in both commercial and general aviation. For example, a private corporate aircraft is treated as engaged in commercial aviation (and subject to the commercial passenger and freight taxes) when it transports for compensation persons other than employees of the corporation owning the aircraft. When the same aircraft transports only employees of the owner corporation, it is treated as engaged in general aviation (and subject to the Airport Trust Fund fuels taxes, described below). A similar flight-by-flight determination regarding taxation is made with respect to aircraft owned by affiliated groups of corporations.

gram expenditure authority is scheduled to expire after September 30, 1998.

2. Airport Trust Fund excise taxes imposed on commercial transportation

The three Airport Trust Fund excise taxes imposed on commercial aviation are retail excise taxes. The structure of these excise taxes is unchanged since the period when airline fares were regulated by the Federal Government. That is, ultimate liability for payment of tax is imposed on the person purchasing the transportation, not on the transportation provider.[9] Transportation providers may be subject to penalties, however, if they fail to make reasonable efforts to collect the tax. Air transportation providers are required to state separately the domestic air transportation excise tax on passenger tickets.

The three Airport Trust Fund commercial air transportation excise taxes currently are scheduled to expire after December 31, 1996. Previously, the taxes expired during the period January 1, 1996 through August 26, 1996.

Domestic air passenger excise tax

Imposition and tax base

The 10-percent air passenger tax generally applies only to amounts paid for domestic air transportation (Code sec. 4261).[10] In the case of domestic air transportation for which payment is made outside the United States, the tax applies only if the transportation both begins and ends within the United States. Domestic transportation is defined generally to include travel between two points within the United States or travel to or from a point within the continental United States[11] and a point within the "225 mile zone." The 225-mile zone includes the portions of Canada and Mexico which are not more than 225 miles from the nearest point in the continental United States.[12]

Special rules apply to air transportation between the continental United States and Alaska or Hawaii and between Alaska and Hawaii. The portion of such transportation which is not within the United States (e.g., the portion over the Pacific Ocean between the continental West Coast or Alaska and Hawaii) is not subject to the 10-percent domestic air passenger excise tax.[13] The 10-percent excise tax applies in full, however, to air transportation within the States of Alaska and Hawaii.

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[9] Structured in this manner, the excise taxes were not a factor in ratemaking decisions by regulatory bodies. The only other example of a "collected" Federal excise tax is the telephone excise tax, which also originally was imposed only on activities subject to governmental rate regulation.

[10] Because the tax applies to "amounts paid" for air transportation, no tax is imposed on transportation under airline frequent flyer programs for which no charge is made. Similarly, no-charge transportation provided to airline employees as a fringe benefit is not subject to tax; tax is imposed (determined by reference to actual amounts paid) for reduced-rate travel available under both frequent flyer programs and airline employee and family fringe benefit programs.

[11] The term "continental United States" excludes Alaska and Hawaii.

[12] The Treasury Department is authorized to enter into agreements with Canada and Mexico excluding specified areas that geographically fall within 225 miles of the United States from the taxable zone if the Treasury determines that Canada or Mexico, respectively, imposes an appropriate air transportation tax on flights from such locations.

[13] The $6 per passenger international air passenger departure excise tax, described below, does apply to this transportation.

The 10-percent air passenger transportation excise tax also does not apply to domestic United States segments of uninterrupted international air transportation. Uninterrupted international air transportation includes only travel (entirely by air) that does not both begin and end in the United States (or in the 225-mile zone) and during which there is no more than a 12-hour scheduled period between arrival and departure at any point in the United States.[14] For example, assume that a passenger travels from Tokyo to New York, with a four-hour stop in Seattle. The domestic segment of the flight (i.e., Seattle to New York) is not subject to the domestic air passenger transportation excise tax because that segment is a part of uninterrupted international air transportation.

Unlike many Federal excise taxes, the Federal Government, State and local governments, and private, non-profit organizations are subject to tax on commercial air transportation purchased by them.

Exemptions

Exemptions are provided for helicopters engaged in the exploration for, or the development or removal of, hard minerals, oil, or gas, and in timber (including logging) operations if the helicopters neither take off from or land at a facility eligible for Aviation Trust Fund assistance or otherwise use Federal aviation services during the flight.[15] In addition, emergency medical aircraft (both fixed-wing and helicopter) are exempt from tax when the aircraft are equipped for and exclusively dedicated to emergency medical transportation. This latter exemption applies regardless of whether the Federal aviation system is used or the aircraft takes off from or lands at a Federally assisted airport. A further exemption applies to transportation on aircraft having a maximum FAA certificated takeoff weight of 6,000 pounds or less, if the aircraft is not operated on an established line.

History of tax

The current 10-percent domestic air passenger excise tax rate dates to 1990 legislation. In 1990, the tax rate was increased from 8 percent to 10 percent for a five-year period (through December 31, 1995) as part of budget reconciliation legislation. That legislation also provided that revenues from the 2-percentage point increase would be retained in the General Fund as a deficit reduction measure for two years of the five-year period. The 10-percent tax lapsed after December 31, 1995. The Small Business Job Protection Act of 1996 (the "1996 Act") reinstated the tax for the period August 27, 1996 through December 31, 1996.

The 8-percent tax rate was imposed concurrent with establishment of the Airport Trust Fund in 1970. Except for the period from October 1, 1980 through August 31, 1982, when the rate temporarily was reduced to 5 percent as a result of a general expiration of the Airport Trust Fund excise taxes, the rate remained at 8 percent until enactment of the 1990 legislation described above. Before

[14] A more liberal rule is provided for military personnel traveling in uniform while on leave in transportation that involves both international and domestic United States segments.

[15] In the case of flights involving multiple intermediate stops, this determination is made on a segment-by-segment basis.

establishment of the Airport Trust Fund in 1970, a 5-percent tax rate was imposed beginning in 1960, with revenues going to the General Fund. (Federal aviation expenditures were financed entirely from the General Fund during that period.)

International air passenger departure tax

Imposition and tax base

A $6 per passenger excise tax is imposed on international air transportation which begins in the United States (sec. 4261(c)). The $6 tax applies to commercial air passenger transportation from the United States which is exempt from all or a part of the 10-percent domestic air passenger excise tax. Thus, transportation between the continental United States and Alaska or Hawaii and between Alaska and Hawaii is subject to this tax (because the international portion of the flight is exempt from the 10-percent tax) as is transportation from the United States to a foreign country. This tax applies regardless of whether the transportation is purchased within the United States (i.e., the tax applies to a return segment from the United States of "round trip" travel originating and ending in a foreign country even if payment occurs within the foreign country).

History of tax

The international air passenger transportation tax was first imposed, at a $3 per passenger rate, by the 1970 legislation that established the Airport Trust Fund. Except for the period from October 1, 1980 through August 31, 1982, when the tax expired, the tax rate was not changed until 1989, when it was increased to $6 per passenger beginning on January 1, 1990. This tax expired after December 31, 1995, and was reinstated by the 1996 Act for the period August 27, 1996, through December 31, 1996.

Domestic air transportation freight excise tax

Imposition and tax base

A 6.25-percent excise tax is imposed on air transportation of freight within the United States (sec. 4271). Like the domestic air passenger transportation excise tax, this tax applies regardless of whether payment for the transportation is made within the United States; however, the tax does not apply unless the transportation both begins and ends within the United States. Transportation is treated as beginning and ending within the United States if both the point of origination and the final destination point are within the United States (i.e., layover time outside the United States and movement of aircraft in deadhead service are treated as part of taxable transportation).

Air freight transportation between the continental United States and Alaska or Hawaii and between Alaska and Hawaii is partially exempt from this tax under special rules similar to those that apply under the domestic air passenger transportation excise tax. Transportation of freight within either Alaska or Hawaii is fully taxable, even when a portion of the transportation occurs over international waters or Canada.

The domestic air freight excise tax base does not apply to charges for certain accessorial ground services, such as costs of ground transportation from a downtown freight carrier drop station to the airport. Accessorial service charges are not subject to tax only if the service could be performed by a party other than the transportation provider and if the provider maintains in its records a separate accounting for the charge.

Unlike the domestic air passenger excise tax, air freight transportation providers are not required to state the amount of this tax separately on customer bills.

Exemptions

The air freight excise tax does not apply to property transported by emergency medical aircraft performing qualifying medical services. The Treasury Department further has ruled that the tax does not apply to amounts paid for transportation of property in cropdusting, and aerial firefighting service, or the use of helicopters in construction such as setting equipment on the roofs of buildings or installing power lines.

History of tax

The domestic air freight excise tax was first imposed by the 1970 legislation that established the Airport Trust Fund. Except for the period when the Airport Trust Fund excise taxes generally expired from October 1, 1980 through August 31, 1982, the tax rate was 5 percent of the transportation charge until 1990, when the current 6.25-percent rate was enacted. Revenues attributable to the 1.25-percentage point rate increase were retained in the General Fund as a deficit reduction measure for the first two years of the original five-year period during which the 6.25-percent rate applied. The tax expired after December 31, 1995, and was reinstated by the 1996 Act for the period August 27, 1996 through December 31, 1996.

3. Airport Trust Fund excise taxes imposed on fuels used in general aviation

Imposition of tax and tax base

In lieu of the passenger and freight excise taxes imposed on commercial air transportation, general aviation is subject to Airport Trust Fund excise taxes on the fuels it consumes (secs. 4081 and 4091). These taxes are imposed at rates of 17.5 cents per gallon on jet fuel and 15 cents per gallon on aviation gasoline. The jet fuel tax is imposed on the sale of the fuel by producers, defined to include registered wholesale distributors.[16] The aviation gasoline tax is imposed on the removal of the gasoline from registered terminal facilities under the same administrative rules as apply to the highway motor fuels excise taxes.[17]

Like the Airport Trust Fund excise taxes on commercial air transportation, the fuels taxes imposed on general aviation cur-

[16] The majority of this tax is imposed on wholesale distributors of jet fuel. Because most major airports have wholesale distributors on site that deliver fuel directly into aircraft, the absence of a retail intermediary effectively renders much of the tax a retail tax.

[17] A more complete discussion of the administration of the gasoline tax is included in Part II.B., regarding the highway transportation motor fuels excise taxes.

rently are scheduled to expire after December 31, 1996. The tax on jet fuel and 1 cent per gallon of the tax on aviation gasoline expired during the period January 1, 1996 through August 26, 1996; the remaining 14 cents per gallon of the aviation gasoline excise tax continued to be imposed, with revenues being deposited in the Highway Trust Fund. When the Airport Trust Fund excise taxes were reinstated in the 1996 Act, revenues from this 14-cents-per-gallon tax collected during the tax-expiration period were transferred to the Airport Trust Fund.

Exemptions

Exemptions are provided for helicopters engaged in the exploration for, or the development or removal of, hard minerals, oil, or gas, and in timber (including logging) operations if the helicopters neither take off from or land at a facility eligible for Airport Trust Fund assistance or otherwise use Federal aviation services during the flight.[18] In addition, emergency medical aircraft (both fixed-wing and helicopter) are exempt from fuels taxes when the aircraft are equipped for and exclusively dedicated to emergency medical transportation.[19] This latter exemption applies regardless of whether the Federal aviation system is used or the aircraft takes off from or lands at a Federally assisted airport. A further exemption applies to fuels used by tax-exempt aircraft museums operated for the care and exhibition of World War II combat aircraft.

Fuels sold for export or for use as supplies for vessels or aircraft (generally use by the United States military), use by State and local governments and nonprofit educational organizations, or use on a farm for farming purposes are exempt from the aviation fuels excise taxes.

History of tax

The general aviation gasoline tax was imposed at a 2-cents-per-gallon rate before the Airport Trust Fund was established in 1970 (revenues from this tax were dedicated to the Highway Trust Fund from 1956 through 1970). The general aviation gasoline tax rate was increased to 7 cents per gallon beginning in 1970, and the tax on jet fuel was imposed at the same rate. During the period when the Airport Trust Fund taxes generally were expired previously (October 1, 1980–August 31, 1982), the tax on jet fuel was zero and the tax on aviation gasoline reverted to the pre-Trust Fund rate of 2 cents per gallon. In 1982, when the Airport Trust Fund taxes were reinstated, the aviation gasoline tax rate was increased to 12 cents per gallon, and the jet fuel tax rate was increased to 14 cents per gallon. In 1990, the Airport Trust Fund general aviation fuels taxes were increased further: the aviation gasoline tax rate was increased further to 15 cents per gallon and the jet fuel tax rate was increased to 17.5 cents per gallon.

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[18] In the case of flights involving multiple intermediate steps, this determination is made on a segment-by-segment basis.

[19] The Airport Trust Fund exemptions for fixed-wing emergency medical aircraft were enacted in the Small Business Job Protection Act of 1996. A technical correction is needed to clarify application of the fuels tax exemptions to these aircraft.

4. General Fund transportation motor fuels excise tax

Imposition of tax and exemptions

The 1993 Act imposed a permanent, General Fund excise tax on transportation motor fuels for deficit reduction (secs. 4081 and 4091). The tax rate is 4.3 cents per gallon. The tax applies generally to motor fuels used in all transportation sectors, including aviation. Fuels used in *commercial* aviation were exempt during the period through September 30, 1995.

This General Fund motor fuels excise tax rate is administered as an "add-on" to existing Trust Fund excise taxes. Thus, the tax on aviation jet fuel is imposed (along with any applicable Airport Trust Fund excise tax) on the sale of the fuel by a producer (typically, a wholesale distributor); aviation gasoline is taxed upon removal of the fuel from registered terminal facilities.

Fuels used in a use that is exempt from all Trust Fund excise taxation similarly is exempt from the General Fund transportation motor fuels excise tax.[20]

History of tax

The Omnibus Budget Reconciliation Act of 1990 represented the first time that transportation motor fuels excise taxes had been used for General Fund purposes since enactment of the various Federal Trust Fund programs (e.g., aviation in 1970). The 1990 General Fund "deficit reduction" tax of 2.5 cents per gallon applied only to highway and rail transportation fuels and was scheduled to expire after September 30, 1995. The Omnibus Budget Reconciliation Act of 1993 expanded upon the 1990 Act, adding an additional 4.3-cents-per gallon to the existing General Fund tax rate, and expanding the transportation sectors subject to this additional tax rate to include aviation (commercial aviation after September 30, 1995) and inland waterway fuels.[21] The 1993 tax is permanent.

5. Repealed or expired aviation excise taxes

Two additional excise taxes previously were imposed on air transportation. First, an annual civil aircraft use tax was imposed from 1971 to 1980. The tax rate was $25 plus 3.5 cents per pound of the maximum certificated takeoff weight for turbine aircraft or 2 cents per pound of maximum certificated takeoff weight in excess of 2,500 pounds for other aircraft (jet aircraft).

Second, before 1984, aircraft tires and tubes were subject to tax as part of a general tire and tube excise tax that also applied to highway vehicles.

Revenues from the annual aircraft use tax and the tax on aircraft tires and tubes (after 1970) were dedicated to the Airport Trust Fund.

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[20] The tax base established in 1993 for this tax generally paralleled that of the Leaking Underground Storage Tank Trust ("LUST") Fund fuels excise tax. The LUST tax rate of 0.1 cents per gallon applied to aviation (both commercial and general), highway, rail, inland and intracoastal waterway, and recreational motorboat (gasoline). Revenues from the LUST excise tax, which expired after December 31, 1995, were used to finance clean up of pollution from leaking underground petroleum storage tanks. Because it has expired, the LUST excise tax is not discussed further in this document.

[21] See the discussion in Parts II.B. and D. for 1993 changes to the 1990 2.5-cents-per-gallon General Fund transportation motor fuels tax.

B. Highway Transportation Excise Taxes

1. In general

Excise taxes are imposed on fuels and heavy vehicles (including certain parts and accessories therefor) used in highway transportation. Between 1956 when the Highway Trust Fund was established and 1991, all revenues from these taxes were dedicated to funding for the programs financed by that Trust Fund. Beginning in 1983, the Highway Trust Fund financed certain mass transit programs as well as traditional highway construction and maintenance programs. Since 1991, a portion of the motor fuels excise tax revenues also has been dedicated to the General Fund of the Treasury for deficit reduction. The articles subject to tax generally, and the Trust Fund tax rates, historically have been structured to produce financial contributions from different highway transportation segments, determined in part by reference to past studies of relative costs created by those segments. A majority of the revenues produced by highway transportation excise taxes is derived from the taxes on motor fuels.

The current highway transportation excise taxes consist of:

(1) taxes on gasoline, diesel fuel, and special motor fuels;

(2) a retail sales tax imposed on trucks and trailers having gross vehicle weights in excess of prescribed thresholds;

(3) a tax on manufacturers of tires designed for use on heavy highway vehicles; and

(4) an annual use tax imposed on trucks and tractors having taxable gross weights in excess of prescribed thresholds.[22]

The Trust Fund components of the highway motor fuels excise taxes and the non-fuels highway taxes are scheduled to expire after September 30, 1999; the General Fund component of the highway motor fuels excise taxes is permanent. Highway Trust Fund expenditure authority is scheduled to expire after September 30, 1997. (Each of the highway transportation excise taxes is described in more detail below.)

2. Highway motor fuels excise taxes

Tax rates

Separate Federal excise taxes are imposed on gasoline, diesel fuel,[23] and special motor fuels used for highway transportation (secs. 4041 and 4081). With the exception of the special motor fuel compressed natural gas ("CNG"), the excise taxes on each of these

[22] Two additional highway-related excise taxes are imposed under present law: a graduated-rate excise tax on automobiles that fail to meet specified fuel efficiency standards (the "gas guzzler tax") and a retail excise tax on "luxury" automobiles. The gas guzzler tax applies to automobiles having a rated fuel efficiency less than 22.5 miles per gallon. The tax ranges from $1,000 to $7,700 per vehicle depending on fuel efficiency. This tax is permanent. The current rate of the excise tax on luxury automobiles is 9 percent of the excess of the retail price over $34,000. This tax is scheduled to expire after December 31, 2002; phased annual rate reductions and indexing of the price threshold are scheduled to occur between 1997 and 2002. Revenues from both of these excise taxes are retained in the General Fund. These taxes are not discussed further in this document because they generally are not viewed as imposed on transportation providers.

[23] Kerosene generally is taxed as an aviation fuel if it is suitable for that use. Kerosene also commonly is blended with diesel fuel to prevent gelling of the diesel fuel in colder temperatures. When kerosene is blended with taxable diesel fuel, the blender is liable for payment of the applicable diesel motor fuel excise tax rate (24.3 cents per gallon) on the blended kerosene. Kerosene that is not used as a motor fuel is not subject to the highway transportation excise taxes.

fuels is comprised of a Trust Fund rate and a permanent General Fund rate. CNG is subject only to the permanent General Fund rate. Other special motor fuels include liquefied natural gas ("LNG"), benzol, naphtha, liquefied petroleum gas (e.g., propane), natural gasoline, and any other liquid (e.g., ethanol and methanol) other than gasoline and diesel fuel.

Table 1, below, provides a summary of the current highway motor fuels tax rates.[24]

Table 1.—Current Federal Highway Motor Fuels Tax Rates

[Rates shown in cents per gallon]

Fuel	Trust Fund Rate	General Fund Rate	Aggregate Rate
Gasoline	14.0	4.3	18.3
Diesel fuel	20.0	4.3	24.3
Special motor fuels (other than CNG)	14.0	4.3	18.3
CNG	0	[1]4.3	4.3

[1] The statutory rate is 48.54 cents per thousand cubic feet ("MCF"), which is equivalent on an energy (Btu) basis to the 4.3-cents-per-gallon General Fund portion of the tax rate imposed on propane. In general, the motor fuels tax rates are not determined by Btu equivalency. Thus, fuels with fewer Btus per gallon (e.g., propane) may be taxed somewhat higher per Btu than fuels having a higher energy content per gallon (e.g., diesel fuel).

Exemptions

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

(1) use in State and local government and nonprofit educational organization highway vehicles;

(2) use in buses engaged in transporting students and employees of schools;

(3) use in private local mass transit buses having a seating capacity of at least 20 adults (not including the driver) when the buses operate under contract with (or are subsidized by) a State or local governmental unit to furnish the transportation; and

(4) use in private intercity buses serving the general public along scheduled routes. (Such use is totally exempt from the gasoline excise tax and is exempt from 17 cents per gallon of the diesel fuel tax.)

[24] Before January 1, 1996, each of the rates shown, with the exception of the rates on liquefied petroleum gas (propane) and CNG, included an additional 0.1 cent per gallon to finance the Leaking Underground Storage Tank Trust Fund program. (See also Appendix A for a listing of motor fuels excise tax rates by transportation sector.)

Exempt off-highway uses.—In addition to exemptions for these highway uses of otherwise taxable motor fuels, fuels used in off-highway uses (limited to off-highway business uses in the case of gasoline) and on farms for farming purposes generally are exempt from these motor fuel taxes.[25] In no case is tax imposed on fuel used in an off-highway use to fund the Highway Trust Fund. Rather, where tax is imposed, it is either for the General Fund (i.e., diesel fuel used after December 31, 1997, in motorboats, and diesel fuel used in trains) or to finance other Trust Funds (e.g., motorboat gasoline taxes that are dedicated to the Aquatic Resources Trust Fund).

Alcohol fuels.—Partial exemptions from the highway excise taxes are provided for alcohol fuels that are used as special motor fuels or are blended with gasoline for use as a highway motor fuel. In the case of ethanol and renewable source methanol (derived from sources other than petroleum, natural gas, or coal), the excise tax exemption is equal to 5.4 cents per gallon of ethanol (6.0 cents per gallon for methanol) used as an alcohol special motor fuel, and the same amount per gallon of blended fuels consisting of gasoline or diesel fuel blended with these alcohols in prescribed proportions. This exemption is coordinated with an income tax credit equal to 54 cents per gallon for ethanol and 60 cents per gallon of renewable source methanol, producing a net tax subsidy for these fuels.[26]

Present law allows alcohol blenders (persons that blend ethanol or renewable source methanol and gasoline for use as a highway fuel) a choice of three methods of realizing this subsidy. First, the subsidy may be realized in whole or in part by an income tax credit. Second, blenders that register with the Internal Revenue Service may purchase gasoline to be blended with alcohol in certain gasoline/alcohol ratios at a special reduced tax rate (and alcohol tax-free) so that the tax-paid on the gasoline is reduced by the portion of the alcohol subsidy in excess of full tax-exemption for the alcohol. Third, blenders purchasing gasoline bearing the full 18.3-cents-per-gallon tax rate and blending the gasoline with alcohol may apply for a refund (on weekly basis) which bears interest unless paid by the Internal Revenue Service (the "IRS") within 20 days.[27]

Additionally, the Highway Trust Fund tax rate on methanol produced from natural gas and used as a highway special motor fuel is reduced to 7 cents per gallon (instead of 14 cents per gallon). Methanol produced from natural gas is not eligible for the income

[25] Diesel fuel is the same fuel (#2 fuel oil) as is commonly used as home heating oil. Fuel oil used as heating oil is not subject to the Federal excise tax.

[26] The 0.6- and 6-cents-per-gallon differences between the subsidies for ethanol and renewable source methanol were enacted to offset the revenue loss from a 10-cents-per-gallon small producer income tax credit available to ethanol, but *not* to methanol.

[27] The choice of how the alcohol subsidy is realized generally will depend on the arrangements under which the blender purchases gasoline, the blender's tax circumstances, or proportions of gasoline and alcohol in the blended fuel. For example, reduced tax rate gasoline purchases may be used to realize the full renewable source alcohol fuels tax subsidy only on gasoline/alcohol mixtures that meet either of three proportions: 90, 92.3, or 94.5 percent gasoline and 10, 7.7, or 5.5 percent alcohol respectively. The balance of the alcohol tax subsidy on nonconforming mixtures must be claimed through the income tax credit.

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

All taxpayers are eligible for the income tax credit; however, that credit may not be used to offset alternative minimum tax liability and is not refundable. Thus, a blender that has limited regular income tax liability would prefer the excise tax methods of receiving the alcohol subsidy.

tax credit and does not qualify for any exemption when blended with gasoline or diesel fuel. This 7-cents-per-gallon reduced excise tax rate is based on that methanol's lower Btu content relative to gasoline. Almost all commercially marketed methanol is derived from natural gas.

Administration of highway motor fuels excise taxes

The gasoline and diesel fuel excise taxes are imposed on removal of the fuel from a refinery or on importation, unless the fuel is transferred by pipeline or barge to a registered terminal facility. In such as case, tax is imposed on removal of the fuel from the terminal facility (i.e., at the "terminal rack").[28] A large majority of the taxes imposed on gasoline and diesel fuel is imposed at the terminal rack. The special motor fuels tax, which accounts for a relatively small portion of motor fuels tax revenues, is imposed at the retail level.

Present law imposes tax on *all* gasoline and diesel fuel that is removed from a terminal facility, except diesel fuel that is destined for nontaxable use (including a partially taxable use in an intercity bus or a train) and that is indelibly dyed in accordance with Treasury Department regulations.[29] The person holding an inventory position in the terminal at the time the fuel is removed from that facility (the "position holder") is liable for payment of the tax. The current points at which these taxes are imposed were established between 1986 and 1993 in response to reports of extensive tax evasion occurring at points of taxation established when the tax rates were substantially lower than those in effect since 1983.[30] Terminal racks represent a point in the distribution chain of gasoline and diesel fuel that commonly is at least two parties removed from delivery of the fuel to the ultimate consumer.[31] Thus, absent marking or dyeing of fuel (as is permitted with diesel motor fuel destined for nontaxable use), it cannot be determined with certainty what the ultimate use of the fuel will be at the point where tax is imposed.

To effect the tax exemptions provided by law while preventing tax evasion, present law generally provides that exemptions are realized through refunds of tax paid by a previous party in the fuel distribution chain. In the case of gasoline, all exemptions are realized through refunds to ultimate users, except in the case of gasoline sold to State and local governments, nonprofit educational organizations, the U.S. military for aircraft use, or for export where refunds can be made to wholesale distributors (if the distributors

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[28] Gasoline and diesel motor fuel may be removed from a refinery without payment of tax only if the party removing the fuel and all subsequent parties before its removal from a terminal facility are registered with the Internal Revenue Service. If fuel is sold to an unregistered party before leaving the terminal facility, tax immediately is imposed. This tax does not affect imposition of a second tax at the terminal rack; however, the second tax may be refunded upon request. This dual tax regime was enacted in 1990 in response to reports that fuel was being removed from terminals upon a claim that tax had already been paid, when in fact it had not been paid.

[29] Persons selling or using dyed diesel fuel in a taxable use (other than in an intercity bus or a train) are subject to a penalty equal to the greater of $1,000 or $10 per gallon of fuel.

[30] As described more fully below, the gasoline and diesel motor fuel tax rates were 4 cents per gallon from 1959 until 1983, at which time they were increased to 9 cents per gallon.

[31] Following production at a refinery, gasoline and diesel motor fuel typically travel by pipeline or barge to a terminal facility. Upon removal from the terminal facility, the fuels typically travel by truck either to retail outlets, to smaller wholesale storage facilities, or to ultimate users that purchase fuel in bulk quantities.

elect) or to the persons that actually paid the tax upon removal of the gasoline from a terminal. In the case of diesel fuel, all exemptions are realized either through refunds or through the removal of dyed fuel (on which no tax is paid).[32] Like gasoline refunds, diesel fuel tax refunds generally are made only to ultimate users of the fuel. An exception provides that these refunds are made only to ultimate vendors of fuel to State and local governments and farmers, thereby allowing tax-free pricing on sales to these users.

History of highway motor fuels excise tax rates

Before establishment of the Highway Trust Fund in 1956, the Federal Government's role in highway construction and maintenance was funded through general revenues. Excise taxes at a rate of 1 cent per gallon were imposed on gasoline, diesel fuel, and special motor fuels from 1932 to 1940; a 1.5-cents-per-gallon tax was imposed from 1940 to 1951; and a 2-cents-per-gallon tax was imposed from 1951 to 1956. When the Highway Trust Fund was established in 1956, the motor fuels tax rates were increased initially to 3 cents per gallon. Subsequent increases in the highway motor fuels excise tax rates were enacted in 1959 (to 4 cents per gallon), in 1982 (to 9 cents per gallon), in 1984 (diesel fuel to 15 cents per gallon to offset revenue lost by a reduction in the heavy vehicle annual use tax), in 1990 (to 14 cents per gallon (gasoline and special motor fuels) and 20 cents per gallon (diesel fuel)), and 1993 (to 18.3 cents per gallon (gasoline and special motor fuels) and 24.3 cents per gallon (diesel fuel)).

Before 1990, the highway transportation motor fuels taxes generally were scheduled to expire in concert with expiration of authorizing highway legislation.[33] Beginning with enactment of the Omnibus Budget Reconciliation Act of 1990 use of a portion of the highway motor fuels tax revenues for General Fund deficit reduction, however, that link was broken—the 1990 rate increases were effective through September 30, 1995, and were subsequently extended through September 30, 1999 in the 1993 legislation). The 1993 General Fund rate increase was permanent.

3. Non-fuel Highway Trust Fund excise taxes

In addition to 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 imposed only on heavy highway vehicles to achieve a better matching of Federal highway program costs with excise taxes, based on findings of past DOT highway cost allocation studies that heavier vehicles disproportionately contribute to deterioration of the highways. Unlike the highway motor fuels excise taxes, there

[32] The diesel fuel dyeing regime allows, for example, #2 fuel oil (diesel fuel) to be sold as heating oil without payment of tax, thereby eliminating the need for homeowners to purchase higher-priced, tax-paid fuel and apply for refunds.

[33] Anti-deficit provisions of the Highway Trust Fund (Code sec. 9503) limit new expenditure obligation authority to projected revenues for the upcoming two years (Highway Account) or one year (Mass Transit Account). A projected shortfall would result in across-the-board (pro rata) reductions in certain program expenditure levels. As a result, scheduled Highway Trust Fund tax expirations generally lag two years behind authorizing legislation expirations. Current authorizing legislation expires after September 30, 1997; current Highway Trust Fund excise tax rates expire after September 30, 1999.

is no General Fund component of these taxes. Each of the taxes is scheduled to expire after September 30, 1999.

Retail excise tax on heavy vehicles

Tax rate and base

A 12-percent excise tax is imposed on the first retail sale of heavy highway trucks, tractors, and trailers (sec. 4051).[34] Trucks having a gross vehicle weight ("GVW") of 33,000 pounds or less are not subject to the tax; trailers having a GVW of 26,000 pounds or less are exempt. Gross vehicle weight is defined as the loaded weight (generally based on axle capacity) at which the vehicle is designed to operate.

Although the tax is imposed only on the first retail sale, the first sale of a remanufactured vehicle is taxable as the sale of a new vehicle. The determination of whether modifications to an existing vehicle constitute repair or remanufacture is based on all relevant facts and circumstances. In general, modifications are treated as remanufacture if the cost of the modifications exceeds 75 percent of the cost of a comparable new vehicle. However, lesser modifications that result in a change in function of a truck are treated as remanufacture.

In general, the tax base is the full retail sales price of the base vehicle and all parts and accessories. Pursuant to Treasury Department rulings, however, certain equipment that is installed on highway vehicles, but which is unrelated to its highway transportation function, is excluded from the tax base. Further, the tax includes provisions designed to prevent the sale of "stripped down" vehicles to which additional parts and accessories will be added shortly after the taxable event. Under these provisions, all parts and accessories installed on a vehicle within six months of the first retail sale are subject to tax. Because the tax is determined on an *ad valorem* basis, the Treasury Department is authorized to prescribe presumed markup rules to equalize the tax cost of vehicles sold directly by manufacturers to consumers (typically fleet sales) to that of vehicles sold through retail dealers.

History of tax

The heavy vehicle excise tax originally was imposed as a manufacturers' excise tax. Before the 1956 establishment of the Highway Trust Fund, the tax rate was 8 percent; the 1956 legislation increased the rate to 10 percent where it remained until 1982 legislation that both changed the point at which the tax is imposed and increased the rate. From 1917 until 1971, a manufacturers' excise tax also was imposed on automobiles at rates that ranged from 3 percent to 10 percent over the period. Between 1971, when automobiles and light trucks first were exempted from the tax, and 1982, the weight threshold for determining whether a vehicle was taxable was 10,000 pounds GVW. The 1982 rate increase and the taxable threshold modifications were enacted in response to a DOT highway cost allocation study. Before 1982, an 8-percent companion excise tax to the heavy vehicle excise tax was imposed on parts and

[34] A backup "use" tax is imposed on otherwise taxable vehicles that are placed in service before a taxable sale occurs.

accessories for those vehicles, and a 6-cents-per-gallon excise tax was imposed on lubricating oil.

Manufacturers' excise tax on certain tires

Imposition of tax

A graduated excise tax is imposed on the sale by a manufacturer (or importer) of tires designed for use on heavy highway vehicles (sec. 4071). The tire tax rates are as follows:

Tire weight	Tax rate
Not more than 40 lbs	No tax.
More than 40 lbs., but not more than 70 lbs.	15 cents/lb. in excess of 40 lbs.
More than 70 lbs., but not more than 90 lbs.	$4.50 plus 30 cents/lb. in excess of 70 lbs.
More than 90 lbs	$11.50 plus 50 cents/lb. in excess. of 90 lbs.

No tax is imposed on the recapping of a tire that previously has been subject to tax. Tires of extruded tiring with internal wire fastening also are exempt.

History of tax

Before enactment of the 1982 highway legislation, the tire tax was imposed on all tires, regardless of weight, at a rate of 9.75 cents per pound (4.875 cents per pound on nonhighway tires), and inner tubes were taxed at 9 cents per pound. The 1982 legislation also repealed a tax on tread rubber (5 cents per pound on tread rubber for use in recapping or retreading highway-type tires).

Heavy vehicle annual use tax

Imposition of tax and exemptions

An annual use tax is imposed on highway vehicles having a taxable gross weight of 55,000 pounds or more (sec. 4481). The tax rate is $100 per year, plus $22 for each 1,000 pounds in excess of 55,000 pounds. The maximum tax, imposed on vehicles having a taxable gross weight over 75,000 pounds, is $550 per year. The taxable year for this tax begins on July 1 of each year; the person in whose name the vehicle is registered under State law is liable for payment.

Highway authorization statutes include provisions to assist in achieving compliance with this tax. Under those provisions, States that do not verify tax payment when registering heavy vehicles may lose a portion of Federal Highway Trust Fund monies otherwise allocated to them.

Heavy highway vehicles owned and operated by the Federal Government and State and local governments are exempt from the tax. Private transit buses which satisfy a passenger fare revenue test also are exempt as are otherwise taxable trucks which are reasonably expected to be used on the highways for fewer than 5,000 miles (7,500 miles for agricultural vehicles) during a year. A special 25-percent rate reduction is provided for vehicles exclusively used

in logging operations and for vehicles whose base plate registration is in Canada or Mexico.

History of tax

Prior to the 1982 highway legislation, the annual highway use tax was $3 per 1,000 pounds of taxable gross weight in excess of 26,000 pounds. The 1982 legislation imposed a graduated use tax on heavy vehicles that is higher than the present-law rates. The use tax rates were changed to the current rate schedule in 1984 legislation which also increased the diesel fuel excise tax rate as a revenue offset to the reduced use tax rate schedule.

C. Water Transportation Excise Taxes

1. In general

Six excise taxes are imposed on four segments of the water transportation sector: shipping on designated inland and intracoastal waterways, domestic and international shipping through United States ports, recreational motorboat transportation, and certain commercial passenger water transportation. In the case of the first three segments, at least a portion of the taxes imposed is dedicated to financing Federal Trust Fund programs benefiting of the transportation segments subject to tax. The tax on commercial passenger water transportation is exclusively a General Fund tax.

The water transportation excise taxes, and the Trust Funds, if any, to which the revenues are dedicated, consist of:

(1) a permanent 20-cents-per-gallon excise tax on fuels used on commercial cargo vessels traveling on a designated system of United States inland and intracoastal waterways, revenues from which are dedicated to the Inland Waterways Trust Fund;

(2) a permanent harbor maintenance excise tax imposed on the loading and unloading of commercial cargo and passengers at all publicly navigable U.S. ports (other than ports that are part of the inland or intracoastal waterway system, above), revenues from which are dedicated to the Harbor Maintenance Trust Fund;

(3) through September 30, 1999, a 14-cents-per-gallon excise tax imposed on gasoline used in recreational motorboats, revenues from 11.5 cents of which are dedicated to the Aquatic Resources Trust Fund and the Land and Water Conservation Fund ($1 million per year);

(4) after December 31, 1997 and through December 31, 1999, a 24.3-cents-per-gallon General Fund excise tax on diesel fuel used in recreational motorboats; and

(5) a permanent $3 General Fund excise tax imposed on passengers traveling on commercial vessel voyages extending for one or more nights, or on voyages on which gambling occurs beyond the territorial waters of the United States; and

(6) a permanent 4.3-cents-per-gallon General Fund transportation fuels excise tax imposed on inland and intracoastal waterway and motorboat gasoline.

2. Inland and intracoastal waterways excise tax

Imposition of tax and exemptions

A permanent 20-cents-per-gallon excise tax is imposed on fuel used in powering commercial cargo vessels on a designated system of 27 inland and intracoastal waterways, including the Mississippi River upstream from Baton Rouge, the Mississippi River's tributaries, the Gulf of Mexico and Atlantic Intracoastal Waterways, and the Tennessee-Tombigbee Waterway (sec. 4042). The inland waterways excise tax is a use tax, imposed on the boat operator.

The excise tax does not apply to fuel for vessels primarily used for passenger transportation nor does it apply to fuel used in deep-draft ocean going vessels. Additional exemptions are provided for fuels used by State and local governments in transporting property

in governmental business and for fuels used by LASH and SEABEE oceangoing barges released by their ocean-going carriers solely to pick up or deliver international cargoes.

History of tax

The inland waterways excise tax was enacted in 1978 legislation; the Inland Waterways Trust Fund was established in the same legislation. The tax rate initially was 4 cents per gallon, effective October 1, 1980, with scheduled increases to 10 cents per gallon. In 1986, additional phased increases to the current 20-cents-per-gallon rate were enacted.

3. Harbor maintenance excise tax

Imposition of tax

A permanent 0.125-percent harbor maintenance excise tax is imposed with respect to cargo and/or ship passengers loaded or unloaded at United States ports;[35] this tax is collected by the U.S. Customs Service (sec. 4461). The harbor maintenance excise tax applies to ship passengers as well as to shipments of property. The base to which the tax rate is applied is the value of the cargo, or in the case of passenger loading and unloading, the actual charge paid for transportation. The tax is imposed on all cargo or passengers loaded or unloaded at U.S. ports, defined as any channel or harbor in the United States which is open to public navigation and is not part of the system of waterways with respect to which the inland waterways fuels excise tax is imposed. Shippers, importers, and exporters are liable for the tax.[36]

Exemptions

Exemptions are provided for ferry transportation of passengers (and their vehicles) within the United States and between the United States and Canada or Mexico. Several special rules apply to shipments between the continental United States and Alaska, Hawaii, and U.S. possessions if the ultimate use of the cargo will occur in the location where landed. In general, cargo shipments between these locations, and shipments within Alaska, Hawaii, or a U.S. possession, are exempt from tax. The tax also does not apply to certain passenger cruises within Alaska and Hawaii which also include travel in international waters, if the cruises do not include any stops at ports of call located outside the State from which the cruise began.

The Treasury Department is authorized to waive the tax on shipments to Canada or Mexico if Treasury determines that the relevant country imposes a substantially equivalent tax and that failure to waive the tax would result in significant economic loss to the affected United States port (but would not result in diversion of shipments from other U.S. ports). Finally, the tax does not apply

[35] No tax is imposed on cargo movements within a United States port.

[36] On October 25, 1995, the United States Court of International Trade in *United States Shoe Corp.* v. *United States* granted a summary judgment motion finding the harbor maintenance excise tax as applied to exports unconstitutional under the Export Clause of the Constitution, and enjoined the U.S. Customs Service from collecting the tax. However, a motion to stay the decision pending appeal was granted. Until a decision is rendered in the appellate process, the harbor maintenance excise tax continues to be imposed.

to shipments by the United States Government and to cargo of nonprofit organizations which are intended for humanitarian or development assistance overseas (e.g., shipments of Project Hope).

History of tax

The harbor maintenance excise tax was imposed in 1986 legislation, effective on April 1, 1987. The tax rate originally was set at 0.04 percent of the value of the cargo or passenger transportation charges; the rate subsequently was increased in 1990 to 0.125 percent, effective January 1, 1991.

4. Taxes on fuels used in recreational motorboats

Imposition of taxes

Three separate excise taxes are imposed on fuels used in recreational motorboats. First, gasoline used in recreational motorboats is subject to an 11.5-cents-per-gallon excise tax rate, revenues from which are dedicated to the Aquatic Resources Trust Fund and the Land and Water Conservation Fund ($1 million per year) (sec. 4081). In addition to this dedicated excise tax, motorboat gasoline is subject to a General Fund excise tax rate of 6.8 cents per gallon (sec. 4081).[37] Of the resulting total 18.3-cents-per-gallon tax imposed on motorboat gasoline, 14 cents per gallon is scheduled to expire after September 31, 1999; the remaining 4.3 cents per gallon rate is permanent (like the General Fund transportation motor fuels excise tax imposed on other transportation sectors).[38] The tax on motorboat gasoline is collected in the same manner as the highway transportation gasoline excise tax. The provisions dedicating revenues to the Aquatic Resources Trust Fund and the Land and Water Conservation Fund expire after September 31, 1997.[39]

Beginning after December 31, 1997, diesel fuel used in recreational motorboats is scheduled to be subject to a combined General Fund excise tax rate of 24.3 cents per gallon (sec. 4081).[40] (This tax rate is inclusive of the 4.3-cents-per-gallon permanent General Fund transportation motor fuels excise tax, described below.) The entire 24.3-cents-per-gallon excise tax is retained in the General Fund. The recreational motorboat diesel fuel excise tax is imposed under the same administrative rules as the highway transportation diesel fuel excise tax. This tax is scheduled to expire after December 31, 1999.[41]

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[37] The Aquatic Resources Trust Fund benefits from a permanent appropriation for certain of its expenditure programs. The budget effect of this permanent appropriation provision led Congress in 1993 to limit the portion of the aggregate excise tax imposed on motorboat gasoline that is dedicated to the Aquatic Resources Trust Fund to 11.5 cents per gallon (in contrast to the 14 cents per gallon of highway gasoline tax revenues that is dedicated to the Highway Trust Fund).

[38] The motorboat gasoline excise tax rate is identical to that imposed on highway gasoline.

[39] The actual flow of funds for these taxes is as follows: revenues received in the General Fund are transferred to the Highway Trust Fund (to the extent of 11.5 cents per gallon) along with other gasoline excise tax revenues, and thereafter are retransferred to the two other Funds. After the September 30, 1997 expiration of the retransfers from the Highway Trust Fund, 11.5 cents per gallon of the motorboat gasoline excise tax revenues will be retained in the Highway Trust Fund (absent any further legislative extensions).

[40] If the LUST excise tax rate were reimposed, this rate would increase automatically to 24.4 cents per gallon, with all revenues still being retained in the General Fund.

[41] Statutorily, this tax is imposed by partially overriding an historical exemption from tax provided for off-highway uses of diesel fuel. Thus, no permanent 4.3-cents-per-gallon tax rate is imposed on motorboat diesel fuel.

History of taxes

Recreational motorboat diesel fuel was subject to tax from 1993 until enactment of the Small Business Job Protection Act of 1996. The tax rates were enacted as part of 1993 budget reconciliation legislation as a revenue offset for repeal of the excise tax on luxury boats. The temporary suspension was enacted in response to reports that marine fuels dealers were declining to stock undyed (taxable) diesel fuel in many instances because the predominate customer demand was in commercial shipping. Diesel fuel used in commercial shipping is not subject to tax; thus, most commercial boats use dyed diesel fuel. That 1996 legislation requested the Treasury Department to study alternative methods of imposing the recreational motorboat diesel fuel excise tax (while still achieving substantial compliance) and to report to Congress April 1, 1997.[42]

5. Water transportation passenger excise tax

A $3 per passenger retail excise tax is imposed on "covered voyages" of commercial vessels (sec. 4471). A covered voyage is defined generally as any voyage during which passengers embark or disembark the vessel in the United States and (1) which extends for one or more nights on a passenger vessel having berth or stateroom accommodations for more than 16 passengers, or (2) on which passengers may engage in gambling aboard the vessel while beyond the territorial waters of the United States. Voyages between two United States ports that last fewer than 12 hours are exempt from the tax. The transportation provider is liable for payment of the tax.

The water transportation passenger excise tax was enacted in 1989 and is permanent. Revenues from the tax are retained in the General Fund.

6. General Fund water transportation motor fuels excise tax

Like motor fuels used in highway, air, and rail transportation, fuels used in water transportation that is subject to another fuels excise tax generally are subject to an "add-on" 4.3-cents-per-gallon permanent General Fund transportation motor fuels excise tax (secs. 4041, 4042, and 4081). The 4.3-cents-per-gallon excise tax is imposed and collected in the same manner as the underlying fuels tax to which it is added.

Table 2, below, summarizes the tax rates applicable to water transportation fuels.

[42] A complete discussion of the rules governing imposition and collection of the gasoline and diesel fuel excise taxes is contained in Part II.B. on the highway transportation excise taxes.

Table 2.—Current Federal Water Transportation Fuels Excise Tax Rates

[Rates shown in cents per gallon]

Transportation	Trust Fund Rate	General Fund Rate	Aggregate Rate
Inland/Intracoastal Waterway Fuels	20.0	4.3	24.3
Recreational Motorboat:			
Gasoline	11.5	6.8	18.3
Diesel Motor Fuel	No tax	No tax	[1] No tax

[1] Beginning after December 31, 1997, tax rate will be 24.3 cents per gallon, all for the General Fund.

D. Rail Transportation Excise Tax

There is no Federal rail transportation trust fund. Instead, railroads generally construct and maintain railways using their own capital. Thus, there are no Federal rail transportation trust fund excise taxes. Diesel motor fuel used in trains is subject, however, to a General Fund excise tax of 5.55 cents per gallon (sec. 4041). After September 30, 1999, this rate is scheduled to decline to 4.3 cents per gallon. The 4.3-cents-per-gallon rate is permanent.

Rail diesel fuel first became subject to tax in 1990 budget reconciliation legislation. The 1990 rail diesel fuel excise tax was imposed as part of a broader imposition of a 2.5-cents-per-gallon deficit reduction rate that also applied to highway transportation motor fuels. When enacted, the 1990 deficit reduction rate was scheduled to expire after September 30, 1995. In 1993 budget reconciliation legislation, the 1990 rate on rail diesel fuel was extended from 1995 through September 30, 1999, at a reduced rate of 1.25 cents per gallon.[43]

The permanent 4.3-cents-per-gallon rate also was imposed in 1993 as part of a broader General Fund transportation motor fuels excise tax applicable on a permanent basis to all transportation sectors: rail, highway, aviation, inland and intracoastal waterway, and recreational motorboat.

[43] This tax, as applied to highway transportation fuels, also was extended through September 30, 1999, in the same legislation. In the case of highway transportation motor fuels, the full 2.5-cents-per-gallon rate continues to be imposed throughout the extension period, but revenues from the tax are dedicated to the Highway Trust Fund.

III. FEDERAL TRANSPORTATION TRUST FUND AND GENERAL FUND TRANSPORTATION EXPENDITURE PROGRAMS

Five Federal transportation-related Trust Funds currently receive dedicated funding from excise taxes, imposed generally on the beneficiaries of the Trust Fund programs. These are the Airport Trust Fund, the Highway Trust Fund (Highway and Mass Transit Accounts), the Inland Waterways Trust Fund, the Harbor Maintenance Trust Fund, and the Aquatic Resources Trust Fund (Sport Fish and Boating Safety Accounts).[44] Expenditures from these Trust Funds and certain General Fund monies finance the Federal Government's role in transportation activities. In addition to the specified, dedicated excise tax revenues transferred to these Trust Funds, the Trust Funds earn interest on any unused balances, which are invested in Federal Government securities (Code sec. 9602(b)).

A. Airport and Airway Trust Fund

1. Trust Fund expenditure purposes

The Airport Trust Fund was created in 1970 to finance a major portion of the Federal expenditures on national aviation programs. Prior to that time, these expenditures had been financed with General Fund monies. The 1996 expenditure authorization legislation, enacted on October 9, 1996, generally extended expenditure authority for these programs through September 30, 1998; conforming amendments to the Code Airport Trust Fund expenditure provisions were included in that legislation.[45] The statutory provisions relating to the Airport Trust Fund were placed in the Code in 1982 (Code sec. 9502).

General Trust Fund expenditure purposes

The current general expenditure purposes for the Airport Trust Fund are:

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[44] $1 million per year of motorboat gasoline excise tax revenues is dedicated to the Land and Water Conservation Fund, which provides grants for certain Federal-State conservation projects. Unlike the Trust Funds cited above, the Land and Water Conservation Fund is not a formal Trust Fund. Additionally, gasoline excise tax revenues from fuel used in off-highway recreational trails vehicles is dedicated to the National Recreational Trails Trust Fund, subject to funds for the programs of that Trust Fund being appropriated and obligated. No transfers have occurred since enactment of that Trust Fund in 1991, as no appropriations have been made. Both of these funds are beyond the scope of this document.

[45] Federal Aviation Reauthorization Act of 1996 (the "FAA Act of 1996"), enacted on October 9, 1996 (P.L. 104-264). See also conference report on H.R. 3539 (H. Rept. 104-848). Title X of H.R. 3539 extended the authority to spend from the Airport Trust Fund through September 30, 1998.

(1) obligations incurred under provisions of aviation authorizing Acts enacted since 1970, as those provisions were in effect on the date of enactment of the FAA Act of 1996;[46]

(2) obligations incurred under part A of subtitle VII of Title 49, United States Code (generally, FAA programmatic provisions), which are attributable to planning, research and development, construction, or operation and maintenance of—

(a) air traffic control,

(b) air navigation,

(c) communications, or

(d) supporting services for the airway system; and

(3) obligations incurred for administrative expenses of the Department of Transportation which are attributable to activities described in items (1) and (2).

Because the expenditure purposes are set in the law as of the date of enactment of the FAA Act of 1996 (October 9, 1996), the authorizing and appropriations committees of Congress cannot accomplish expenditure of Trust Fund monies for any new purposes without an amendment (approved by the tax-writing committees) to the Internal Revenue Code. No expenditures are permitted to be made from the Airport Trust Fund after September 30, 1998.

Specific Airport Trust Fund expenditure programs

Authorized expenditures for the following airport and airway programs are included under the general purposes, described above.

(1) *Airport Improvement Program ("AIP").*—

(a) *Airport planning*—Planning for airport systems; also, airport noise compatibility planning for air carrier airports eligible for terminal development costs.

(b) *Airport construction*—Construction, improvement or repair of public airports (includes removal of airport hazards and construction of physical barriers and landscaping to diminish noise).

(c) *Airport terminal facilities*— Non-revenue-producing public-use areas which are directly related to movement of passengers and baggage at certified air carrier airports having required safety and security equipment (including baggage facilities and passenger-moving equipment); also, development of revenue-producing areas and construction of non-revenue-producing parking lots for nonhub airports (subject to certification that the grant will not defer needed development with respect to safety, security, or capacity).

(d) *Land acquisition*—Includes land or property interests for airport noise control purposes; also includes acquisition

[46] The Acts (or provisions of Acts) pursuant to which Airport Trust Fund expenditures are allowed are Title I of the Airport and Airway Development Act of 1970; the Airport and Airway Development Act Amendments of 1976; the Aviation Safety and Noise Abatement Act of 1979; the Fiscal Year 1981 Airport Development Authorization Act; the Airport and Airway Improvement Act of 1982; the Airport and Airway Safety and Capacity Expansion Act of 1987; the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990; the Aviation Safety and Capacity Expansion Act of 1990; the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992; the Airport Improvement Program Temporary Extension Act of 1994; the Federal Aviation Administration Authorization Act of 1994; and, the Federal Aviation Reauthorization Act of 1996.

of land for, or work necessary to construct, pads suitable for aircraft deicing (subject to certain limitations).

(e) *Airport-related equipment*—Airport security equipment required by Department of Transportation regulations, snow removal equipment, noise suppressing equipment, navigation aids, and safety equipment required for airport certification; also includes construction or purchase of capital equipment necessary for compliance by an airport with the Americans with Disabilities Act, the Clean Air Act, or the Federal Water Pollution Control Act, other than capital equipment which would primarily benefit a revenue-producing area of the airport used by a nonaeronautical business.

(f) *Airport noise compatibility programs*—Includes sound-proofing of public buildings; local governmental units are eligible for project grants as well as airports.

(2) *Facilities and Equipment Program ("F&E").*—Costs of acquiring, establishing, and improving air navigation facilities.

(3) *Research, Engineering, Development, and Demonstration Program ("R&D").*—Projects in connection with FAA research and development activities.

(4) *Operations and Maintenance Programs ("O&M").*—Expenses of flight checks and operations and maintenance of air navigation facilities, including air traffic control; services provided under international agreements relating to the U.S. share of joint provision of air navigation services; weather reporting services provided to the FAA by the National Oceanic and Atmospheric Administration.

(5) *Small Community Air Service Program.*—Contract authority for payments to ensure that eligible localities receiving airline service at the time of deregulation continue to have airline service.

(6) *Vocational Technical Institutions.*—Grants to up to four vocational technical institutions for the acquisition of facilities for the advanced training of maintenance technicians for air carrier aircraft.

(7) *Airway Science Curriculum Grants.*—Grants for higher education airway science study programs, including equipment, buildings, and associated facilities.

(8) *Civil Aircraft Security Research and Development.*—Grants relating to technologies and procedures to counteract terrorist activities against civil aviation.

2. General Fund air transportation expenditures

Under the FAA Act of 1996, spending from the Airport Trust Fund for FAA operations and maintenance for fiscal years 1997 and 1998 may not exceed the *lesser* of (1) 50 percent of the amounts appropriated for airport grants, airway facilities and equipment, and research and development or (2) (a) 72.5 percent (as compared to 70 percent for fiscal years 1994–1996) of total FAA expenses minus (b) expenses under (1).[47] The balance of those expenses, principally a portion of FAA operations and maintenance (e.g., air traffic control expenses), is financed from general revenues.

[47] See section 48104, 49 U.S.C.

B. Highway Trust Fund

1. In general

The Highway Trust Fund was established in 1956 to coordinate the Federal role in highway construction and maintenance activities, including the development of the then-new Interstate Highway System. Prior to that time, General Fund excise taxes had been imposed on highway transportation, and Federal funding for these activities came from general revenues. Since 1982, the operative Highway Trust Fund provisions have been contained in the Internal Revenue Code and, the Highway Trust Fund has been divided into two accounts, a Highway Account and a Mass Transit Account, each of which is the funding source for specific programs.[48]

Highway and Mass Transit Account expenditure purposes have been revised with passage of each authorization Act enacted since establishment of the Highway Trust Fund in 1956. In general, expenditures authorized under those Acts (as the Acts were in effect on the date of enactment of the most recent such authorizing Act) are approved Highway Trust Fund expenditure purposes.[49] Authority to make expenditures from the Highway Trust Fund is scheduled to expire after September 30, 1997. Thus, as with Airport Trust Fund expenditures, no Highway Trust Fund monies may be spent for a purpose not approved by the tax-writing committees of Congress. Further, no Highway Trust Fund expenditures may occur after September 30, 1997, without such approval.

Highway Trust Fund spending further is limited by two, internal to the Trust Fund, anti-deficit provisions. The first of these provisions limits Highway Account obligations in any year to amounts not exceeding revenues projected to be raised for that Account by the dedicated excise taxes during the two following years (the so-called "Byrd Rule"). The second anti-deficit provision similarly limits Mass Transit Account obligations to revenues projected to be raised for that Account by the dedicated excise taxes during the next year (the so-called "Rostenkowski Rule"). Because of these two rules, the highway transportation excise taxes typically are scheduled to expire at least two years after current authorizing Acts.[50] If either of these rules is violated, spending for specified programs funded by the relevant Trust Fund Account is to be reduced proportionately, in much the same manner as would occur under a general Budget Act sequester.

2. Highway Account

The Highway Trust Fund's Highway Account receives revenues from all non-fuel highway transportation excise taxes and revenues from all but 2 cents per gallon of the highway motor fuels excise

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[48] The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982 (Code sec. 9503).

[49] The authorizing Acts which are currently referenced in the Highway Trust Fund 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, and the Intermodal Surface Transportation Efficiency Act of 1991.

[50] 1993 projections of a revenue shortfall in the Highway Account during the later years of the current authorizing Act led Congress in 1993 to extend the 1990 2.5-cents-per-gallon General Fund motor fuels excise taxes on highway transportation through 1999 and to dedicate those revenues to the Highway Trust Fund beginning after September 30, 1995.

taxes. Programs financed from this account include expenditures for the following:

(1) Federal-aid highways, including the interstate system, primary and secondary systems, urban systems, forest and public lands highways, scenic highways, and certain overseas highways;

(2) Interstate highway resurfacing and repair;

(3) Bridge replacement;

(4) Highway safety research and development, including a share of the cost of National Highway Traffic Safety Administration ("NHTSA") programs and university research centers;

(5) Traffic control demonstration grants and traffic control signal demonstration projects;

(6) Intermodal urban demonstration projects and mass transit (including carpool and vanpool) grants;

(7) Certain administrative costs of the Federal Highway Administration and NHTSA; and

(8) Grants to the IRS for fuels and highway use tax enforcement activities.

3. Mass Transit Account

The Highway Trust Fund Mass Transit Account receives revenues equivalent to 2 cents per gallon of the highway motor fuels excise taxes. Mass Transit Account monies are available through September 30, 1997, for capital and capital-related expenditures under sections 5338(a)(1) and (b)(1) of Title 49, United States Code, or the Intermodal Surface Transportation Efficiency Act of 1991.

The capital and capital-related mass transit programs include new rail or busway facilities, rail rolling stock, buses, improvement and maintenance of existing rail and other fixed guideway systems, and upgrading of bus systems.

C. Water Transportation Trust Funds

1. Inland Waterways Trust Fund

The Inland Waterways Trust Fund was established in 1978 to provide a dedicated funding source for navigation construction and rehabilitation expenditures on a designated system of inland and intracoastal waterways, including the Mississippi River upstream from Baton Rouge, the Mississippi River's tributaries, the Gulf of Mexico and Atlantic Intracoastal Waterways, and pursuant to later legislation, the Tennessee-Tombigbee Waterway.[51]

In specified cases, 50 percent of the costs of certain projects must be paid from the General Fund. These are construction of locks and dams listed in the Water Resources Development Act of 1986, including the inland navigation portion of the Mississippi River-Gulf Outlet project (canal lock and connecting channels).

2. Harbor Maintenance Trust Fund

The Harbor Maintenance Trust Fund (the "Harbor Trust Fund") was established in the Water Resources Development Act of 1986, effective on April 1, 1987 (Code sec. 9505). The most recent amendments to the Harbor Trust Fund were enacted in the Water Resources Development Act of 1996,[52] which reauthorized, and slightly expanded, the expenditure programs of the Trust Fund. In addition to revenues equivalent to the harbor maintenance excise tax, the Harbor Trust Fund receives revenues from the United States portion of any Saint Lawrence Seaway tolls that may be imposed.

Authorized Harbor Trust Fund expenditure programs are:

(1) The commercial navigation share of operation and maintenance costs of all harbors and inland harbors within the United States;[53]

(2) Costs attributable to the portions of the Saint Lawrence Seaway that are operated and maintained by the Saint Lawrence Seaway Development Corporation;

(3) Payments of rebates and tolls or charges of the United States portion of the Saint Lawrence Seaway to payors thereof; and

(4) Up to $5 million per fiscal year of Harbor Trust Fund tax administrative costs incurred by the Department of the Treasury, the Army Corps of Engineers, and the Department of Commerce.

Examples of approved navigation operation and maintenance expenses include harbor dredging, hazardous waste removal, construction and operation and maintenance of storage facilities for dredged materials, and restoration of adjacent land areas affected by waterway operation and maintenance activities.

3. Aquatic Resources Trust Fund

The Aquatic Resources Trust Fund (the "Aquatic Trust Fund") is a dedicated funding source for Federal-State boating safety, sport

[51] The Inland Waterways Trust Fund statute was placed in the Internal Revenue Code in 1986 legislation, effective on January 1, 1987 (Code sec. 9506).

[52] P.L. 104-303, signed on October 12, 1996.

[53] As enacted in 1986, there was a limit of 40 percent of such costs allowed from the Harbor Trust Fund. This was changed to 100 percent in 1990 (sec. 316 of the Water Resources Development Act of 1990).

fish, and wetlands restoration programs. The Aquatic Trust Fund, established in 1984 as the successor to two prior special funds with similar purposes, is divided into two accounts: a Boating Safety Account and a Sport Fish Account (Code sec. 9504).

As described in Part II.C., motorboat gasoline taxes fund both the Boat Safety Account and a portion of the Sport Fish Account. The Sport Fish Account also receives substantial funding from an excise tax on sport fishing equipment (including outboard motors and certain electronic fish finding devices); the wetlands activities of the Sport Fish Account are funded entirely with revenues from the tax on gasoline used in off-highway small engines.

Boating Safety Account

The Boating Safety Account is funded exclusively with motorboat gasoline excise tax revenues. This Account receives up to $70 million per fiscal year of these revenues, but no transfers occur if the transfers would result in the balance in the Account exceeding $70 million. Two-thirds of the monies in the Boating Safety Account in any fiscal year may be spent for State boating safety programs, with the remaining one-third being available to offset operating expenses of United States Coast Guard (including the Coast Guard Auxiliary) recreational boating safety programs.[54] The types of State programs for which funding may be provided include:

(1) Providing facilities, equipment, training, supplies, and personnel for boat safety education programs and boat safety law enforcement activities;

(2) Acquiring, constructing, and repairing public access sites used primarily by recreational boaters;

(3) Conducting boat safety inspections and accident investigations;

(4) Establishing and maintaining facilities for emergency or search-and-rescue assistance; and

(5) Establishing and maintaining navigation aids.

Expenditures may be made from the Boating Safety Account through March 31, 1998.[55] Boating Safety Account appropriations have historically fallen below the maximum $70 million per year; as a result, a portion of monies that otherwise would be allocated for this purpose have been transferred to the Sport Fish Account.

Sport Fish Account

The Sport Fish Account funds Federal-State grants programs administered by the Department of the Interior for restoring and managing all species of fish that have material value in connection with sport or recreation in the marine and/or fresh waters of the United States. A sub-account of the Sport Fish Account (which receives gasoline excise tax revenues attributable to off-highway small-engine use) finances wetlands restoration activities.

The Sport Fish Account operates under a permanent appropriation Act, enacted in 1951;[56] therefore, substantially all of the monies received by the Account are spent on a current basis.

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[54] Most of the Coast Guard's budget is from General Fund revenues.
[55] See also section 13106 of Title 46, United States Code.
[56] See section 777 et seq., Title 16, United States Code.

D. Rail Transportation Expenditures

There is no Federal rail transportation trust fund. The Federal Government does provide funding, from the General Fund, for certain rail transportation activities. This includes operating assistance for the Government National Railroad Passenger Corporation ("AMTRAK"), funding for the Northeast Corridor Improvement Program and certain high-speed rail projects, and certain safety-related rail expenditures of the Federal Rail Administration.

IV. BUDGETARY TREATMENT OF TRANSPORTATION EXCISE TAX REVENUES AND TRUST FUND EXPENDITURES

A. Roles of Different Congressional Committees in Transportation Excise Taxes and Trust Fund Programs

Because most transportation excise taxes are dedicated to Trust Fund programs, extensions and modifications of the taxes frequently have been considered in conjunction with extensions and revisions of Trust Fund expenditure programs. Viewed in their totality, the excise taxes and programmatic expenditures require approval of at least three legislative components, by at least three committees in each House of Congress—the tax-writing committee, one or more authorizing committees, and the appropriations committee. The tax-writing committees ensure adequate revenues and review Trust Fund expenditure purposes; the authorizing committees consider competing transportation needs on a detailed level; and, the appropriations committees reconcile transportation spending needs with all other Federal spending needs. Historically, tax provisions and expenditure authorizations generally have been enacted as separate titles of a single Act;[57] appropriations generally have been enacted separately as part of the annual Congressional appropriations process.

Raising revenues

Imposition of excise taxes and other "revenue measures" is within the exclusive jurisdiction of the House Committee on Ways and Means (and the Senate Committee on Finance). Extension or modification of existing taxes, reinstatement of expired excise taxes, and imposition of fees and other measures which constitute revenue measures are included within this jurisdiction. (See, Rule 1(s)(3) of the rules of the House of Representatives.)

Authorizing committees may impose, or may authorize executive agencies to impose, non-tax, or true, user fees that agencies may charge for specific services they provide. There are often disagreements as to whether certain charges constitute "fees" or "taxes." These disagreements generally arise in one of three contexts: (1) determining whether there has been an unconstitutional delegation of the taxing power;[58] (2) determining whether legislation constitutes a revenue measure that must originate in the House of

[57] The 1995 extension of the Airport Trust Fund excise taxes as part of the Balanced Budget Act of 1995 (vetoed by President Clinton) and the temporary reimposition of those taxes as part of the Small Business Job Protection Act of 1996 were contained in separate legislation, in part because of the budget scorekeeping rules, described in Part IV.B.

[58] Article I, Section 8 of the U.S. Constitution includes among the enumerated powers of Congress the ". . . Power To lay and collect Taxes, Duties, Imposts, and Excises. . . ." Congress is limited in its ability to delegate legislative authority to the Executive Branch.

Representatives;[59] or (3) determining the committee assignment (including sequential committee referral) for a particular bill.[60]

In general, a true fee is a charge levied on a class that directly avails itself of a governmental program, and is used solely to finance that program rather than to finance the costs of Government generally. The amount of the fee charged to any payor generally may not exceed the costs of providing the services with respect to which the fee is charged. Fees are not imposed on the general public; there must be a reasonable connection between the payors of the fee and the agency or function receiving the fee.[61] Those paying a fee have the choice of not utilizing the governmental service or avoiding the regulated activity and thereby avoiding the charge. In other words, the fee can be viewed as a payment for a special privilege, as opposed to a mandatory charge (or tax) imposed on the public at large for general or specified (e.g., Trust Fund) governmental purposes.

Establishment of trust funds; dedication of excise tax revenues and authorization of expenditures

Transportation Trust Funds are governed by parallel provisions of the United States Code. First, the Internal Revenue Code (Title 26, sec. 9501 et. seq.) contains the operative provisions for all Federal Trust Funds to which specific excise tax revenues are dedicated. These Code provisions provide for the transfer of specified revenues to the Trust Fund, include administrative provisions for management of Trust Fund monies, and provide general or specific purposes for which Trust Fund expenditures may be made. These Trust Fund provisions are within the jurisdiction of the Committee on Ways and Means and the Committee on Finance. Amendments to these provisions generally are contained in revenue titles of combined authorization and revenue legislation.

Generally, the Trust Fund expenditure purposes included in the Code approve general expenditure purposes and cross-reference authorizing Acts which contain specific program expenditure details. On occasion, however, the tax-writing committees have addressed (either with approval or disapproval) specific expenditure purposes contemplated by authorizing legislation. Trust Fund monies may not be spent for a purpose that is not approved in the relevant Code Trust Fund provisions.

The Code transfers amounts equivalent to "gross receipts" raised by the transportation excise taxes, rather than the "net revenues"

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[59] Article I, Section 7 of the U.S. Constitution (commonly referred to as the "Origination Clause") provides that "[a]ll Bills for raising Revenue [must] originate in the House of Representatives. . . ." This prerogative of the House is enforced by a privileged motion available to any Member, commonly referred to as a "blue slip" motion.

[60] See, e.g., 137 Cong. Rec. H501 (January 15, 1991) (statement of the Speaker of the House providing guidance for the application of House Rule XXI, Clause 5(b), regarding the referral of bills.

[61] See, e.g., the Statement of Managers on the Federal Aviation Reauthorization Act of 1996, clarifying that certain fees which the FAA is authorized to charge for overflight services provided to aircraft that neither take-off nor land within the United States may "not exceed the aggregate annual direct costs incurred by the FAA in providing air traffic services to such flights." (H. Rept. 104-848, p. 110) Also, the report of the House Committee on Transportation and Infrastructure on that same legislation, to the effect that these user fees may not be based on "any non-cost based determination of the 'value' of the service provided. For example, assuming similar cost of serving different carrier and aircraft types, the FAA user fees should not vary based on factors such as aircraft seating capacity or revenues derived from passenger fares." (H. Rept. 104-714, Part 1, p. 50).

produced by those taxes, to the transportation Trust Funds. Net revenues equal approximately 75 percent of gross receipts. The concept of net revenues reflects budget scorekeeping conventions that discount excise tax revenues by the amount that income tax receipts are expected to decrease as a result of monies being removed from the private economy for payment of excise taxes.[62]

Trust Fund expenditure (but not revenue dedication) provisions also are contained in transportation titles of the United States Code. These provisions generally authorize specifically identified expenditure purposes, with accompanying dollar amounts that are authorized to be spent therefor. These provisions are within the jurisdiction of the authorizing committees: in the House, generally, the Committees on Transportation and Infrastructure, Commerce, and Science and Technology; and in the Senate, generally, the Committee on Environment and Public Works and the Committee on Commerce, Science, and Technology.

Unused cash balances in the transportation Trust Funds earn interest on investments in Government securities (Code sec. 9602). These earnings are available, as are the dedicated excise tax revenues, for expenditure from the respective Trust Funds.

Expenditure appropriations

The transportation Trust Funds provide that monies in the Trust Funds may be spent only when they are appropriated. The operative Trust Fund provisions may provide for expenditures pursuant to advance appropriations, or pursuant to authority granted to the Executive Branch to enter into contracts obligating the United States to spend amounts not exceeding legislatively prescribed maximums with actual appropriations following. Monies generally are appropriated and levels of annual permitted contract authority are established as part of the Congressional appropriations process.

[62] See, Joint Committee on Taxation, *Discussion of Revenue Estimation Methodology and Process* (JCS-14-92), August 13, 1992.

B. Budget Act Scorekeeping Rules for Transportation Excise Taxes and Trust Fund Expenditures

The Budget Enforcement Act of 1990 and related legislation (collectively the "1990 Budget Act") include two provisions that are central to the operation of the Federal transportation Trust Fund programs: an assumption that dedicated excise taxes are imposed permanently (even if statutorily they are scheduled to expire) and classification of Trust Fund spending as discretionary spending subject to aggregate annual caps that apply to all discretionary spending (both for transportation and other programs).

The effect of these rules is that under the 1990 Budget Act, there is no budget scorekeeping link between the revenues raised by the transportation excise taxes and the spending from the transportation Trust Funds. The Trust Fund balances similarly have no effect in a broader budgetary sense on the amount that can be obligated for transportation program expenditures.[63] If Trust Fund excise taxes and programs are extended and reauthorized before expiration of the taxes, generally there is neither a revenue nor a spending budget score from the legislation. Further, because transportation Trust Fund spending is classified as discretionary spending, if a dedicated excise tax is reimposed after the tax has expired (and has been removed from the CBO revenue baseline), the resulting revenue increases may be scored under the Budget Act to offset the revenue loss from enactment of other tax or direct spending provisions without affecting the Trust Fund to which the revenues are dedicated.

Treatment of dedicated excise taxes under CBO revenue baseline

The 1990 Budget Act provides that excise taxes that are dedicated to Trust Funds are assumed permanent for budget scorekeeping purposes. This means that revenues from the excise taxes are automatically included each year in the Congressional Budget Office ("CBO") and Office of Management and Budget forecast of Government receipts (the "revenue baseline"), even though the taxes may be scheduled to expire before the end of the baseline period. The CBO issues this annual baseline as part of its overall economic forecast each February; the forecast is used in developing the Congressional budget resolution. Both revenue and spending estimates are determined relative to that forecast (and the budget resolution) throughout the year.[64] As a result of their inclusion in the revenue baseline, extensions of Trust Fund excise taxes generally are *not* scored as raising revenues when the extensions are enacted. On the other hand, reductions in those excise taxes (even as part of an extension of the taxes), are scored as losing revenue.

The following examples illustrate the operation of these budget scorekeeping rules.

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[63] Unrelated to this general budgetary result, some transportation Trust Funds have internal anti-deficit provisions that limit amounts that can be authorized and appropriated *from the Trust Funds.*

[64] The CBO typically issues an update of its February forecast in August; however, because the budget resolution is based on the February baseline, revenue estimates continue to be determined by reference to the February baseline throughout the year.

Example (1).—In 1995, the Airport Trust Fund excise taxes were scheduled to expire after December 31, 1995. The taxes had been imposed since before January 1, 1995. In November 1995, when Congress passed the Balanced Budget Act of 1995 extending these excise taxes, no revenue increase was scored from the extension. This occurred because the February 1995 CBO revenue baseline, against which legislation was scored, assumed permanent imposition of these dedicated excise taxes (i.e., the scheduled expiration date was disregarded in forecasting future Government receipts).

Example (2).—The Airport Trust Fund excise taxes expired after December 31, 1995. When the CBO issued its 1996 revenue baseline, projected future receipts from the Airport Trust Fund excise taxes were deleted, and deficit forecasts were adjusted accordingly. The excise taxes were reimposed by the Small Business Job Protection Act of 1996 (the "Small Business Act") for the period August 27, 1996, through December 31, 1996. Because the Airport Trust Fund excise taxes had expired when the 1996 CBO revenue baseline was issued, no revenue from these excise taxes was included in the baseline, and thus, revenue increases were scored from their reinstatement in the Small Business Act, for the approximately four-month period during which the taxes actually were reimposed.

Example (3).—Assume the Airport Trust Fund excise taxes expire as scheduled after December 31, 1996. When the February 1997 CBO revenue baseline is issued, the Airport Trust Fund excise taxes will have expired and the baseline will not include any projected receipts from them. If Congress acts to reimpose the taxes in 1997 after the CBO baseline is issued, revenue increases will be scored for the period during which the taxes are reimposed.

Example (4).—Assume, on the other hand, that the Small Business Act had extended the Airport Trust Fund taxes through April 15, 1997. In that Act, revenue increases would have been scored for the period during which the taxes were reimposed (i.e., through April 15, 1997). In the February 1997 CBO revenue baseline, the taxes would be assumed to be in effect for the entire budget period because the taxes would have been in effect at the time the CBO baseline was issued, and as dedicated excise taxes, would be assumed permanent under the budget scorekeeping rules. If Congress before April 16, 1997, approved a further extension, or reimposed the taxes after the assumed April 15 expiration and before a new revenue baseline was issued in 1998, no revenue increases would be scored because the February 1997 CBO revenue baseline would assume permanent imposition of the taxes.

Example (5).—The Highway Trust Fund excise taxes are scheduled to expire after September 30, 1999. Assume that as part of Highway Trust Fund expenditure reauthorization legislation in 1997, Congress extends these taxes for three additional years. No additional Federal revenues would be scored from this extension because the 1997 CBO revenue baseline will reflect permanent imposition of the excise taxes under the Budget Act rule that current dedicated excise taxes are assumed permanent.

Example (6).—Assume that as part of the highway legislation described in Example (5), the Highway Trust Fund special motor fuels tax on alternative fuels is extended at a lower rate than is imposed under present law. This provision would be scored as hav-

ing a revenue loss because the CBO revenue baseline assumes the present-law taxes to be permanent. (Note that as shown by Example (4), extension of the underlying excise taxes provides no revenue increase to offset this loss.)

Trust Fund expenditures as discretionary spending

The 1990 Act divides non-defense Federal Government spending into two major categories: direct spending and discretionary spending. Direct spending is spending for which no appropriation is required (e.g., entitlements such as social security old age benefits). Discretionary spending may occur only when funds are appropriated. All discretionary spending programs must compete for a fixed pool of dollars under aggregate annual caps imposed on Federal discretionary spending. As described above, spending for the Federal transportation Trust Fund programs is classified as discretionary spending. When authorizing legislation is enacted, generally, it is not considered to be an increase in Federal spending. Rather, that spending is scored when the funds are appropriated, which occurs after competing demands of transportation and other discretionary spending programs have been reconciled within the annual caps. This spending reconciliation is independent of issues related to imposition or revenue scoring of dedicated Trust Fund excise taxes.

As described above, amounts equivalent to gross receipts from the transportation excise taxes generally are dedicated to the transportation Trust Funds under present law. Amounts in excess of net revenues produced by the transportation excise taxes may be dedicated to these Trust Funds without a budgetary effect because, as described above, there is no budget scorekeeping link between revenues raised and Trust Fund expenditures: the Trust Funds are included within the unified Federal budget, and expenditures from the Trust funds are classified by the Budget Act as discretionary spending, subject to aggregate annual caps on all such spending. If, however, expenditures from the Trust Funds were reclassified as direct spending which occurs automatically without appropriation, a budgetary shortfall could result if the amount of direct spending exceeded net revenues raised by the transportation excise taxes (e.g., was based on gross receipts from the taxes).[65] Similarly, if the transportation Trust Funds were removed from the unified budget, an increase in stated deficits could occur because actual outlay patterns from those Trust Funds typically lag behind excise tax collections. Under present law, amounts in excess of those to be spent during the current budget period (even though the amounts may be obligated for future transportation expenditures) act to reduce stated deficits.

[65] Under the budget rules, new direct spending may be offset by new revenues or reductions in existing direct spending programs. If the transportation Trust Funds were reclassified as direct spending, and received amounts equal to gross receipts from the excise taxes, a direct spending budgetary shortfall could occur if Trust Fund spending exceeded those net revenues, in which case an entitlement sequester would occur.

V. DATA ON FEDERAL TRANSPORTATION TRUST FUND AND GENERAL FUND EXPENDITURES AND TRANSPORTATION EXCISE TAX REVENUES

A. Revenue from Transportation Excise Taxes

As discussed in Part II, some of the revenues from transportation excise taxes go the General Fund of the Treasury, while most of the revenues from these taxes go to specified Trust Funds. In the case of motor fuels taxes, the same fuel generally is subject to tax both for purposes of funding a Trust Fund and for General Fund purposes. Figure 1 shows which receipts derived from the taxation of motor fuels flow to the General Fund and which receipts derived from the taxation of those fuels flow to specified Trust Funds.

Fig. 1. Flow of Funds from Transportation Fuels Taxes

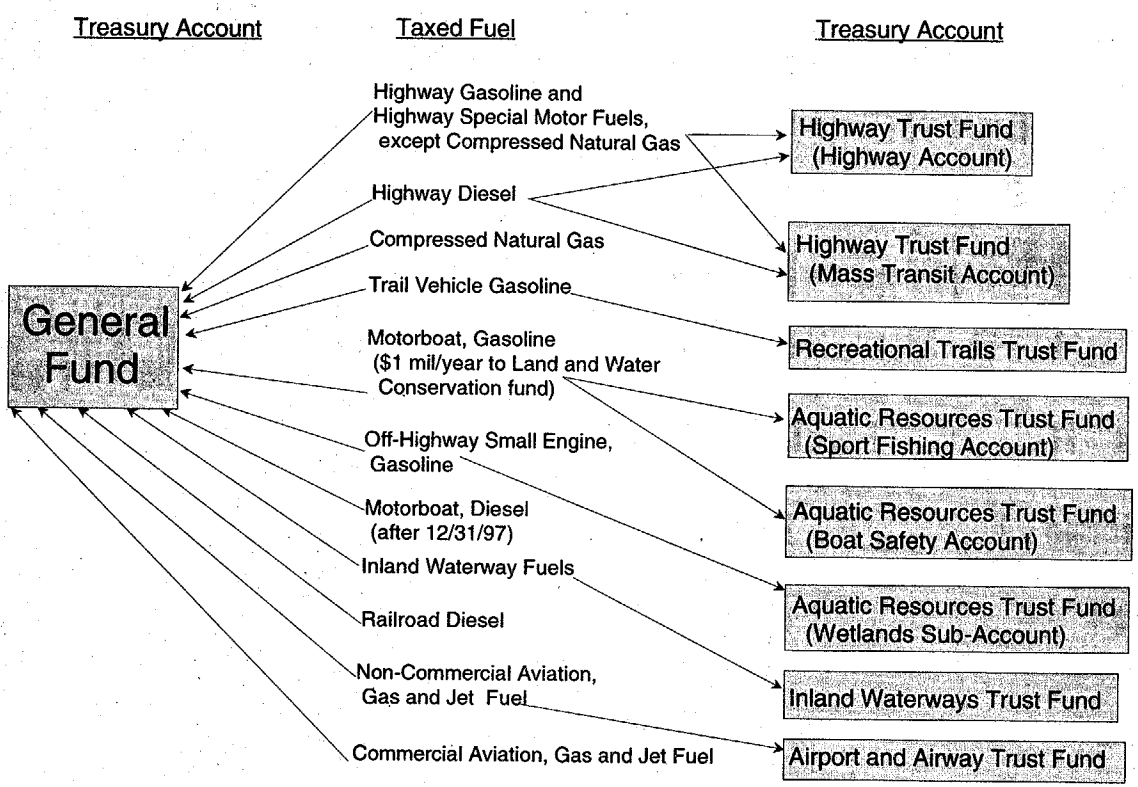


Table 3 presents data on actual and projected revenues for Fiscal Years 1993–2002, for each of the Federal transportation excise taxes described in Part II. The revenues reported in this, and subsequent tables, in a budgetary sense reflect, gross receipts rather than net revenues. (See discussion in Part IV.)

Table 3.—Federal Transportation Trust Fund and General Fund Excise Tax Revenues, Fiscal Years 1993–2002

[Millions of dollars]

Tax	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
A. Airport and Airway Taxes										
1. Airport Trust Fund Taxes:										
Air passenger ticket tax	4,316	4,748	4,928	1,189	(a)	(a)	(a)	(a)	(a)	(a)
International departure tax	224	225	256	64	(a)	(a)	(a)	(a)	(a)	(a)
Domestic air cargo tax	238	330	335	87	(a)	(a)	(a)	(a)	(a)	(a)
Noncommercial aviation, gasoline	21	27	30	3	(a)	(a)	(a)	(a)	(a)	(a)
Noncommercial aviation, other fuel	145	159	177	40	(a)	(a)	(a)	(a)	(a)	(a)
Total Airport Trust Fund taxes	**4,944**	**5,489**	**5,726**	**1,383**	(a)	(a)	(a)	(a)	(a)	(a)
2. General Fund Aviation Taxes:										
Noncommercial aviation gasoline	4	15	16	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Commercial aviation gasoline and jet fuel	0	0	0	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Total General Fund Aviation	**4**	**15**	**16**	**595**	**617**	**644**	**665**	**700**	**708**	**729**

B. Highway and Rail Taxes										
1. Highway Trust Fund taxes:										
Fuels taxes										
Gasoline	11,799	12,050	12,114	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Diesel	3,833	4,587	4,829	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Other	592	622	765	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Diesel fuel, bus use	3	1	−1	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Gasohol	526	562	744	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Special motor fuels	33	28	21	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Misc. floor stock taxes	30	31	1	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Compressed natural gas ("CNG")	0	0	0	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Subtotal, fuels taxes	**16,224**	**17,259**	**17,708**	**21,879**	**22,155**	**22,693**	**23,229**	**23,766**	**24,291**	**24,856**
Non-fuels taxes										
Trucks and trailers	1,313	1,636	2,040	1,596	1,670	1,751	1,837	1,926	2,020	2,119
Tires	319	358	390	363	365	372	381	389	397	406
Highway use tax	617	647	695	677	683	698	712	727	743	758
Subtotal, non-fuels taxes	**2,249**	**2,641**	**3,125**	**2,636**	**2,718**	**2,821**	**2,930**	**3,042**	**3,160**	**3,283**
Total Highway Trust Fund Refunds	**(525)**	**(711)**	**(1,019)**	**(852)**	**(866)**	**(886)**	**(906)**	**(927)**	**(946)**	**(968)**
Net Highway Trust Fund Taxes	**17,948**	**19,189**	**19,814**	**23,663**	**24,007**	**24,628**	**25,253**	**25,881**	**26,505**	**27,171**
2. National Recreational Trails Trust Fund Taxes:										
Nonhighway recreational fuels tax[c]	0	0	0	0	0	0	0	0	0	0

Table 3.—Federal Transportation Trust Fund and General Fund Excise Tax Revenues, Fiscal Years 1993–2002—Continued

[Millions of dollars]

Tax	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
3. Highway and Rail Taxes for the General Fund:										
Gasoline	2,630	7,301	7,345	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Highway diesel fuel	548	1,782	1,876	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Rail diesel fuel	91	193	209	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Other	319	725	870	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Diesel fuel, bus use	0	1	−1	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Gasohol	282	682	854	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Special motor fuels	7	16	13	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Misc. floor stock taxes	30	25	3	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Compressed natural gas	0	1	1	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Total Highway Taxes to the General Fund	**3,588**	**10,001**	**10,300**	**6,153**	**6,292**	**6,440**	**6,588**	**6,740**	**6,890**	**7,051**
C. Inland Waterways Fuels Taxes										
1. Trust Fund Tax	79	113	129	116	117	119	120	123	125	127
2. General Fund Tax	(d)	(d)	(d)	27	27	27	28	28	29	29
D. Harbor Maintenance Trust Fund Tax	**588**	**621**	**697**	**746**	**784**	**826**	**873**	**922**	**972**	**1,025**

E. Aquatic Resources Taxes										
1. Aquatic Resources Trust Fund Tax:										
Motorboats and small-engine gasoline	194	196	200	213	220	225	232	238	244	250
Fishing rods, reels, etc	84	86	90	101	104	107	110	113	116	120
Total Aquatic Resources Trust Fund Taxes	**278**	**282**	**290**	**314**	**324**	**332**	**342**	**351**	**360**	**370**
2. General Fund Aquatic Taxes:										
Motorboat gasoline	(e)	(e)	(e)	(e)	(e)	(e)	(e)	(e)	(e)	(e)
F. Other General Fund Transportation Taxes										
Water transportation tax on ship passengers	17	17	17	29	31	34	38	41	46	50
Motorboat diesel	(d)	(d)	(d)	41	42	43	44	17	8	8

[a] No revenues are projected currently for the Airport Trust Fund taxes, since these taxes are scheduled to expire after December 31, 1996. These taxes were expired for the period January 1, 1996–August 26, 1996.

[b] Detailed breakdown of forecast unavailable for CBO March 1996 baseline.

[c] No revenues have been transferred from the Highway Trust Fund to the National Recreational Trails Trust Fund because no appropriations have yet been made for the recreational trails program. Revenues related to nonhighway recreational vehicle fuels are included in the Highway Trust Fund revenues reported above.

[d] Information unavailable.

[e] Exact liability information is not available to the IRS. Historical and forecast amounts are included in Highway and Rail taxes for the General Fund (B.3., above).

Source: Congressional Budget Office, using IRS data and CBO March 1996 baseline projections.

B. Airport and Airway Trust Fund

Table 4 presents data on Trust Fund revenues and expenditures for the Airport Trust Fund. The table reports actual revenues and expenditures for Fiscal Years 1993–1995 and projected revenues and expenditures for Fiscal Years 1996–2002. The table also reports actual and projected end-of-year cash balances for the Trust Fund. Because of long construction periods involved with the capital expenditures financed from the Airport Trust Fund, end-of-year balances do not measure unobligated funds available for future spending. The CBO estimates that the Airport Trust Fund closed the 1996 Fiscal Year with nearly $6 billion in unpaid commitments. Table 4 reflects the scheduled December 31, 1996 expiration of the aviation excise taxes. As a consequence, assuming continued authorizations and outlays, the CBO projects that the Airport Trust Fund balance will reach zero early in the 1998 Fiscal Year.

Table 4 reports past and projected "budget authority." Budget authority is authority provided by Federal law to incur financial obligations that will result in outlays. Specific forms of budget authority include appropriations, borrowing authority, contract authority, and spending authority from offsetting collections. Contract authority is important in transportation spending as contract authority permits obligations to be incurred in advance of appropriations or receipts. Contract authority, therefore, may be unfunded. In recent years, the appropriations committees have imposed obligation limitations that limit the amount of contract authority that agencies would otherwise be able to initiate.

Table 4.—Revenues and Outlays for the Airport and Airway Trust Fund, Fiscal Year 1993–2002

[Millions of dollars]

Year	1993[a]	1994[a]	1995[a]	1996[b]	1997[b]	1998[b]	1999[b]	2000[b]	2001[b]	2002[b]
Tax Revenue	4,944	5,489	5,726	1,383	0	0	0	0	0	0
Interest Revenue	1,040	837	757	622	267	−120	−534	−978	−1,439	−1,961
Total Revenue	[c]4,302	6,082	6,291	2,000	267	−120	−534	−978	−1,439	−1,961
New Budget Authority	6,980	7,574	6,175	5,897	6,792	7,004	7,220	7,443	7,672	7,907
Outlays	6,655	6,547	7,384	6,165	6,193	6,244	6,227	6,363	6,609	6,815
End of Year Fund Balance	12,850	12,386	11,365	7,199	1,274	−5,090	−11,851	−19,192	−27,240	−36,015

[a]Data for 1993–1995 report actual tax revenues transferred to the Trust Fund as tabulated by the IRS. The data for 1993–1995 also report actual New Budget Authority and Outlays. However, the 1993–1995 figures reported for interest revenue, total revenue, budget authority, outlays, and End of Year Fund Balance are from the Office of Management and Budget as reported in past budget documents. As a result, for 1993–1995, the entry for Total Revenue is not the sum of Tax Revenue and Interest Revenue, nor is the End of Year Fund Balance equal to the sum of the prior year's fund balance plus tax revenue and interest revenue less outlays. Because the IRS must tabulate actual receipts after the close of the fiscal year, actual year end Fund balances are never reported, rather adjustments are made to future year's projected trust Fund balances and interest income.

[b]CBO projections based on March 1996 CBO baseline including projected inflation. However, there will be some additional Trust Fund revenues for 1996 and 1997 due to the temporary extension of the Trust Fund taxes (August 27, 1996–December 31, 1996) in the Small Business Job Protection Act of 1996.

[c]P.L. 102–581 transferred $1,795 million from the Airport and Airway Trust Fund to the General Fund. Hence, reported revenue for 1993 is less than the sum of tax revenue and interest. See also note (a) above.

Source: Congressional Budget Office.

C. Highway Trust Fund

Tables 5 and 6 present data on Trust Fund revenues and expenditures for the Highway Account and the Mass Transit Account of the Highway Trust Fund. The tables report actual revenues and expenditures for Fiscal Years 1993–1995 and projected revenues and expenditures for Fiscal Years 1996–2002. The tables also report actual and projected end-of-year cash balances for the two Accounts.

Tables 5 and 6 report past and projected "budget authority." Budget authority is authority provided by Federal law to incur financial obligations that will result in outlays. Specific forms of budget authority include appropriations, borrowing authority, contract authority, and spending authority from offsetting collections. Contract authority is important in transportation spending as contract authority permits obligations to be incurred in advance of appropriations or receipts. Contract authority, therefore, may be unfunded. In recent years, the appropriations committees have imposed obligation limitations that limit the amount of contract authority that agencies would otherwise be able to initiate.

As is the case for the Airport Trust Fund, it is important to recognize that because of long construction periods involved with the capital expenditures financed from these accounts that the unexpended end-of-year cash balances do not measure the amount of unobligated funds available for future spending on highway and transit projects. On the contrary, existing obligations far exceed the amounts currently in the Trust Funds. For example, CBO estimates that at the end of Fiscal Year 1996, outstanding obligations of the Highway Trust Fund totaled $36 billion, roughly twice the size of the estimated Fiscal Year 1996 end-of-year cash balance of $19 billion.[66]

The level of future obligations compared to future cash balances will depend on actions taken by authorizing and appropriations committees. Limits on spending may continue to cause certain highway authorizations to go unobligated. The CBO projection of unfunded budget authority is the sum of unpaid balances on contracts outstanding and other budget authority that has gone unobligated due to annual obligation limitations. Unfunded budget authority represents future claims against the Trust Fund. The CBO projects that the difference between unfunded budget authority and cash balances will narrow over the next six years. Nevertheless, the CBO projects that unfunded budget authority will continue to outstrip cash balances by several billion dollars in Fiscal Year 2002. (See Figure 2.)

[66] United States Congress, Congressional Budget Office, "Statement of Robert A. Sunshine, Deputy Assistant Director for Budget Analysis, Congressional Budget Office on The Highway Trust Fund," Subcommittee on Surface Transportation, Committee on Transportation and Infrastructure, U.S. House of Representatives, May 16, 1996.

Table 5.—Revenues and Outlays for the Highway Account of the Highway Trust Fund, Fiscal Year 1993–2002

[Millions of dollars]

Year	1993[a]	1994[a]	1995[a]	1996[b]	1997[b]	1998[a]	1999[b]	2000[b]	2001[b]	2002[b]
Tax Revenue	15,991	17,171	17,774	20,821	21,096	21,665	22,200	22,757	23,308	23,899
Interest Revenue	817	754	547	677	723	826	968	1,148	1,330	1,549
Total Revenue	16,864	15,414	20,967	21,498	21,819	22,491	23,168	23,905	24,638	25,448
New Budget Authority	21,477	22,499	21,429	18,362	22,610	23,364	23,695	24,155	24,632	25,112
Outlays	16,641	19,011	19,472	20,123	20,448	20,599	20,546	20,832	21,248	21,753
End of Year Fund Balance	11,523	7,927	9,421	10,796	12,167	14,059	16,682	19,754	23,144	26,839

[a] Tax revenue is net of refunds.

Data for 1993–1995 report actual tax revenues transferred to the Trust Fund as tabulated by the CBO using IRS data. The data for 1993–1995 also report actual New Budget Authority and Outlays. However, the 1993–1995 figures reported for interest revenue, total revenue, and End of Year Fund Balance correspond to CBO projections. As a result, for 1993–1995, the entry for Total Revenue is not the sum of Tax Revenue and Interest Revenue, nor is the End of Year Fund Balance equal to the sum of the of the prior year's fund balance plus tax revenue and interest revenue less outlays. Because the IRS must tabulate actual receipts after the close of the fiscal year, actual year end Trust Fund balances are never reported, rather adjustments are made to future years' projected Trust Fund balances and interest income.

[b] CBO projections based on March 1996 CBO baseline including projected inflation. Tax revenue is net of refunds.

Source: Congressional Budget Office.

Table 6.—Revenue and Outlays for the Mass Transit Account of the Highway Trust Fund, Fiscal Years 1993–2002

[Millions of dollars]

Year	1993[a]	1994[a]	1995[a]	1996[b]	1997[b]	1998[b]	1999[b]	2000[b]	2001[b]	2002[b]
Tax Revenue	1,956	2,016	2,029	2,842	2,911	2,963	3,052	3,124	3,198	3,273
Interest Revenue	743	684	621	657	647	685	736	793	839	901
Total Revenue	2,735	2,691	2,813	3,499	3,558	3,648	3,788	3,917	4,037	4,174
New Budget Authority	2,875	2,975	2,875	2,775	4,800	4,940	5,077	5,220	5,365	5,516
Outlays	1,916	3,364	3,179	3,053	3,069	2,920	2,909	2,993	3,068	3,143
End of Year Fund Balance	10,617	9,945	9,579	10,024	10,514	11,242	12,121	13,044	14,014	15,044

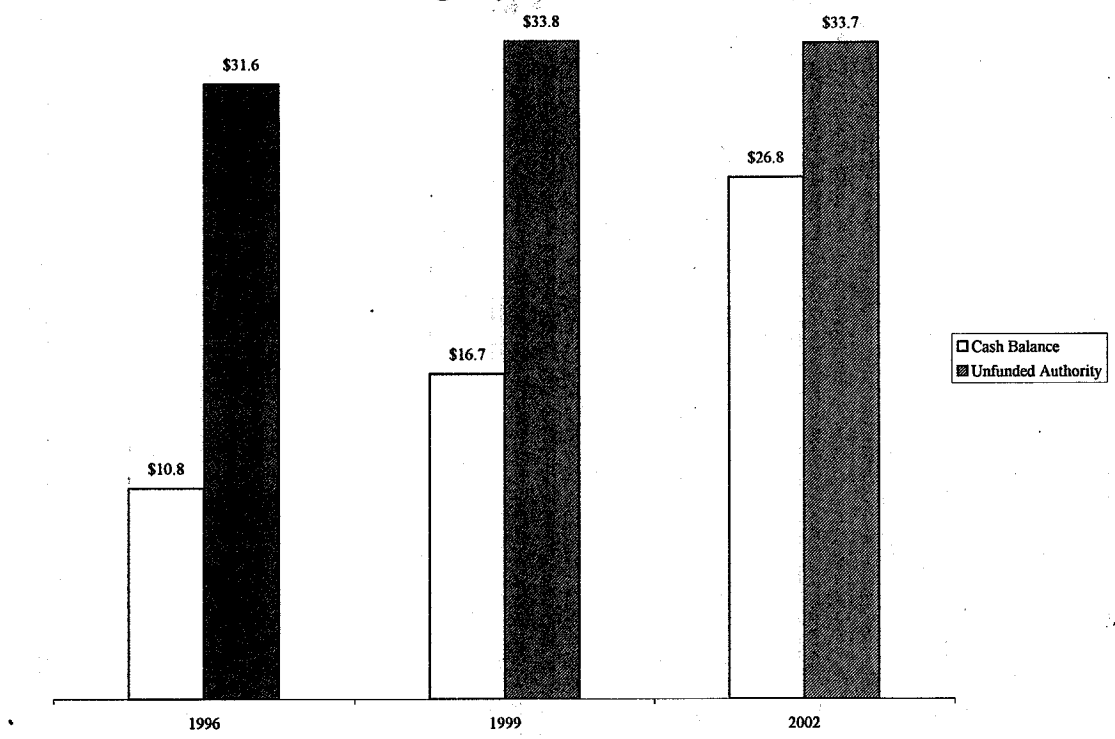
[a] Tax revenue is net of refunds.

Data for 1993–1995 report actual tax revenues transferred to the Trust Fund as tabulated by the CBO using IRS data. The data for 1993–1995 also report actual New Budget Authority and Outlays. However, the 1993–1995 figures reported for interest revenue, total revenue, and End of Year Fund Balance correspond to CBO projections. As a result, for 1993–1995, the entry for Total Revenue is not the sum of Tax Revenue and Interest Revenue, nor is the End of Year Fund Balance equal to the sum of the prior year's fund balance plus tax revenue and interest revenue less outlays. Because the IRS must tabulate actual receipts after the close of the fiscal year, actual year end Trust Fund balances are never reported, rather adjustments are made to future years' projected Trust Fund balances and interest income.

[b] CBO projections based on March 1996 CBO baseline included projected inflation. Tax revenue is net of refunds.

Source: Congressional Budget Office.

Figure 2.-- Comparison of Projected Unfunded Budget Authority and Cash Balances of the Highway Account, Selected Years (in billions)



Source: CBO 1996 Baseline Projections

D. Inland Waterways Trust Fund, Harbor Maintenance Trust Fund, and Aquatic Resources Trust Fund

The Inland Waterways Trust Fund, the Harbor Maintenance Trust Fund, and the Aquatic Resources Trust Fund are substantially smaller in scale than either the Highway Trust Fund or the Airport Trust Fund. Tables 7 and 8 present data on revenues and expenditures for the Inland Waterways and Harbor Maintenance Trust Funds, respectively. Table 7 (Inland Waterways Trust Fund) reports actual revenues and expenditures for Fiscal Years 1993–1996 and projected revenues and expenditures for Fiscal Years 1997–2002. Table 8 (Harbor Maintenance Trust Fund) reports actual revenues and expenditures for Fiscal Years 1993–1995 and projected revenues and expenditures for Fiscal Years 1996–2002. Table 9 reports comparable data for the Aquatic Resources Trust Fund. Historic data were unavailable and only projected revenues and expenditures for Fiscal Years 1996–2002 are reported in Table 9.

Tables 7, 8, and 9 report "budget authority." Budget authority is authority provided by Federal law to incur financial obligations that will result in outlays. Specific forms of budget authority include appropriations, borrowing authority, contract authority, and spending authority from offsetting collections. Contract authority is important in transportation spending as contract authority permits obligations to be incurred in advance of appropriations or receipts. Contract authority, therefore, may be unfunded. In recent years, the appropriations committees have imposed obligation limitations that limit the amount of contract authority that agencies would otherwise be able to initiate.

Table 7.—Revenue and Outlays for the Inland Waterways Trust Fund, Fiscal Years 1993–2002

[Millions of dollars]

Year	1993[a]	1994[a]	1995[a]	1996[a]	1997[b]	1998[b]	1999[b]	2000[b]	2001[b]	2002[b]
Tax Revenue	79	113	129	116	117	119	120	123	125	127
Budget Authority	88	76	55	53	55	56	58	59	61	63
Outlays From Prior Years' Budget Authority	11	51	83	28	21	0	0	0	0	0
Total Outlays	75	76	93	87	68	56	57	59	61	63

[a]The Inland Waterways Trust Fund revenue projections are net of refunds.
Data for 1993–1996 report actual tax revenues transferred to the Trust Fund as tabulated by the CBO using IRS data. The data for 1993–1996 also report actual New Budget Authority and Outlays.
[b]CBO projections based on CBO March 1996 baseline including projected inflation.

Source: Congressional Budget Office.

Table 8.—Revenue and Outlays for the Harbor Maintenance Trust Fund, Fiscal Years 1993–2002

[Millions of dollars]

Year	1993[a]	1994[a]	1995[a]	1996[b]	1997[b]	1998[b]	1999[b]	2000[b]	2001[b]	2002[b]
Tax Revenue	588	621	697	746	784	826	873	922	972	1,025
Budget Authority	466	447	521	500	517	534	552	570	588	608
Outlays From Prior Years' Budget Authority	0	0	0	0	0	0	0	0	0	0
Total Outlays	446	447	521	500	517	534	552	570	588	608

[a] Data for 1993–1995 report actual tax revenues transferred to the Trust Fund as tabulated by the CBO using IRS data. The data for 1993–1995 also report actual New Budget Authority and Outlays.

[b] CBO projections based on March 1996 CBO baseline including projected inflation. Actual revenue for fiscal year 1996 is to be reported November 15, 1996.

Source: Congressional Budget Office.

Table 9.—Revenue and Outlays for the Aquatic Resources Trust Fund, Fiscal Years 1996–2002

[Millions of dollars][a]

Year	1996	1997	1998	1999	2000	2001	2002
Tax Revenue:							
Motor fuels	214	220	226	232	238	244	251
Sport fishing equipment	101	104	107	110	113	116	120
Import duties	27	28	30	31	33	35	36
Total Tax Revenue	342	352	363	373	384	395	407
Budget Authority	344	383	390	408	418	432	447
Outlays From Prior Years' Budget Authority	176	187	218	259	271	277	288
Total Outlays	281	312	339	383	398	418	427

[a] CBO projections based on March 1996 CBO baseline including projected inflation. Actual revenue for fiscal year 1996 is to be reported November 15, 1996.

Source: Congressional Budget Office.

E. National Railroad Passenger Corporation (AMTRAK)

Table 10 presents data on budget authority and outlays related to the National Railroad Passenger Corporation ("AMTRAK"), which is financed with General Fund appropriations.

Table 10.—Budget Authority and Outlays Related to the National Railroad Passenger Corporation (AMTRAK), Fiscal Years 1996–2002

[Millions of dollars]

Year	1996[a]	1997[a]	1998[a]	1999[a]	2000[a]	2001[a]	2002[a]
Grants for Operations:							
Budget Authority	305	314	323	332	342	351	361
Total Outlays	305	314	323	332	342	351	361
Appropriations for Capital Expenditures:							
Budget Authority	215	221	228	234	241	247	255
Total Outlays	220	251	224	230	238	243	251
Other Appropriations:[b]							
Budget Authority	115	118	122	125	129	132	136
Total Outlays	83	106	121	124	127	132	135
Totals:							
Budget Authority	635	653	673	691	712	730	752
Total Outlays	608	671	668	686	707	726	747

[a] CBO projections based on March 1996 CBO baseline including projected inflation.
[b] Includes transfers to AMTRAK from other accounts and special transition assistance.

Source: Congressional Budget Office.

F. Total Federal Transportation-Related Outlays Compared to Trust Fund Outlays

In fiscal year 1995, Federal outlays for transportation, both outlays charged to a Trust Fund and those outlays charged to the General Fund, totaled $39.4 billion.[67] Figure 3 shows the distribution of those outlays by type of transportation.[68] Figure 3 shows that approximately 50 percent of Federal transportation outlays go to highway transportation, 25 percent to air transportation, 11 percent to mass transit, 10 percent to water transportation, and three percent to rail transportation. Figure 3 may understate Federal outlays related to water transportation. Figure 3 is based on the outlays reported by the Office of Management and Budget ("OMB") by function.[69] The OMB reports under a different function certain expenditures of the Army Corps of Engineers. Some of these expenditures may serve multiple purposes. For example, improvements to locks and dams may improve both flood control and inland waterway shipping.[70]

As reported in Tables 4–8, in Fiscal Year 1995, Federal outlays for transportation from Trust Funds totaled $30.6 billion. Figure 4 shows the distribution of those outlays by type of transportation. Figure 4 shows that approximately 64 percent of Trust Fund outlays go to highway transportation, 24 percent to air transportation, 10 percent to mass transit, and two percent to water transportation. Approximately 78 percent of total Federal transportation outlays in Fiscal Year 1995 were Trust Fund related. However, the distribution of Trust Fund based outlays as a percentage of total outlays differs by transportation sector. Figure 5 compares total outlays to Trust Fund outlays for each mode of transportation. Figure 5 shows that for Fiscal Year 1995, 98 percent of highway outlays were outlays from the Highway Trust Fund; 74 percent of air transportation outlays were from the Airport and Airways Trust Fund; 71 percent of mass transit outlays were from the Highway Trust Fund; and 16 percent of water transportation outlays were from the Harbor Maintenance and Inland Waterways Trust Funds.

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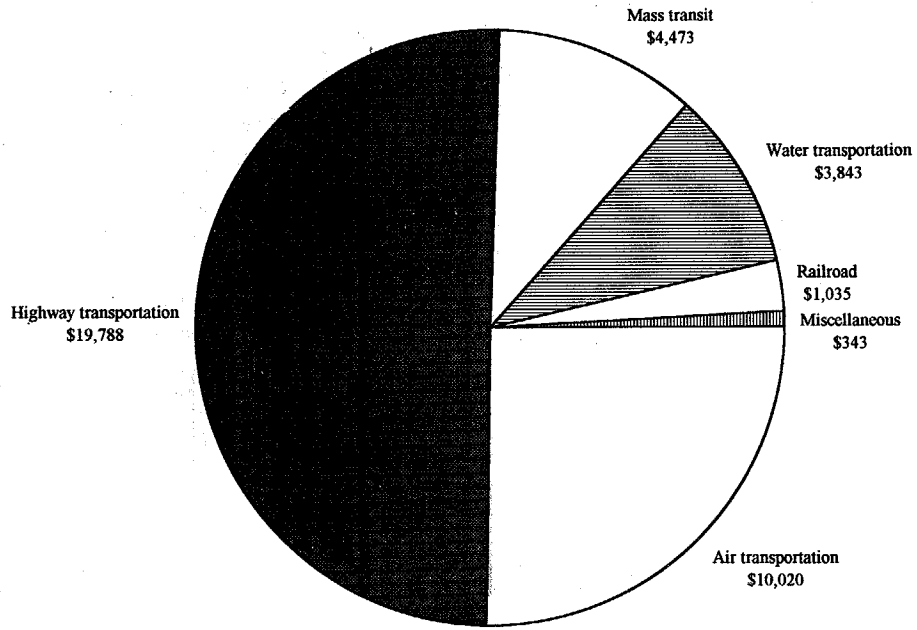
[67] Office of Management and Budget, Executive Office of the President, *Budget of the United States Government, Fiscal Year 1997, Analytical Perspectives*, p. 246.

[68] *Ibid.*, pp. 245–246. In constructing Figure 3, certain outlays and offsetting receipts are not reported. In particular, the Figure does not allocate either the $37 million in outlays charged to regulation of "ground transportation" or the $36 million in offsetting receipts collected from "ground transportation" against any of the highway, mass transit, or railroad categories. Nor does the Figure include the $47 million in receipts net of outlays of the Panama Canal Commission, the $64 million in water transportation offsetting receipts, or the $42 million in miscellaneous offsetting receipts.

[69] Transportation is Function Code 400.

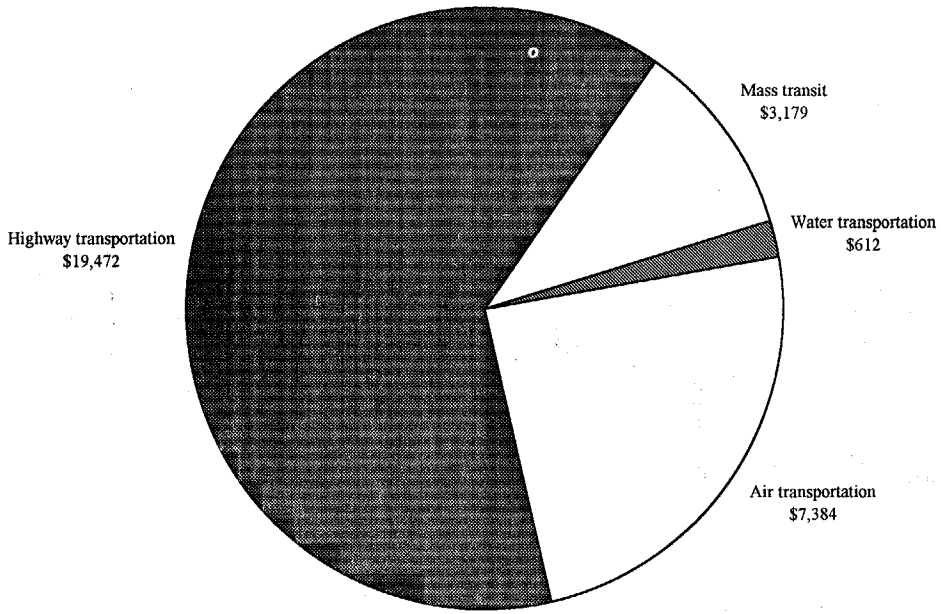
[70] The U.S. Army Corps of Engineers ("USACE") estimates that in fiscal 1995, the USACE spent $87 million on inland waterways construction projects out of the USACE Construction, General Account; $277 million on navigation construction projects out the USACE Construction, General Account; and $490 million on operating and maintaining inland waterways out of the USACE Operations and Maintenance Account.

Figure 3.-- Federal Government Outlays for Transportation, Fiscal 1995
(millions of dollars)



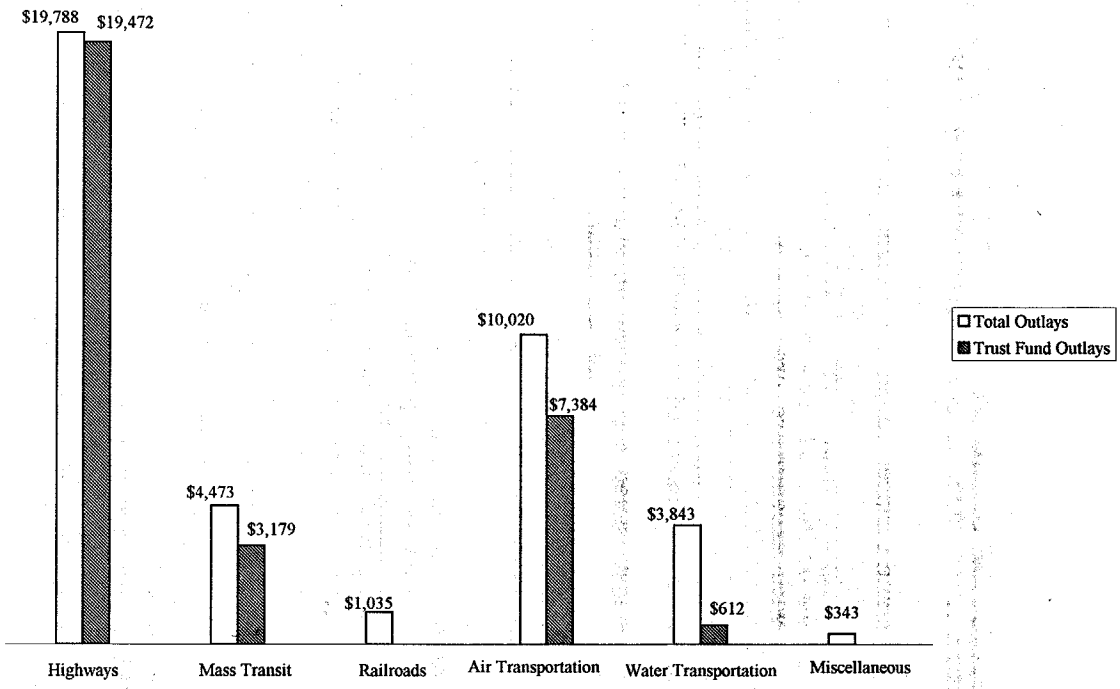
Source: Office of Management and Budget, Budget of the United States Government, Fiscal Year 1997, Analytical Perspectives.

Figure 4.-- Federal Transportation Trust Fund Outlays, Fiscal 1995 (millions of dollars)



Source: See Tables 4 - 8.

Figure 5.--Total Federal Transportation Outlays and Trust Fund Outlays by Function, Fiscal Years 1995 (millions of dollars)



Source: See Tables 4-8 and Figure 3.

VI. STATUS OF CURRENT DEPARTMENT OF TRANSPORTATION AVIATION AND HIGHWAY COST ALLOCATION STUDIES

The goods and services subject to transportation excise taxes and tax rates of certain of these taxes have been influenced by cost allocation studies by the Department of Transportation. Past cost allocation studies by the DOT have reviewed the costs expected to be associated with expenditure programs of a transportation Trust Fund administered by that Department and have assigned those costs (pursuant to a methodology developed by DOT) to the different segments (e.g., automobile v. truck drivers) of the transportation sector that is expected to benefit from the Trust Fund programs.

The DOT last issued cost allocation studies in 1992 (aviation) and 1982 (highway). During the past year, the DOT through the FAA and the Federal Highway Administration ("FHwA") has been engaged in comprehensive updates of the 1992 and 1982 studies. To date, neither of the updated studies has been issued. The submissions from the FAA and FHwA, reproduced below, provide a status report on these cost study update efforts.

In addition to these studies by the DOT, the Federal Aviation Reauthorization Act of 1996 provided for the establishment of an independent Commission (comprised of appointees of the President and the leadership of both the House and Senate) to review the programmatic needs of the FAA and possible funding options to meet those needs. The Commission's report may include recommendations on modifications to the Airport Trust Fund excise tax structure or a recommendation that a user fee system be established. The Commission's work on FAA funding is to include review of an independent cost assessment of FAA activities which is to be completed within 90 days after a contract being awarded for the assessment. (The FAA was directed to award a contract for this assessment within 30 days of enactment of the 1996 reauthorization Act.) The Secretary of Transportation must report to the Congress on the Commission's findings no later than one year after enactment of the reauthorization Act (i.e., no later than October 9, 1997).

A. Airport and Airway Trust Fund

The following progress report on its cost allocation work was received from the FAA on October 31, 1996.

FAA COST ALLOCATION WHITE PAPER

In 1995, the Federal Aviation Administration (FAA) contracted with GRA Associates to conduct a study of FY 1995 FAA program costs and user cost responsibility (FY95CAS). Information was to be developed for the cost of services provided by FAA to aviation

users. An initial assignment of total annual FAA cost was to be made to each of the lines of business, incremental costs of services were to be estimated, and incremental cost plus a share of common and fixed cost were to be allocated to user categories. The FAA received draft material from the contractor during 1995 and 1996, which has never been formally approved or fully reviewed by senior management.

As the FY95CAS was being completed in the late summer of 1996, Congress passed the Federal Aviation Authorization Act of 1996 and it was signed into law by President Clinton on October 8. Section 274 of the 1996 authorization act directs the FAA to "contract with an entity independent of the Administration...to conduct a complete independent assessment of the financial requirements of the Administration..." and ..."also assess the costs to the Administration occasioned by the provision of services to each segment of the aviation system." Instructions in related committee and conference reports suggest that the FAA should not employ any company with which it has current contracts to conduct these assessments. Instead, the law requires a new contract to be awarded 30 days after enactment and the studies to be completed in 90 days after contract award. Thus, Congress has issued a specific requirement for preparation of a new aviation cost allocation study and the almost complete FY95CAS does not fulfill these requirements.

Some of the significant issues involved in developing a cost allocation include:

1. Determination of public benefit—prior cost allocations have generally attributed costs entirely to aviation users;
2. Methodology or economic assumptions for distribution of fixed/common costs to users;
3. Whether costs should be limited only to services the FAA provides, excluding services provided to civil aviation users or other government agencies including DOD;
4. How to account for F&E obligations in cost allocation—expensed versus capitalized and depreciated; and
5. Whether cost responsibility should be based on a historical or a projected basis.

The "independent" cost allocation required by the new FAA authority law will be underway in early November with results available by mid February 1997. Given that results from this congressionally-directed study will be available relatively soon, I suggest that these results be used by the Committee on Ways and Means and the Joint Tax Committee in evaluating the requirements for future aviation taxes or user charges.

In the meantime, we would be happy to discuss prior cost allocations and some of the significant issues involved in allocating costs of services to users. We are also providing you with a study on current fees collected by the agency. We look forward to working with you on this project which is critical to aviation safety and efficiency.

B. Highway Trust Fund

The following progress report on its cost allocation work was received from the FHwA on November 4, 1996.

STATUS OF FEDERAL HIGHWAY COST ALLOCATION STUDY

Background

The Federal Highway Administration (FHwA) is conducting a highway cost allocation study (HCAS) to evaluate the responsibility of different highway users for highway-related costs and assess the extent to which fees paid by those users cover costs they occasion. It has been 14 years since the last Federal highway cost allocation study. A Notice published in the *Federal Register* on February 10, 1995 summarized the highway cost allocation study work plan and requested comments on the study.

The HCAS is being done in conjunction with a comprehensive truck size and weight study that FHwA is conducting in cooperation with other agencies within the Department of Transportation. The cost allocation study is an essential complement to the truck size and weight study and information developed for the cost allocation study will be directly used in assessing impacts of truck size and weight policy options. Infrastructure impacts and potential user fee implications of truck size and weight policy options will be estimated using analytical tools developed for the highway cost allocation study. Estimates of external costs associated with truck size and weight policy options will also be based on cost allocation study results.

Study Issues

Important highway cost allocation study issues include (1) the responsibility of different vehicle classes for highway program costs paid from the Highway Trust Fund; (2) the incidence and magnitude of external costs of highway use and operation; (3) the equity of the Federal highway user fee structure; (4) allocation of multimodal investment costs to highway users; (5) marginal costs of highway use; (6) potential ways to improve the equity and economic efficiency of highway user fees, and (7) highway user fee equity for all levels of government.

Activities to Date

Two workshops have been conducted in connection with the highway cost allocation study. A workshop in October 1994 discussed emerging issues that should be analyzed in the highway cost allocation study. Another workshop held in December 1995 reported on the study's status and provided an opportunity for interested groups to comment on study issues.

The Transportation Research Board (TRB) has formed a peer review committee to evaluate the technical approach being used to address various study issues. The peer review committee, which is made up of State transportation agency officials, academics, and other private sector experts, has held four meetings to date. Technical subcommittees have been established to review in detail research being conducted in key study areas.

Significant contract research was conducted in the following areas:

1. Estimate the travel and operating weight distributions for different vehicle classes;
2. Improve pavement cost allocation methods to better reflect the contribution of different vehicle classes operating at different weights to pavement deterioration;
3. Life-cycle cost analysis for pavement cost allocation and the implications for highway cost responsibility of improved investment decisions based upon life cycle cost analysis;
4. Improvements to bridge cost allocation methods;
5. Allocation of costs for various highway design features;
6. Research on external and other non-agency costs for highway cost allocation including air pollution, safety, congestion, and noise;
7. Multimodal cost allocation techniques including the development of a philosophy and procedures to allocate transit costs among different highway users;
8. Highway cost allocation/pricing for all levels of government;
9. Policy framework for cost allocation.

Previous Federal and State highway cost allocation studies have focused considerable attention on analyzing the responsibility of different vehicle classes for pavement, bridge, and other infrastructure-related costs borne by highway agencies. Methods for attributing costs to different vehicle classes have evolved over time, but generally have followed a "cost-occasioned" philosophy. Engineering and economic studies have been conducted to estimate the extent to which various vehicle classes contribute to highway costs because of their weight, axle loadings, width, length, or other physical or operational characteristics. For instance, a vast body of research has demonstrated the relationship between axle loads and pavement wear. Heavy axle loadings contribute significantly to costs for rehabilitating and reconstructing pavements, and anticipated axle loadings also are major factors influencing the design thickness of new pavements. Likewise, research has been conducted to allow costs for other types of highway improvements to be assigned to different vehicle classes based on characteristics of each vehicle class that influence costs.

The current HCAS will continue to use a cost-occasioned approach in analyzing highway agency costs. Federal costs will consist of obligations from both the Highway and Mass Transit Accounts of the Highway Trust Fund, which are supported by Federal highway user fees including (1) fuel taxes; (2) a 12% vehicle excise tax on the sale of new trucks over certain weights, (3) a Federal tire tax at various rates graduated by tire weight, and (4) an annual Heavy Vehicle Use Tax on vehicles with registered weights of 55,000 pounds or more. Improvements are being made to many of the specific procedures used in the 1982 study to take advantage of improved data on characteristics of travel by different vehicle classes and improved understanding of factors responsible for different highway improvement costs.

An important new element of the current cost allocation study is the allocation of mass transit costs paid from the Highway Trust

Fund. Inconsequential amounts of Highway Trust Funds were used for transit purposes in 1982 and mass transit costs were not analyzed separately in the 1982 study. Currently the equivalent of 2 cents per gallon of Federal fuel taxes is deposited in the Mass Transit Account of the Highway Trust Fund for use on transit improvements, and substantial sums from the Highway Account are also expended for mass transit purposes. These mass transit expenditures are included in the highway cost allocation study and techniques have been developed to allocate them to various highway users.

Examination of environmental and other costs that are not borne by highway agencies is another important part of the study. Total highway-related costs for safety, air pollution, congestion, and noise are estimated along with the marginal costs of highway use by different configurations. These costs are used along with allocations of agency costs to evaluate both the equity and efficiency of highway user fees.

Preliminary results of the cost allocation study are being reviewed and the final report is being prepared. After the study report has been released, highway cost allocation data and methods for use by the States will be developed based upon Federal highway cost allocation methods. This effort will be coordinated through committees of the American Association of State Highway and Transportation Officials.

VII. ISSUES RELATING TO TRANSPORTATION EXCISE TAXES AND THE PROVISION OF TRANSPORTATION SERVICES

A. Overview

Effect on Congressional oversight and Committee roles

Since 1956 (for highways) and 1970 (for aviation), Federal transportation spending (and the financing therefor) has been provided largely through Trust Funds financed with dedicated excise taxes. Previously, General Fund financing and appropriated expenditures were used to deliver the Federal contribution to these programs. Currently, and in large part because of spending constraints related to Congressional budgetary decisions to reduce Federal deficits, numerous proposals have been advanced to modify this structure: (1) privatizing Federal transportation programs (and funding for those programs) in Federally chartered entities; (2) returning some or all of the expenditure program (and required financing) responsibility to the States; (3) reclassifying current Federal spending from discretionary spending to direct (entitlement) spending, or (4) removing Trust Fund spending from budget deficit calculations (i.e., taking the Trust Funds "off budget").

As described in Part IV.A., the present system of financing transportation programs and delivering services requires action by at least three Congressional committees in each of the House and Senate. Each of the committees that currently has oversight responsibility has a distinct role in ensuring the effectiveness of these Federal programs. The oversight roles of these respective committees are affected significantly by the various proposals to change either the financing of or spending for these programs.

Tax design

In current discussions of transportation excise taxes and the provision of transportation services, much emphasis is placed on "cost allocation." Cost allocation refers to attempts to divide the total Government costs incurred in the provision of a service across all beneficiaries of that service. Thus, cost allocation is a method of deciding how Government cost recovery will be obtained. Recovery of costs is one factor that policy makers examine when determining the merits of undertaking certain transportation infrastructure projects or when contemplating imposing excise taxes on the transportation industry.

Tax proposals generally are judged in terms of efficiency, equity, and administrability. An outcome is considered economically *efficient* if it produces the greatest benefit from a given amount of resources. When a tax is used in lieu of price in the provision of a service, efficient use of resources is assured if the tax is equal to the incremental, or marginal, cost of providing the service. *Equity*

involves an assessment of the "fairness" of a tax. To determine fairness it is necessary to look beyond the statutory incidence of a tax to its economic incidence, or market effect. When analyzing taxes earmarked for specific Government expenditures, some suggest that the benefit principle is an equitable basis of taxation and others suggest cost recovery or cost allocation is an equitable basis of taxation. *Administrability* involves an assessment of the expense to the Government and the taxpayer of collecting the tax imposed. In assessing a tax, tradeoffs must be made among the three goals. Rarely is a tax that is deemed most equitable the most efficient or most administrable tax. Likewise, the most administrable tax may not be the most efficient or most equitable.

Effect of transportation excise taxes on the market for transportation services

The design of a system of transportation excise taxes can be expected to affect the market for transportation. The present-law transportation excise taxes generally are imposed on the inputs of transportation service providers (e.g., taxes on fuels or equipment) or are imposed on the purchase of the transportation service (e.g., the air transportation excise taxes). In either case, it generally is assumed that market forces will cause the burden of these excise taxes to flow through to consumers. Thus, the present-law excise taxes may be expected to alter the prices that individuals pay for transportation services.

The tax burdens imposed may cause consumers to choose one mode of transportation over another mode. Thus, if an excise tax is imposed on one sector of the transportation industry (e.g., highway) at a higher rate than on another sector with which that sector competes (e.g., rail or aviation), consumers may find it more cost effective to ship by rail than by truck or travel by airplane rather than by rail, automobile, or bus. The analysis is complicated by present-law expenditure policy that ties the Federal Government's provision of certain services (e.g., highway maintenance) to specific taxes collected. For example, under present law, the highway transportation excise taxes generally are dedicated to road construction and maintenance, services that are used by highway users, while rail transportation, which is subject to lower transportation excise taxes, receives relatively few Government-provided services.

Similar questions arise within an industry sector. For example, the current domestic air passenger transportation excise tax is imposed on the value of the ticket. The revenues from this excise tax generally are used to fund FAA operations, airport grants and airway facilities, and equipment. As a consequence of the *ad valorem* character of the tax, a traveler flying first class will pay more in tax than a traveler flying coach on the same flight, despite the fact that all travelers on a plane receive the same services from the FAA. A recent proposal by a group of seven major commercial air carriers would convert the present-law *ad valorem* air passenger transportation excise tax into three taxes with rates set at flat amounts based on three factors: revenue passengers, seats filled, and mileage. Such a change would involve substantially greater administrative cost for the airlines and the IRS than does the

present-law tax. However, depending on how the tax factors (e.g., mileage) were measured, the system might more appropriately assign costs of FAA services to air travelers if it more closely approximated the marginal costs of services provided by the FAA. The tax burden across different segments of the flying public would change, however, if the excise tax system were changed.

B. Impact of Excise Tax and Expenditure Program Structure on the Role of Congress Generally and on the Jurisdiction of Congressional Committees Specifically

In general

As discussed in the preceding parts of this document, most present Federal transportation expenditure programs are administered through Trust Funds to which revenues from excise taxes imposed on the transportation sector using the goods and services provided through the Trust Fund programs are dedicated. Use of this structure generally can be traced to periods when the affected industry was at a stage of development which was judged to require a significant infusion of Federal resources. For example, the Highway Trust Fund was established in 1956 to promote development of an efficient national highway transportation system (e.g., the interstate system). Other Trust Fund programs have been established because of similar desires to coordinate more closely Federal spending and expenditure policy for a transportation sector, in most cases because of a perceived need for an increased infusion of Federal resources. In general, before these special needs were identified for a transportation sector, at least some Federal programs funded with General Fund appropriations existed for the sector, although in some cases (e.g., highway construction and maintenance) the respective roles of the Federal Government and State and local governments were considerably different than they are today.

The various transportation sectors have changed significantly in many cases from what existed when the Trust Fund/dedicated excise tax system was adopted. For example, construction of the Interstate Highway System is now complete, and Highway Trust Fund expenditure programs focus more on highway maintenance and alternative transportation means, such as mass transit, which are seen as reducing highway use burdens and addressing environmental concerns or broader societal needs (e.g., transportation for lower-income urban residents). Similarly, the Airport Trust Fund was created in 1970 when air travel equipment, facilities, and services, as well as the degree and type of Government regulation of that sector, were very different than they are today.

In addition to changes in the transportation sectors benefiting from these Federal programs, the Federal budgetary situation has changed during in recent years. Since 1982, Federal Government deficit spending has become a major concern. Attempts to control deficit spending have led to the enactment of laws that have affected in major ways the operation and funding of transportation Trust Funds created before these deficit concerns arose. While the Trust Fund structure and revenue dedication remain in place, the deficit control measures that have been enacted have resulted in the transportation Trust Funds becoming in budgetary substance, if not in legal form, more similar to General Fund expenditure programs. Sector-specific excise taxes continue to be imposed with the revenues being dedicated to Trust Funds, and program expenditures from the Trust Funds are authorized, but overall Federal deficit reduction spending targets set actual transportation expenditure levels through the budget process. Stated differently, Trust

Fund expenditures are not automatic or linked to the dedicated excise taxes, but are subject to the same appropriations process as other Federal discretionary spending.

Some proponents of higher transportation spending levels have argued that the deficit reduction spending targets have caused surpluses to accumulate in the Trust Funds. These persons suggest that because the Trust Funds are financed with dedicated sector-specific excise taxes, expenditure levels should be determined based on the amount of revenues collected without regard to overall Federal budget deficit concerns. Discussions of Trust Fund surpluses commonly surface, for example, when the tax-writing committees review the adequacy of Trust Fund revenues as part of extending Trust Fund excise tax rates that are scheduled to expire or when authorizing committees seek higher expenditure levels than the appropriations committees are willing to approve. Claims regarding Trust Fund surpluses generally fail to take into account two important factors. First, actual transportation expenditures lag behind obligations for such spending. Whether a Trust Fund has a surplus should be measured by reference to total obligated spending because ultimately amounts will need to be disbursed to satisfy those obligations. For example, as noted in Part V.C., the CBO estimates that at the end of fiscal year 1996, outstanding Highway Trust Fund obligations totaled $36 billion, or almost two times the size of the estimated end-of-year cash balance of $19 billion.[71] Further, the CBO estimates that the excess of obligations over cash balances will continue throughout the next six years. Thus, claimed surpluses could be viewed as representing cash held in reserve for future satisfaction of existing obligations. Second, as described in Part IV.A., gross receipts from the transportation excise taxes, rather than net revenues, generally are dedicated to the Trust Funds. Even if Trust Fund balances were to exceed future obligations, the surplus might be viewed as an amount attributable to reduced general income tax revenues instead of sector-specific user taxes.

Approaches to modify Federal transportation spending and financing

The combined effect of changes in the transportation industry since the Trust Fund structure was enacted, the Federal budget rules designed to reduce deficit spending, and claims of Trust Fund surpluses, have led to numerous proposals for modifications to or elimination of the current structure of Trust Fund programs and excise taxes. The following are examples of the proposals that have been discussed to modify the way in which the Federal role in transportation spending is managed: (1) privatizing the programs in Federally chartered entities; (2) returning some or all of the expenditure program responsibility to the States; (3) reclassifying current Federal spending from discretionary spending to direct spending, or (4) removing Trust Fund spending from budget deficit calculations (i.e., taking the Trust Funds "off budget"). Proposals to restructure the current excise taxes, or to substitute either privately or Federally imposed "fees" for those taxes, have been ad-

[71] See footnote 66, *supra*.

vanced in conjunction with several of the proposals to restructure the transportation expenditure programs. Most of these proposals are intended to increase transportation spending. Any of these options could be combined with at least a partial return to General Fund financing and program management in lieu of some or all of the current Trust Fund and dedicated tax structure.

As described in Part IV.A., the current system of financing and administering transportation programs requires action by at least three Congressional committees in each of the House and Senate. Each of the committees that currently has oversight responsibility has a distinct role in ensuring the effectiveness of these Federal programs. The current oversight roles of Congressional committees are affected significantly by the various proposals to change either the financing of, or spending for, these programs.

Privatization

Complete privatization of a program would eliminate (or significantly reduce) the roles not only of the committees that currently oversee the programs, but also that of the Congress as a whole. For example, some have suggested that the FAA be converted into a private entity similar to the Postal Service. As a private corporation, the FAA could be exempt from procurement and employment rules unique to the Federal Government and could price and sell its services like other private businesses. Such a restructuring would eliminate the current aviation oversight role of the tax-writing committees and (assuming no Federal General Fund monies were appropriated to subsidize FAA operations) the role of the appropriations committees as well. The only remaining committee oversight responsibility would be that of the authorizing committees, reduced to reflect any decreased Federal involvement in the management and operation of the private corporation. A truly private entity would eliminate even this committee oversight role.

Return responsibilities to the States

Proposals have been made in both Houses of Congress to return substantial components of highway transportation responsibility to the States.[72] These proposals would retain Federal responsibility for limited "core functions" that would be financed with the current fuels excise taxes, imposed at reduced rates. Enactment of a proposal similar to this would retain the division of oversight and funding responsibilities among Congressional committees and that of the Congress as a whole, but the scope of those responsibilities would be reduced to reflect the reduced Federal role in providing highway transportation services.

Modify Budget Act treatment of programs

Maintaining the current transportation Trust Fund program and excise tax structure while reclassifying transportation spending as direct spending under the Budget Act would eliminate the current role of the appropriations committees. Further, unless the amount of the new direct spending were restricted to the amount of net

[72] See, e.g., H.R. 3840 (Mr. Kasich and others) and S. 1971 (Senator Mack and others), both introduced in the 104th Congress.

revenues raised by the Trust Fund excise taxes, such a reclassification of transportation program spending would raise important issues related to levels of spending for other direct spending programs within the jurisdiction of the tax-writing committees (e.g., social security old age benefits and Medicare expenditures).

Alternatively, taking the transportation Trust Fund expenditure programs off-budget would significantly reduce the role of the appropriations committees by curtailing the requirement that they reconcile transportation spending needs with needs of other Federal programs, all within an aggregate permitted spending level. Similarly, if the transportation excise tax revenues were taken off-budget, stated deficits would increase, requiring either that the budget committees recommend to the Congress adoption of higher permitted deficit levels, imposition of increased taxes, or reductions in other Federal spending

While reducing the roles of some committees, proposed changes such as these could increase the responsibility and control over programs of other committees. For example, a Federal transportation program provided through Federal direct (or off-budget) spending and financed entirely with true user fees could consolidate all Congressional committee oversight of the program into the current authorizing committees.

Modify financing structure

A financing change from excise taxes to non-tax, or true, user fees could eliminate the role of the House Committee on Ways and Means and the Senate Committee on Finance in overseeing transportation programs. A suggestion of such a result is seen in a June 1996 aviation funding proposal by a group of seven major commercial air carriers. That proposal would have converted the present *ad valorem* domestic air passenger transportation excise tax to a system of three "user fees" imposed by the FAA in conjunction with the Congressional authorizing committees, thereby eliminating the role of the tax-writing committees in setting funding levels and expenditure purposes for Federal aviation programs.[73] If such a proposal were adopted and these proposed fees were found to be true user fees, the oversight roles of both the appropriations and tax-writing committees could be eliminated, with the result that all Congressional committee oversight would be vested in the authorizing committees.

This "user fee" proposal illustrates some of the complexity of the legal and jurisdictional issues that arise when proposals are advanced to impose "fees" which in substance are tax or revenue measures. As described above, taxes and other revenue measures are within the exclusive jurisdiction of the tax-writing committees and imposition of such measures must be contained in legislation that originates in the House of Representatives. One the three proposed airline "fees" was a per-mile charge set by reference to miles that would have been flown had a passenger traveled directly from his or her origination point to the final destination point shown on the passenger's ticket, regardless of the actual flight route taken.

[73] See, "Air Traffic Control User Fees, A Proposal by the Coalition for Fair FAA Funding," June 7, 1996.

That calculation would ignore the additional costs imposed on the air traffic control system by multiple take-offs and landings for one flight in the case of so-called hub-and-spoke airlines.

On the other hand, passengers whose travel arrangements included a stop between travel segments and passengers traveling on "point-to-point" airlines (which require separate ticketing for each segment of a flight) and would be required to pay for each take-off and landing they actually made. The resulting different fees for the same services, costing the Government the same amount to provide, as well as a number of other features of the overall proposal cause these proposed "fees" to be viewed more properly as "taxes" or "revenue measures" when judged by established standards. If such a system of "fees" were adopted by a House authorizing committee, the House Committee on Ways and Means could assert jurisdiction over the measure. If the "fees" originated in Senate authorizing legislation, not only could the Senate Committee on Finance assert its jurisdiction, but the House, when the legislation was returned to it (e.g., with a request for conference), could "blue slip," or reject, the legislation as an unconstitutional infringement of the prerogative of the House to originate revenue measures.[74]

[74] The proponents of the proposal since have agreed informally to modify the "fee" system into a proposal for an alternative method of calculating the excise tax on domestic air passenger transportation.

C. Issues Arising in the Design of Excise Taxes Dedicated to Trust Funds: Efficiency, Equity, and Administrability

Criteria for assessing transportation excise taxes

As described above, cost allocation or recovery of costs is one factor that policymakers examine when determining the merits of undertaking certain transportation infrastructure projects or when contemplating imposing excise taxes on the transportation industry. Analysts generally judge a tax more broadly in terms of efficiency, equity, and administrability. *Efficiency* involves an assessment regarding the benefit or well-being received from the utilization of its scarce resources. Policies that distort consumer choice generally are said to reduce society's well-being. *Equity* involves an assessment of the "fairness" of a tax. Generally two standards are applied: horizontal equity and vertical equity. Horizontal equity involves whether equivalently situated individuals are treated equivalently. Vertical equity involves the extent to which individuals in different economic circumstances, generally measured in terms of individual well-being, are treated differently. *Administrability* involves an assessment of the expense to the Government and the taxpayer of collecting the tax imposed. In evaluating tax proposals, tradeoffs must be made among the three goals. Rarely is a tax that is deemed most equitable the most efficient or most administrable tax. Likewise the most administrable tax may not be the most efficient or most equitable. The discussion below separately considers general issues of efficiency and equity that may be relevant in analyzing transportation excise taxes. While issues of administrability cannot adequately be addressed in the absence of a specific proposals, some general comments on administrability will be included in both the discussions of efficiency and equity.

Efficiency and transportation excise taxes

Economists generally conclude that private market outcomes constitute efficient outcomes—that is, private market outcomes create the greatest amount of benefit compared to the resources used.[75] This conclusion may be described briefly as follows. In a free market, individuals will seek to purchase those goods that they value most highly. But, they will purchase any given good only if they think the benefit the good will produce for them equals or exceeds the price they must pay to obtain the good. Likewise, suppliers of goods will supply goods as long as the price received from the buyer equals or exceeds the cost of supplying an addition unit of the good. Thus, those goods purchased represent the bundle of goods producing the greatest benefit relative to the costs expended to produce the goods. Following this line of reasoning, economists argue that efficiency is always increased as long as the price paid (or benefit received) for an additional unit of a good exceeds the incremental, or marginal, resource cost of producing the good. Conversely, efficiency is decreased whenever the price paid (or benefit

[75] For an exception of this general conclusion, see the discussion of external costs, such as pollution, below.

received) for an additional unit of a good is less than the marginal resource cost of producing the additional unit of the good.[76]

The benefit principle, transportation excise taxes, and efficiency

While all taxes finance benefits (i.e., pay for Government services), Government provision of transportation services is different from the provision of many other services. At least conceptually, it is possible to exclude many citizens from the use of transportation services. For example, only licensed drivers are permitted to drive on the public roadways, while the all citizens, without exclusion, enjoy the benefits of the national defense. This distinction makes the provision of transportation services somewhat like the provision of other goods and services by the private market for which prices are charged.[77] Receipts from many of the transportation excise taxes discussed in this document are dedicated to financing specific benefits through Federal expenditure programs. Some people view transportation excise taxes such as these as payments for the provision of specific services (highways, air traffic control, locks and dams, etc.) much as the fees collected at highway toll booths pay for the construction and maintenance of specific toll roads. Some argue that it is appropriate to tie certain Government services or expenditures to specific tax revenues, under what is sometimes referred to as the "benefit principle," of taxation.[78] Such taxes are often referred to as "benefit taxes." The tax is viewed as the price one must pay for the service. For example, to drive a car on the public highways one must buy gasoline and that means one must pay the Federal gasoline excise tax. If one chooses not to drive, then generally one does not purchase taxed gasoline, at least directly. When a tax is collected in return for a service provided, the efficiency standard remains unchanged. The tax generally would be viewed as promoting the efficient use of society's resources as long as the tax paid for an additional unit of the transportation service exceeds the incremental, or marginal, resource cost of producing the additional units of transportation service.

As a practical matter, it would be difficult design and administer a pure benefit tax. Such a tax theoretically may require a different tax payment by each individual. Determining the correct payment and administering such a system would be costly. Moreover, many would view such taxes as unfair because two seemingly similar taxpayers may be asked to pay different amounts of tax. On the other hand, simplification may dilute some of the efficiency advantages of a theoretical benefit tax.

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[76] For a more detailed discussion of economic efficiency in the provision of transportation services, see, Congressional Budget Office, *Paying for Highways, Airways, and Waterways: How Can Users Be Charged?* May 1992.

[77] There are reasons that might lead to the conclusion that the private market would not provide transportation or other services, even if it were possible to exclude certain users and charge individual prices. See the discussion of economies of scale below.

[78] The benefit principle has long been advanced as a standard of equity and is discussed more in that context below.

Marginal cost pricing, transportation excise taxes, and economic efficiency

An alternative way to achieve an economically efficient outcome is to set the price charged to users of a service equal to the marginal cost of providing that service to the individual user. As explained above, consumers compare the price of a service with the benefit they anticipate from receiving an additional unit of service. If the price exceeds the benefit, consumers will not use the additional service, or will decrease their use. On the production side, if consumers are charged less than the marginal cost of providing the service, they may be encouraged to overuse the service. Total welfare declines as costs exceed the benefits provided. If consumers are charged more than the marginal cost of providing the service, they may be discouraged from using the service. Total welfare could increase by further provision of the service because further use would produce benefits that exceed costs. When price equals marginal cost there is neither overuse nor underutilization and society's resources are used efficiently.

The conclusion that efficiency results when users are asked to pay the *marginal* cost of providing the service is not the same as saying the user should pay the *average* cost of provision of the service. Thus, setting taxes by average cost generally will not lead to an efficient allocation of resources. The structure of present-law Highway Trust Fund taxes was chosen, in part, to correspond to a 1982 DOT cost allocation analysis based on *average* costs.

The conclusion that marginal cost pricing produces an efficient outcome may appear contradictory with the previous discussion that benefit taxation could produce an efficient outcome. The previous discussion suggested that an outcome could be efficient if each user were charged his or her marginal benefit so long as that benefit exceeded the incremental, or marginal, cost of providing the service. The difference between that standard and the standard currently under discussion involves whether consumers of the service pay the full value of the benefit they receive or whether they pay the marginal cost of producing that benefit. When consumers pay only for the marginal cost of producing that benefit, there generally is value to the consumer beyond the value of the resources used to produce the benefit. When consumers pay the full value of the incremental benefit they receive, the provider receives as incremental profit that value of the benefit that exceeds the marginal cost of producing the service. Thus, the difference between the two efficient outcomes involves whether consumers retain the value of benefit in excess of cost or whether consumers pay that value of benefit in excess of cost over to the producer of the service.[79]

If the transportation excise taxes were imposed at levels that represented the incremental resource cost incurred for providing transportation services to each taxpayer, then the taxes could be called "economically efficient." However, in choosing a tax rate that equals a user's marginal cost a question arises as to whether policy

[79] Economists call the benefit a consumer receives in excess of the price he or she must pay the "consumer surplus." Likewise, economists call the revenue a producer receives in excess of the marginal cost of producing a good or service the "producer surplus." Thus, the difference between the two efficient pricing structures may be described as whether the consumer surplus is transferred to the producer.

makers should look at short-run marginal costs or long-run marginal costs. Generally, short-run marginal costs would reflect resource costs when investment is fixed and long-run marginal costs would reflect resource costs assuming the level of capital investment can vary. That is, in the case of highways, short-run marginal costs would involve the costs of maintenance of an existing highway (e.g., resurfacing an existing road surface that has deteriorated from use), while long-run resource costs would involve costs such as those associated with adding an additional lane to the highway.

Marginal costs often will vary by taxpayers. For example, certain harbors may be more costly to dredge and maintain than others. Imposing a tax to recoup marginal costs would imply differential taxes for different harbor users. Such a tax may violate the uniformity clause of the Constitution, but, even if it did not, a tax system with different rates of tax for many different users would be more complex and more costly to administer than the current transportation excise taxes. In practice, it may be difficult to discern marginal costs. Moreover, some might argue that such taxes are unfair, in that they impose different burdens on otherwise similarly situated taxpayers. Modifications to address concerns of administrability and fairness may dilute the gains of economic efficiency that economists argue flow from marginal cost pricing. If a modification took the form of charging all air passengers the average cost of providing air traffic control services, some taxpayers might pay a tax greater than their marginal cost (implying inefficient underutilization of resources) and other taxpayers may pay a tax less than their marginal cost (implying inefficient overutilization of resources). Design of transportation excise taxes to incorporate the efficiency properties of marginal cost pricing involves tradeoffs between the goals of efficiency, equity, and administrability.

Cost allocation and transportation excise tax efficiency

Cost allocation as a basis of transportation excise tax design also may create an economically inefficient tax structure. The provision of transportation services often requires substantial capital investments. Fixed costs tend to be large compared with marginal costs. For example, the construction of a bridge across the Mississippi River requires a substantial fixed capital investment. The additional resource costs (wear and tear) imposed by one additional automobile on an uncongested bridge, once the bridge has been built, is quite small in comparison. This means that the provision of many transportation services is often characterized by "economies of scale." Provision of a good or service is said to be characterized by economies of scale when the average cost of providing the good or service exceeds the marginal cost of providing that good or service. When this occurs, the average cost of providing the good or service is falling with each additional unit of the good or service provided. As discussed above, economists proffer setting prices or taxes equal to marginal cost to obtain economically efficient outcomes. However, in the presence of substantial economies of scale, the marginal cost is less than the average cost of providing the transportation service and the revenues collected from equating

taxes to marginal costs would not cover the full expenditure required to provide the service. That is, provision of the service may require a subsidy beyond the revenues provided by the economically efficient tax.[80]

On the other hand, advocates of cost allocation would set the price or taxes for transportation services at rates equal to the average cost of services. In the presence of substantial economics of scale, average cost pricing implies that consumers are being charged prices in excess of marginal resource costs and that less than the economically efficient level of transportation services are provided. Indeed, an expansion of services would lead to a decline in the average cost of the service to each user. If each user could be charged that lower average price, the price paid would still exceed the marginal cost of the provision of the service, all costs would be recovered and net economic well-being (efficiency) would increase. Thus, the principle of cost allocation involves a trade-off between economic efficiency and cost recovery.[81]

Externalities, social costs, transportation excise taxes, and economic efficiency

Some economic activities have adverse effects on the environment or health of the population at large. The true cost to society of such activities includes not only the producer's internal costs for labor, raw materials, etc., but also the additional social costs. For example, an additional automobile on a crowded highway imposes costs of delay on other motorists. Motor vehicles emit pollutants that make the air less healthy for motorists and nonmotorists alike. Aircraft noise detracts from the quality of life of people who live or work under flight paths near major airports. Users will take private costs into account when deciding whether to use the roads or airways, but they generally will ignore such external costs as pollution and noise. Such costs to society are called "negative externalities."

If the direct consumers of transportation services that produce negative externalities are not required to compensate those that suffer these added costs, the total social cost may exceed the private cost to individual consumers of transportation services. In this situation, it is natural to expect that too much of the externality creating activity will occur. The incremental cost (private and social added together) of providing transportation services will exceed the benefits produced (private only) and the resulting outcome will not be economically efficient. In the example of automobile use, there may be too much automobile use creating too much congestion and too much pollution. Thus, some argue that transportation excise taxes could promote economic efficiency if the taxes incorporate the marginal external costs such as the costs of pollution, congestion, etc., in addition to the private marginal costs that arise

[80] Some argue that the presence of economies of scale justify Government involvement in certain infrastructure investments. They argue that when the economies of scale are great, the potential for cost recovery and profit from market prices may be insufficient for private providers to undertake the investment, even though provision of the service would create marginal benefits that exceed marginal costs.

[81] For a discussion of ways of decreasing the inefficiencies that arise from diverging from marginal cost pricing while raising revenue to cover substantial fixed costs, see CBO, *Paying for Highways, Airways and Waterways: How Can Users Be Charged?*

in the provision of transportation services. For example, by increasing motor fuels taxes to reflect the negative externalities of congestion and pollution, the price of motor fuels would rise, discouraging some automobile use or encouraging the purchase of more fuel-efficient automobiles. The reduction in automobile use would reduce pollution and congestion, which could create a more socially efficient outcome.

As was discussed in the case of efficiency, in the absence of externalities, fully efficient taxes that attempt to recoup external social costs may differ by region. For example, congestion of air traffic facilities is more acute along some air corridors and at some airports than at others. Highway congestion generally is an urban problem not a rural problem, nor is it equally severe in all urban areas. The theoretically exact tax would have to determine different external costs for different regions. A tax that precisely attempts to recoup such differences will be more costly to administer than a uniform tax and could raise Constitutional issues under the uniformity clause. As noted above, concerns about administrative costs and fairness may require tradeoffs with an efficiency goal that incorporates external costs.

Equity and transportation excise taxes

Equity involves an assessment of the "fairness" of a tax. To determine fairness it is necessary to look beyond the statutory incidence of a tax to its economic incidence, or market effect. Generally, two standards are applied: horizontal equity and vertical equity. In addition, some suggest that the benefit principle as an equitable basis of taxation and others suggest cost recovery or cost allocation as an equitable basis of taxation.

Horizontal equity and transportation excise taxes

Horizontal equity looks to whether equivalently situated individuals are treated equivalently. An issue in applying the notion of horizontal equity in the context of transportation excise taxes is how broadly to interpret the concept of "equivalently situated individuals." For example, one could argue that the current highway diesel fuel excise tax is horizontally equitable because all providers of truck transportation pay the same rate of tax per gallon of diesel fuel. Alternatively, one might argue that the current excise tax is horizontally inequitable because those taxpayers providing truck transportation services with modern, more fuel efficient equipment pay less tax per mile of highway service provided than do those taxpayers providing truck transportation services with less fuel efficient equipment. In addition, one might ask whether in applying the standard of horizontal equity one should confine the analysis to truck transport providers or look more broadly at all shippers of freight and include rail, barge, and air freight services as well.

Vertical equity and transportation excise taxes

Vertical equity involves the extent to which individuals in different economic circumstances, frequently measured by reference to individuals' incomes or other measures of economic well-being, are treated differently. It may not be appropriate to place undue emphasis on the vertical equity of any one tax or group of taxes that

are part of a larger tax system. The importance of the vertical equity of any specific tax is by that tax's marginal effect on the vertical equity of the entire tax system. Because the use of transportation services generally is a larger share of the consumption expenditures of lower-income individuals than of higher-income expenditures, the transportation excise taxes, which tend to be proportional to the use of transportation services, are considered to be regressive. That is, while the total amount of transportation taxes paid may rise as individuals' incomes rise, the taxes as a proportion of income fall.[82]

While it is possible to conceive of a system of transportation taxes in which the tax burden does not decline as income increases, such a system generally would require more information than is needed under the current tax collection system at the point of imposition. Any system that relies on characteristics of individual taxpayers generally will be administratively more complex and prone to evasion than one that treats all purchasers identically regardless of individual characteristics.

The benefit principle and transportation excise tax equity

According to the benefit principle, an equitable tax system is one under which each taxpayer contributes commensurately with the benefits which he or she receives from the public services provided. Unlike the principles of horizontal equity or vertical equity, but like the notion of cost allocation discussed below, the benefit principle directly links tax and expenditure policy in an assessment of equity. Many analysts see several of the current Trust Fund excise taxes as examples of the benefit principle. However, they only satisfy the benefit principle notion of equity in a rough way. For example, while gasoline use depends on distances driven, generally each mile driven does not result in the same benefit, nor the same benefit for each driver. The Washington, D.C., Beltway may have a greater benefit for a driver attempting to get to work during workweek morning hours than for the same driver doing errands on the weekend, while the tax paid would depend upon the vehicle driven and the driving conditions encountered. Moreover, expenditure decisions are made for specific outlays, while taxes are paid independently of particular services provided, so there may be no direct linkage between the specific benefit received and the tax imposed. For example, all air travelers would pay taxes that finance an upgrade of air traffic control facilities in the Northeast, even though many air travelers fly only within West Coast air corridors. Attempts to apply the benefit principle to taxation in a more precise fashion often would involve creating a more complex administrative structure in a attempt to account for benefit differences across individual taxpayers. The benefit principle may be more readily applied with respect to project-specific fees.

Cost allocation and transportation excise taxes

Some analysts suggest that when looking at a joint financing and expenditure program a fair way to assess the financing burden is

[82] See, for example, Joint Committee on Taxation, *Methodology and Issues in Measuring Changes in the Distribution of Tax Burdens* (JCS-7-93), June 14, 1993, p. 66.

not by the benefit received, but by allocating to each user a share of the expenditures related to the average costs that user imposes on the service. Such an approach attempts to allocate to each user, or class of users, the expenditures incurred that may be reasonably attributed to that user.[83] Although such a tax system for transportation may place the burden of financing the system on the users of the system, as was discussed in the context of the benefit principle above, it may not fully meet the equity objective because it allocates costs to each individual user of the transportation service in only a rough fashion.

Reliance on broad averages may obscure substantial differences among different users within a broad user class. The current Highway Trust Fund motor fuels excise taxes rates were restructured in 1982, largely based on a cost allocation analysis. Cost allocation as a basis for taxation generally attempts to be allocate costs on average. New cars are generally more fuel efficient than old cars, even for cars of the same weight, yet generally it is the weight of the vehicle per axle that gives rise to road deterioration. An average tax on all automobile gasoline purchases more lightly taxes newer automobiles. Similarly, within a cost allocation framework, inequities among different users within a broad user class may arise due to differing use of the Government services provided. The current gasoline excise tax is imposed at the same uniform rate for all gasoline purchased regardless of whether the driver primarily drives on highways financed with Federal expenditures or local roads maintained by the driver's State or local government.

As discussed above regarding the benefit principle, such apparent inequities could be addressed within the cost allocation framework. For example, user groups could be defined more narrowly. As noted above, weight per axle is a significant determinant of the damage to a road surface imposed by a given vehicle. One could conceive of fuels tax rates that vary by the number of axles on a given vehicle with the tax rate being lower for vehicles with more axles.[84] Such a fuels tax would require collection at the retail pump in order to distinguish vehicles. The points of collection and administrative costs associated with the gasoline excise tax would increase dramatically were such a change adopted, while compliance likely would decline compared to the current fuels excise tax system.

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[83] As examples, see, Department of Transportation, Federal Highway Administration, *Final Report on the Federal Highway Cost Allocation Study*, Report of the Secretary of Transportation to the United States Congress Pursuant to Public Law 95-599, Surface Transportation Assistance Act of 1978 (May 1982) and Department of Transportation, *Heavy Vehicle Cost Responsibility Study*, Report of the Secretary of Transportation to the United States Congress Pursuant to Section 931 of the Deficit Reduction Act of 1984 (November 1988). See also the brief descriptions in Part VI of current Department of Transportation cost allocation studies relating to the costs of highway services and the cost of air traffic services.

[84] Alternatively, the annual vehicle use tax might be imposed as a tax that declines as the number of axles increases within a vehicle weight class, rather than a tax per vehicle. Some analysts observe that the toll (fee) structure of most toll roads is exactly backwards from the point of view of either marginal cost pricing or cost recovery as higher tolls generally are imposed on additional axles.

D. Effects of Transportation Excise Taxes on the Market for Transportation Services

Structure of the tax system and competition between transportation sectors

The design of a transportation excise tax system can be expected to affect the market for transportation. As stated above, the current transportation excise taxes generally are assessed on the inputs of transportation service providers (e.g., taxes on fuels or equipment) or are assessed on the purchase of the transportation service (e.g., air transportation excise taxes). In either case, it is generally assumed that market forces will cause the burden of these excise taxes to flow through to consumers. In the case where taxes are assessed on the inputs of service providers, the tax becomes part of the cost of doing business. In a market economy, for a firm to continue producing goods or providing services, it must recover its costs of doing business. Thus, excise taxes on inputs generally will be borne by the consuming public in the form of higher prices for transportation services. In the case where the tax is assessed on the provision of the service, the effect on the price paid by the consuming public is more obvious. Thus, the current excise taxes may be expected to alter the prices paid for transportation services.

Through their effect on market prices, changes in transportation excise taxes can be expected to affect the aggregate scope of the transportation industry in the United States. For example, if all United States transportation excise taxes were increased (lowered), the higher (lower) resulting prices to consumers would be expected to expand (contract) the total amount of transportation services provided. Likewise, through their effect on prices, the excise tax burdens imposed by various transportation excise taxes may cause consumers to choose one mode of transportation over another mode. Thus, if an excise tax is imposed on one sector of the transportation industry (e.g., highway users) at a higher rate than on another sector with which that sector competes (e.g., rail users), consumers may find it more cost effective to ship by rail than by highway. Similarly, a recent proposal to exempt the special motor fuel LNG from the highway special motor fuels excise tax could reduce costs to certain heavier highway vehicles, thereby encouraging truck shipping (using governmentally financed infrastructure instead of rail shipping (using privately financed infrastructure). That is, the structure of the tax system may affect the structure of the United States transportation industry.

The structure of the tax system also may affect the structure of the United States transportation industry *vis a vis* potential competitive shippers along the nation's Northern and Southern borders. The harbor maintenance excise tax is a cost of doing business that affects the price of shipping through United States's ports. If the price of shipping through Canadian ports is lower than that of shipping through United States ports, the ports of Seattle and Tacoma, Washington, for example, may lose business to the port of Vancouver, Canada.

The analysis is complicated by current expenditure policy that ties the Federal Government's provision of certain services (e.g.,

highway maintenance) to specific taxes collected. The provision of Government services can both increase the private benefit to users of the service (e.g., fewer potholes in highways will imply that more eggs arrive at supermarkets undamaged) and reduce the costs of providing transportation services (e.g., reduced highway congestion permits eggs to be delivered with lower consumption of costly fuel). To return to the example of competition between rail and highway shipping, under present law, certain transportation excise taxes generally are dedicated to road construction and maintenance, services that are used by highway users, while the rail transportation sector receives relatively few Government-provided services. Thus, the mere fact that the consumers of the services of one sector of the transportation industry bear a higher tax burden does not imply that the Federal *tax and expenditure* system leaves that sector at a competitive disadvantage. Nevertheless, for a given level of benefits provided to two transportation sectors, an increased excise tax rate on one sector relative to the excise tax rate on the other sector may alter the terms of competition between them. Similarly, if the level of taxes were held constant and additional benefits were provided to one sector but not to other sectors, the terms of competition between the transportation sectors could change.

Some have advocated retention of the current transportation excise taxes, but repeal of the Trust Funds, with funding of Federal transportation programs being carried out solely through appropriations from the General Fund. If Congress determined that spending on transportation services should be increased, while transportation taxes remained the same, the net cost of providing transportation services should decline and the demand for such services might increase. If the additional spending were to occur all in one sector, on inland waterways for example, the net cost of providing river barge shipping could be expected to decline relative to the cost of rail and highway shipping. The river barge sector might expand relative to the rail and highway sectors. Oppositely, if Congress determined that spending on transportation services should be decreased, while transportation taxes remained the same, the net cost of providing transportation services should increase and the demand for such service might decrease.

A similar situation arises with a proposal that would, with no change in tax rates, divert monies from the General Fund to a newly created Passenger Rail Account. Under such a proposal, presumably the amount of benefits provided to passenger rail users would rise. This could be expected to decrease the net costs of traveling by rail. One would expect passenger rail services to expand. Such a proposal also could reduce automobile use as rail travel became more attractive.

More generally, the effect of the excise tax structure on transportation industry structure involves questions of efficiency, equity, and administrability. Just as is true with the current excise tax structure, any change in that is proposed to increase efficiency, to increase equity, or to improve administrability, can be expected to change the resources devoted to each sector and the use of each sector's services.

Structure of the tax system and competition within transportation sectors

In general

Just as a transportation excise tax system may affect the scope and structure of the transportation industry as a whole, the taxes affecting one sector may affect the scope and structure of that specific sector. The price of gasoline, inclusive of motor fuels excise taxes, is one factor that affects the demand for different models of automobiles and individuals' decisions regarding travel. Likewise, the available road system is another factor that affects the demand for different models of automobiles and individuals' decisions regarding travel. Changes in either the level of motor fuels excise taxes or in the provision of the highway system may be expected to alter the type of travel that individuals undertake by automobile and the type of automobiles in which they choose to travel. The following discussion uses two specific examples of potential changes in the existing transportation excise tax system to illustrate how tax changes may affect a specific sector of the transportation industry.

Air passenger industry

The current domestic air transportation excise tax is imposed on the value of the ticket. As a consequence of this excise tax design, a traveler flying first class will pay more in tax than a traveler flying coach on the same flight, despite the fact that both the front and the back of the plane receive the same services from the FAA. Likewise, on a comparable flight, customers of a discount air carrier will pay less tax than customers of a higher-fare air carrier. Again, for a comparable flight, comparable FAA services would be rendered to each passenger. The current excise tax system might be viewed as inefficient, in that the marginal cost of providing air traffic control and other airway services is the same in this example for a discount air carrier and a higher-fare carrier, or for a first class seat and a coach seat, yet different taxes are imposed to cover the cost of the service. Nor, in this example, would it obviously be the case that the discount carrier's flight pays less for air traffic services than does the higher fare carrier's flight. A discount carrier flight with all seats occupied might produce more tax revenue than a partially occupied flight of a higher fare carrier. The principles discussed in Part VII.B might suggest that there may be an inefficient allocation of resources between discount carriers (or coach seats) and other carriers (or first class seats). In addition, such an outcome also might be viewed as inequitable across travelers.

Evaluating changes to the present excise tax structure, however, requires an analysis of the questions of efficiency, equity, and administrability. For example, as described above, a recent proposal by a group of seven of major commercial air carriers would substitute taxes imposed at flat rates on each of three factors: revenue passengers, seats filled, and mileage, for the current 10-percent *ad valorem* tax. Such a change would involve substantially greater administrative cost for the airlines and the IRS than does the current tax structure. However, if the proposed excise tax rates more close-

ly approximated the marginal costs of services provided by the FAA for each flight, they might improve the efficiency of resources devoted to domestic air passenger transportation. There is no data, at present, to suggest that the marginal, or incremental, costs of the provision of FAA services increases with the number of revenue passengers or seats on a given flight. While marginal costs may be related to miles flown, as discussed in Part VII.B., to be fully efficient one may want to vary such charges depending on where the miles are flown, as the incremental costs of FAA services are likely to be greater on the approximately 250-mile flight from Washington to New York than on the approximately 250-mile flight from St. Louis to Kansas City.[85]

Finally, the burden across different sectors of the flying public would change. The FAA has estimated that if flying patterns did not change one discount air carrier, and ultimately its passengers, would experience approximately a 60 percent increase in tax burden, while the tax burdens of the seven major air carriers, and ultimately their passengers, who proposed the change all would decline.[86] By increasing the costs to discount carriers while reducing costs to other carriers, the structure of the domestic air passenger industry, and the income characteristics of people traveling by air, likely would change.

Highway transportation services

The current structure of highway transportation excise taxes relies heavily on the 1982 DOT cost allocation study.[87] As discussed in Part VII.B., average cost allocation is offered as an equitable way to recover the costs incurred in provision of highway services. One result of 1982 excise tax changes is that users of the freight shipping services of heavy trucks bear a heavier tax than do users of passenger automobiles. The diesel fuel excise tax rate is 6 cents per gallon greater than the gasoline excise tax rate because most trucks use diesel fuel and most automobiles use gasoline as a fuel. In addition, there are separate non-fuel excise taxes that generally are imposed only on heavy trucks: the tax on certain tires; the heavy vehicle retail excise tax; and the annual use tax. The higher tax rates for trucks (fuel and non-fuel taxes) were imposed in an attempt to reflect the greater road damages from trucks and heavy trucks in particular. The structure of these taxes demonstrates compromises reached to accommodate administrability of the tax system to the desire to equitably recover costs. Administrative costs could have been minimized by relying solely on the fuels excise

[85] Another approach suggested by some would expand the current 4.3-cents-per-gallon fuels excise tax on commercial aviation fuels to include a Trust Fund component rate (as is imposed under present law on highway transportation). Such a fuels tax rate would reflect miles traveled and take-offs and landings, and thereby important components of FAA costs, as well as being administratively easier to collect than the proposal by the seven major airlines (because fuels taxes already are imposed). Data would need to be developed and analyzed in order to evaluate fully whether such a proposal would accurately assign FAA costs (either the marginal costs or the average costs) to those creating the costs as well as to determine the effect of such a proposal on the air transportation market.

[86] See, letter and accompanying materials to the staff of the Aviation Subcommittee of the House Committee on Transportation and Infrastructure from Charles A. Hunnicutt, Assistant Secretary of Transportation for Aviation and International Affairs, June 7, 1996.

[87] Department of Transportation, Federal Highway Administration, *Final Report on the Federal Highway Cost Allocation Study*, Report of the Secretary of Transportation to the United States Congress Pursuant to Public Law 95-599, Surface Transportation Assistance Act of 1978 (May 1982).

taxes, but the three additional excise taxes permit policymakers to distinguish between heavy cross-country vehicles that burn diesel fuel and smaller, lighter local delivery vehicles that also burn diesel fuel. Given this apparent goal, the annual use tax reflects further compromise with the goal of administrability. The annual use tax is the same dollar amount whether the truck drives 5,001 miles or 100,000 miles in the year. Collecting a tax based on actual miles driven would be more precise, but potentially difficult to administer.[88]

The extent to which the current highway transportation excise taxes promote the efficient use of highway system depends upon the extent to which these taxes approximate the incremental cost of the Government's provision of the highway services. As noted above, because these taxes are set at average rates to apply nationally, the taxes can never be fully efficient. It is more costly to build and maintain roads in some geographic locations than in others. For example, it is less expensive to build highways across flat rural areas than through mountains or in urban areas. Similarly, the tax and expenditure policy is unlikely to follow cost or tax burdens imposed exactly. The excise taxes generally apply to all motor fuel purchased, while the expenditures (benefits) are provided only to the users of certain highways.

Past DOT cost allocation studies have concluded that heavy trucking services impose greater average costs on the nation's highways than is reflected in the current highway excise tax structure. As a result, some have suggested that a "weight-distance" tax (as in effect in several States) might reflect the more equitably the costs allocated to heavy trucking services. Taxes requiring more vehicle-specific monitoring, however, could require more administrative resources (and be more prone to evasion) than the current highway excise tax system. Increasing taxes on heavy trucking services may not improve the efficient allocation of resources. As discussed above, in the presence of economies of scale, increasing taxes to reflect average costs better may move the tax (price) further away from marginal costs, thereby decreasing efficiency. On the other hand, if an increase in taxes on heavy trucking services coincides with a decrease in taxes on automobile use, the tax reduction may move the tax (price) on automobile use closer to the marginal cost of automobile use, thereby increasing efficiency. Any such change in the taxes assessed on different highway users may be expected to change the pattern of use of the highways by the different users.

[88] The tax on certain vehicle purchases and on tires bears some relation to use as new vehicles and tires often are purchased as replacements for worn out older equipment.

APPENDICES

APPENDIX A. PRESENT-LAW FEDERAL TRUST FUND AND GENERAL FUND MOTOR FUELS EXCISE TAX RATES ON VARIOUS TRANSPORTATION SECTORS (AS OF NOVEMBER 1, 1996)

[Rates shown in cents per gallon]

Transportation Sector	Trust Fund	General Fund	Total tax
Highway Transportation:[1]			
In general (trucks, automobiles):[2]			
Gasoline	14.0	4.3	18.3
Diesel fuel	20.0	4.3	24.3
Special motor fuels[3]	14.0	4.3	18.3
Intercity bus:			
Gasoline	no tax	no tax	no tax
Diesel fuel	3.0	4.3	7.3
Rail Transportation	no tax	5.55	5.55
Water Transportation:			
Inland waterway	20.0	4.3	24.3
Recreational boats:			
Gasoline	14.0	4.3	18.3
Diesel fuel	no tax	no tax	[4]no tax
Air Transportation:			
Commercial aviation	[5]no fuels tax	4.3	4.3
Noncommercial aviation:			
Gasoline	15.0	4.3	19.3
Jet fuel	17.5	4.3	21.8

[1] Reduced highway motor fuels excise tax rates apply to mixtures of taxable fuels with ethanol and methanol produced from renewable sources (i.e., "gasohol") and to certain "neat" (at least 85 percent pure) methanol fuels produced from natural gas.

[2] Heavy highway vehicles also are subject to Trust Fund excise taxes on retail vehicle price (12 percent) and tires, as well as to an annual use tax.

[3] Examples of special motor fuels are propane, liquefied natural gas ("LNG"), other liquids used as a fuel in highway transportation, and compressed natural gas ("CNG"). CNG, a gaseous fuel rather than a liquid fuel, is subject only to a General Fund tax of 48.54 cents per thousand cubic feet (equivalent on a Btu basis to the 4.3-cents-per-gallon General Fund tax rate imposed on propane).

[4] After December 31, 1997, and before January 1, 2000, the tax rate will be 24.3 cents per gallon for the General Fund.

[5] Airport Trust Fund excise taxes imposed on commercial aviation consist of a 10-percent domestic passenger tax, a $6 per person international departure tax, and a 6.25-percent domestic air freight tax, all imposed on passengers and shippers of freight rather than on the transportation provider.

APPENDIX B. PRESENT-LAW NON-FUEL FEDERAL TRANSPORTATION EXCISE TAX RATES (AS OF NOVEMBER 1, 1996)

Tax	Tax Rate
Airport and Airway Trust Fund Taxes:	
Air passenger ticket tax	10 percent of amount paid.
International departure tax	$6 per person.
Domestic air cargo tax	6.25 percent of amount paid.
Highway Trust Fund Taxes:	
Tax on highway vehicles (trucks over 33,000 lbs. and trailers over 26,000 lbs.)[1]	12 percent of retail price.
Tax on highway tires	40 lbs. or less—no tax. 40–70 lbs.—15 cents/lb. over 40 lbs. 70–90 lbs.—$4.50, plus 30 cents/lb. over 70 lbs. Over 90 lbs.—$10.50, plus 50 cents/lb. over 90 lbs.
Annual use tax on highway vehicles.	Under 55,000 lbs.—no tax. 55,000–75,000 lbs.—$100, plus $22 per 1,000 lbs. over 55,000 lbs. Over 75,000 lbs.—$550.
Waterway Taxes:	
Habor Maintenance Trust Fund tax.	0.125 percent of value of commercial cargo loaded or unloaded at U.S. ports.
Tax on international ship passenger departures.	$3 per passenger on commercial vessels over one or more nights or vessels engaged in gambling on board outside U.S. waters.
Other Automotive-Related Taxes:	
Retail tax on luxury automobiles.	Tax is imposed on sales price in excess of indexed threshold (currently $34,000): 9 percent for August 27, 1996–December 31, 1996; 8 percent for 1997; 7 percent for 1998; 6 percent for 1999; 5 percent for 2000; 4 percent for 2001; 3 percent for 2002; 0 percent (repealed) after 2002.

APPENDIX B.—Continued

Tax	Tax rate
Tax on gas guzzler automobiles:	
Fuel economy rating (miles per gallon):	Tax per vehicle:
At least 22.5	0
21.5–22.5	$1,000
20.5–21.5	1,300
19.5–20.5	1,700
18.5–19.5	2,100
17.5–18.5	2,600
16.5–17.5	3,000
15.5–16.5	3,700
14.5–15.5	4,500
13.5–14.5	5,400
12.5–13.5	6,400
Less than 12.5	7,700

[1] Includes tractors of the kind chiefly used for highway transportation with a trailer or semitrailer.

APPENDIX C. CERTAIN NON-TAX FEES IMPOSED ON TRANSPORTATION PROVIDERS

As discussed in Part IV.B., Congressional authorizing committees may impose, or authorize executive agencies to impose, true user fees. The following is an overview, prepared by the Congressional Research Service (CRS), of Federal user fees currently imposed on various sectors of the transportation industry.

CONGRESSIONAL RESEARCH SERVICE,
ECONOMICS DIVISION,
THE LIBRARY OF CONGRESS,
Washington, DC, November 1, 1996.

Memorandum

To: Joint Committee on Taxation (Attention: Ben Hartley).

From: John W. Fischer, Specialist in Transportation; Stephen J. Thompson; Specialist in Transportation; Kenneth R. DeJarnette, Specialist in Transportation; William A. Lipford, Analyst in Transportation.

Subject: Federal taxes and fees on transportation not related to the transportation trust funds.

This memorandum responds to your request that we identify federal taxes and fees imposed on the transportation sector, that are not associated with the several transportation trust funds. As we discussed, we have tried to identify significant taxes and fees that can be correlated with the provision of some sort of service by the federal government. As you might expect, however, this is often not a clean distinction. As a result, this memorandum includes several charges that may exceed your working definition of a federal tax or fee. Information on these charges is provided in sufficient detail to allow you to make an informed judgment as to whether to include these charges in your final listing of all federal transportation taxes and fees.

The remainder of this memorandum will discuss the taxes and fees levied on each major portion of the transportation sector. As you will see, there is a wide disparity amongst the transportation modes as to the degree to which each group is subject to non-trust-fund taxation. The common theme that can be extracted from this information is that domestic freight transportation of all kinds and all international transportation are subject to more additional (non-trust-fund) taxes and fees than domestic passenger transportation.

Rail[1]

There are a number of peculiarities in the federal treatment of the railroad industry, based primarily on historical factors, that makes it unique among transportation modes. The principal distinction is that the federal government operates the railroad retirement system and provides the industry with an unemployment insurance structure that differs from the structure covering other private sector workers. They collections for these activities may, or may not, fall within your definition of federal taxes and fees. They are nonetheless significant in their cost. In 1995, the Class I railroads (the largest U.S. railroads) paid approximately $486.0 million into tier I railroad retirement and $1,133.0 million into tier II railroad retirement. An additional $94.0 million was collected for "supplemental annuities" and $20.0 million was collected for the federally operated unemployment insurance system.

The taxes and fees that more clearly fit your definitional structure are as follows:

A 5.55 cents per gallon tax on fuel. These funds are collected for deficit reduction. In 1995, this tax provided the U.S. Treasury with approximately $227.0 million in general fund revenues.

The Federal Railroad Administration (FRA) special safety tax. This tax pays for FRA safety activities. The tax is assessed on a formula basis that computes the share of the total federal tax attributable to each railroad. The special safety tax provided $40.0 million in 1995.

U.S. Customs inspection tax. Railroads pay a fee of $7.50 for customs inspection of each "loaded" freight car entering the United States from either Canada or Mexico. Approximately $6.0 million in taxes were collected from U.S. railroads in 1995 for this activity.

U.S. Department of Agriculture (USDA) animal/plant health inspection tax. Railroads pay a fee of $7.50 for USDA inspection of each "loaded" freight car entering the United States from Mexico. Collections for this tax amounted to approximately $0.8 million in 1995.

Trucking[2]

The vast majority of federal fees and taxes levied on the trucking industry are associated with the highway trust fund and, therefore, fall outside the focus of this discussion. Additional fees on this transportation sector appear to be quite limited in number. There are no separate safety charges. The only fee that seems to meet your definition is as follows:

U.S. Customs and USDA fees are charged only for truck crossings between the United States and Mexico. Truckers either buy a one trip permit for $7.00 per truck ($5.00 for customs and $2.00 for USDA) or can buy an annual permit (decal) for $250.00 per truck.

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[1] For further information on this subject contact Stephen J. Thompson at 77771. Information in this section was provided primarily by the Association of American Railroads (AAR).

[2] For further information on this subject contact Stephen J. Thompson at 77771. Information in this section was provided primarily by the American Trucking Association (ATA).

Surface Transportation Board[3]

The Surface Transportation Board (STB), established in 1996, is the successor agency to the Interstate Commerce Commission (ICC). A major issue in the creation of the STB was the reliance on user fees to fund a significant portion of the Board's activities. After considerable controversy, the Board adopted a new user fee structure, effective September 16, 1996. The user fee structure was printed in the *Federal Register* on August 14, 1996.

The STB retains some of the regulatory power once vested in the ICC, particularly as regards railroad activities. Some interstate trucking, bus, and inland waterway activity also remains subject to STB review. The fee structure adopted by the Board is designed to charge the firms doing business with the agency some portion of the cost to the STB for the processing of this business. The fee structure does not provide for full cost recovery, however; the majority of the STB's funding is provided through the annual appropriations process.

Highways and Transit[4]

All federal taxes and fees collected in this sector appear to be associated with the federal highway trust fund. We have contacted knowledgeable professionals at the American Road and Transportation Builders Association (ARTBA), the American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and the Federal Highway Administration (FHWA) without uncovering any taxes or fees that meet the criteria of this memorandum. In addition, we have contacted environmental professionals to see if highway or transit construction is subject to special fees by the Environmental Protection Agency (EPA). In this instance, transportation related construction is treated the same as all other types of construction.

Maritime[5]

A very extensive 1993 study by the U.S. General Accounting Office (GAO) found that 12 federal agencies imposed $1.9 billion in taxes and fees on waterborne commerce. Several of the fees mentioned in the study are similar to those imposed on other transportation modes described in this memorandum, e.g. customs and immigration. The study also lists as fees a number of items that would not meet your definitions. Fees levied by the Panama Canal Commission, for example, can be viewed as voluntary tolls on facility users. In 1995, these tolls produced $460.0 million in revenues, a portion of which went to Panama. In 1999, all revenues from the Canal will go to Panama. It should also be pointed out that the United States no longer charges tolls for the use of its portion of the St. Lawrence Seaway. The portion of the maritime industry subject to tolls is relatively small.

As a result of conversations with professional staff at the Maritime Administration (MARAD), we have reason to believe that the structure studied in 1993 is essentially unchanged. There may

[3] For additional information on this subject contact Stephen J. Thompson at 77771.
[4] For additional information on this subject contact William A. Lipford at 77764.
[5] For additional information on this subject contact Kenneth R. DeJarnette at 77769.

have been some minor changes in the fee structure listed in the GAO study, especially in regard to some Coast Guard fees.

Aviation[6]

The majority of federal aviation activities are funded through the airport and airway trust fund. Consequently, most of the taxes imposed on the aviation sector are related to the trust fund. There are a number of additional fees and taxes on this sector that could meet your criteria:

Immigration and Naturalization Service (INS) user fee. Airline passengers traveling between the United States and other nations are subject to a $6.00 fee for INS services at airports. The fee is levied as part of each international airline ticket. In 1994, this fee raised $261.0 million.

Customs user fee. Airline passengers traveling between the United States and other nations are subject to a $6.50 fee for customs services. The fee is levied as part of each international airline ticket. In 1994, this fee raised $281.0 million.

Animal and Plant Health Inspection (APHIS) user fee. Airline passengers traveling between the United States and other nations are subject to a $1.45 fee for APHIS. The inspection is carried out by the USDA. The fee is levied as part of each international airline ticket. In 1994, this fee raised $59.0 million.

The largest fee levied in aviation, not associated with the trust fund, is the passenger facility charge (PFC). PFCs, formerly referred to as airport head taxes, are levied on airline passengers for the use of domestic airports. Passengers can be charged up to $3.00 for the use of each airport per visit. The PFC is included as part of an airline ticket. On trips with multiple stops, passengers can be charged a maximum of $12.00 per round trip ticket. PFCs are not a federal tax. An exception to existing Federal law was required, however, to allow airports to charge PFCs. The funds collected are disbursed to the charging airport, and airports are typically state, local, or regional entities. Federal approval, by the FAA, is required before an airport can levy a PFC. In 1994, PFCs raised a total of $852.0 million.

The Federal Aviation Administration (FAA) imposes fees for activities such as aircraft registration. A registration certificate costs no more than $10.00 irrespective of the type of aircraft involved. As a result, this type of fee could be viewed as administrative in nature and might not fit your definition.

The air package express industry, e.g. Federal Express, UPS, pay a special "merchandise processing fee (MPF)" to the Customs Service to pay for dedicated staff at airports used by these firms sorting facilities. This fee structure, negotiated by Customs and the package express industry in the late 1980s, provides the agency with reimbursement for Customs inspectors working the peak overnight periods when the package express carriers perform most of their package sorting and trans-shipment. Customs inspectors working during a normal workday are typically provided to air cargo and

[6] For additional information on this subject contact John W. Fischer at 77766. Much of the discussion in this section is based on information provided by the Air Transport Association (ATA) and the Aircraft Owners and Pilots Association (AOPA).

other transportation activities without additional charges. As part of the original agreement the package express carriers agreed to pay 100% of the inspectors wages, 30% of their fringe benefits, and 15% of the Customs Service administrative/overhead costs attributable to the inspectors. In addition, the carriers pay a fee on the number and value of items subject to customs inspection.

The 5 largest package express carriers believe that this special situation costs them an additional $10.0 million a year. A fee not paid by their daytime competitors. They are also concerned that Customs now views the MPF as something of a "cash cow," and that it has no incentive to control its own costs relative to this activity, in part because Treasury removed the original cap on MPF contributions during a year. Finally, the package express carriers are concerned that their major competitor, the U.S. Postal Service (USPS), is not subject to the same cost structure, for a variety of reasons.

Additional Issues[7]

All DOT agencies charge some fee for administrative activities, i.e. copies of licenses and freedom of information (FOI) requests. For the most part these fees are relatively small. There are instances, however, where the cumulative effect of multiple small fees on something like a large FOI request can become quite significant. It should also be noted that these administrative fees are not typically set at full cost recovery levels. Hence, the provision of administrative assistance tends to add costs to the affected agency.

Almost every group contacted as part of this request alluded to the issue of costs borne by transportation operators as part of compliance with U.S. Department of Transportation regulations. For example, the FAA does not impose any direct fees for aircraft safety and pilot licensing activities. Aviation system users, however, are required to keep detailed aircraft maintenance and personnel qualification records and can be fined heavily for failure to comply with these requirements. Many of these issues would come under the heading of regulatory reform. Regulatory reform was a major issue in the 104th Congress, as you are well aware. The one area in which this discussion may fit your criteria is on the issue of fines. Several observers have suggested that fines, levied in the administrative context, could be viewed as proxies for user fees in some instances. The rationale behind this argument alludes to the ability of the respective agencies to impose a wide range of penalties and a sense that the penalty does not always fit the offense.

In our discussions with various transportation groups a number of special taxation issues dealing with various provisions of the IRS Code were raised. It is our sense that these are outside the criteria of this memorandum. Should you desire further information about these issues or any other issue raised in this memorandum, please contact us at 77766.

[7] For additional information on this section contact John W. Fischer at 77766.

APPENDIX D. CERTAIN CORRESPONDENCE RELATED TO PREPARATION OF MATERIALS BY THE STAFF OF THE JOINT COMMITTEE ON TAXATION

1. Letter from Chairman Bill Archer to Kenneth J. Kies, Chief of Staff, Joint Committee on Taxation, October 2, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, October 2, 1996.

Mr. KENNETH J. KIES,
Chief of Staff, Joint Committee on Taxation, 1015 Longworth House Office Building, Washington, DC.

DEAR KEN: As you are aware, I am appointing a bipartisan task force of Members of the Committee on Ways and Means to advise me on transportation excise tax issues. I believe that the structure of the transportation excise taxes (both their Trust Fund and General Fund components) and the reasons for the current tax structure should be examined systematically before the Committee takes any future action on these taxes and programs. Further, the input of this task force will help me to evaluate more generally the appropriate role of transportation excise taxes in a restructured tax system.

I am requesting the Joint Committee staff, in coordination with Ways and Means staff, to assist the task force on a continuing basis by developing information needed for the task force's work. I anticipate that this assistance will involve not only your own expertise in the rationale, legal structure, and administrative aspects of these taxes, but also will involve your staff coordinating with other groups such as the Department of Transportation, General Accounting Office, and Congressional Budget Office to secure the best available information on the costs of and benefits derived from the various Federal public works transportation programs financed by these taxes.

As a first step, I request that you review the history and current structure of the transportation excise taxes so that the task force be briefed on that background when it commences work. Your initial work should also include development of a preliminary list of other information, such as cost allocation studies and relative sectoral (and vehicular) tax burden/Federal program benefits analysis, that I will need to secure from other groups.

Sincerely,

BILL ARCHER, *Chairman.*

2. Letter from Kenneth J. Kies to Honorable Federico Pena, Secretary of Transportation, October 24, 1996

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, October 24, 1996.

Hon. FEDERICO PENA,
Secretary of Transportation,
Washington, DC.

DEAR MR. SECRETARY: Chairman Bill Archer of the House Committee on Ways and Means has appointed a bipartisan task force of Members of that Committee to review and advise him on excise tax issues affecting all transportation sectors—air, highway, water, and rail. As you are aware, both the highway and aviation trust fund excise taxes or programs are scheduled to expire within the next year; future funding of the programs financed with these taxes is dependent on action by the Committee on Ways and Means early in the next Congress. Further, an appeal is pending of a court decision that the harbor maintenance excise tax in part is unconstitutional. By letter of October 2, 1996, Chairman Archer requested the staff of the Joint Committee on Taxation to develop a number of materials for use by the task force. I enclose a copy of that letter. The Joint Committee staff has been directed to report to the Chairman by early November.

Our work for the task force requires that we review the extent to which the current highway, aviation, and waterway excise taxes accurately reflect the traditional user pay principles underlying these trust fund programs. We understand that your Department has underway cost allocation studies for the Federal highway and aviation programs. We request that you supply us with copies of these studies and of any work you have done with regard to the inland waterway or harbor maintenance tax programs, and that you assist us in arranging any needed staff briefings so we can meet the Chairman's deadline.

We also are informed that the Federal Government imposes a variety of non-tax, user fees on transportation providers to offset the costs of certain services provided to them. In order to evaluate the overall Federal financial burden imposed on transportation providers, the Chairman has asked us to provide a list of all such fees. We request that you supply us with a list of all such fees imposed by your Department on transportation providers by November 8, 1996.

Should you have questions, or desire to schedule any meetings with my staff, you may contact H.B. Hartley at 225–7377. I appreciate your cooperation in this matter.

Sincerely,

KENNETH J. KIES.

Enclosure: Letter from Chairman Archer.

3. Letter from Kenneth J. Kies to Honorable Dan Glickman, Secretary of Agriculture, October 24, 1996

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, October 24, 1996.

Hon. DAN GLICKMAN,
Secretary of Agriculture,
Washington, DC.

DEAR MR. SECRETARY: Chairman Bill Archer of the House Committee on Ways and Means has appointed a bipartisan task force of Members of that Committee to review and advise him on excise tax issues affecting all transportation sectors—air, highway, water, and rail. As you may be aware, both the highway and aviation trust fund excise taxes or programs are scheduled to expire within the next year; future funding of the programs financed with these taxes is dependent on action by the Committee on Ways and Means early in the next Congress. Further, an appeal is pending of a court decision that the harbor maintenance excise tax in part is unconstitutional. By letter of October 2, 1996, Chairman Archer requested the staff of the Joint Committee on Taxation to develop a number of materials for use by the task force. I enclose a copy of that letter. The Joint Committee staff has been directed to report to the Chairman by early November.

We are informed that the Federal Government imposes a variety of non-tax, user fees on transportation providers to offset the costs of certain services provided to them. In order to evaluate the overall Federal financial burden imposed on transportation providers, the Chairman has asked us to provide a list of all such fees. We request that you supply us with a list of all such fees imposed by your Department on transportation providers by November 8, 1996.

Should you have questions, or desire to schedule any meetings with my staff, you may contact H. B. Hartley at 225–7377. I appreciate your cooperation in this matter.

Sincerely,

KENNETH J. KIES.

Enclosure: Letter from Chairman Archer.

4. Letter from Kenneth J. Kies to Honorable Doris M. Meissner, Commissioner, Immigration and Naturalization Service, October 24, 1996

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, October 24, 1996.

Hon. DORIS M. MEISSNER,
Commissioner, Immigration and Naturalization Service,
Chester A. Arthur Building, Room 7100,
425 Eye Street, N.W.,
Washington, DC.

DEAR MS. MEISSNER: Chairman Bill Archer of the House Committee on Ways and Means has appointed a bipartisan task force of Members of that Committee to review and advise him on excise tax issues affecting all transportation sectors—air, highway, water, and rail. As you may be aware, both the highway and aviation trust fund excise taxes or programs are scheduled to expire within the next year; future funding of the programs financed with these taxes is dependent on action by the Committee on Ways and Means early in the next Congress. Further, an appeal is pending of a court decision that the harbor maintenance excise tax in part is unconstitutional. By letter of October 2, 1996, Chairman Archer requested the staff of the Joint Committee on Taxation to develop a number of materials for use by the task force. I enclose a copy of that letter. The Joint Committee staff has been directed to report to the Chairman by early November.

We are informed that the Federal Government imposes a variety of non-tax, user fees (e.g., immigration inspection fees) on transportation providers to offset the costs of certain services provided to them. In order to evaluate the overall Federal financial burden imposed on transportation providers, the Chairman has asked us to provide a list of all such fees. We request that you supply us with a list of all such fees imposed by your agency on transportation providers by November 8, 1996.

Should you have questions, or desire to schedule any meetings with my staff, you may contact H. B. Hartley at 225–7377. I appreciate your cooperation in this matter.

Sincerely,

KENNETH J. KIES.

Enclosure: Letter from Chairman Archer.

5. Letter from Kenneth J. Kies to Lieutenant General Joe N. Ballard, Chief of Engineers, U.S. Army Corps of Engineers, October 24, 1996

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, October 24, 1996.

Lt. Gen. JOE N. BALLARD,
Chief of Engineers, U.S. Army Corps of Engineers,
Washington, DC.

DEAR GENERAL BALLARD: Chairman Bill Archer of the House Committee on Ways and Means has appointed a bipartisan task force of Members of that Committee to review and advise him on excise tax issues affecting all transportation sectors—air, highway, water, and rail. As you are aware, both the highway and aviation trust fund excise taxes or programs are scheduled to expire within the next year; future funding of the programs financed with these taxes is dependent on action by the Committee on Ways and Means early in the next Congress. Further, an appeal is pending of a court decision that the harbor maintenance excise tax in part is unconstitutional. By letter of October 2, 1996, Chairman Archer requested the staff of the Joint Committee on Taxation to develop a number of materials for use by the task force. I enclose a copy of that letter. The Joint Committee staff has been directed to report to the Chairman by early November.

We are informed that the Federal Government imposes a variety of non-tax, user fees on transportation providers to offset the costs of certain services provided to them. In order to evaluate the overall Federal financial burden imposed on transportation providers, the Chairman has asked us to provide a list of all such fees. We request that you supply us with a list of all such fees imposed by the Corps of Engineers on transportation providers by November 8, 1996.

Should you have questions, or desire to schedule any meetings with my staff, you may contact H.B. Hartley at 225–7377. I appreciate your cooperation in this matter.

Sincerely,

KENNETH J. KIES.

Enclosure: Letter from Chairman Archer.

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