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The Federal Excise Tax on Gasoline and the Highway Trust Fund: A Short History

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Summary

Excise taxes have long been a part of our country's revenue history. In the field of gasoline taxation, the states led the way with Oregon enacting the first tax on motor fuels in 1919. By 1932, all states and the District of Columbia had followed suit with tax rates that ranged between two and seven cents per gallon. The federal government first imposed its excise tax on gasoline at a one-cent per gallon rate in 1932. The gas tax was enacted to correct a federal budgetary imbalance. It continued to support general revenue during World War II and the Korean War.

Economists know the gasoline excise tax as a "manufacturer's excise tax" because the government imposes it at production (i.e., the producer, refiner, or importer) for efficiency in collection. Particularly in the short run, when the demand for gasoline is relatively inelastic, economists recognize that any increase in the gasoline tax is generally passed forward to the retailer, translating into a higher retail gas sales price. Thus, the burden for much of the tax ultimately falls on the consumer.

The Highway Revenue Act of 1956 established the federal Highway Trust Fund for the direct purpose of funding the construction of an interstate highway system, and aiding in the finance of primary, secondary, and urban routes. This act increased the tax on gasoline from two to three cents per gallon. Each time Congress has extended the Highway Trust Fund it has also extended the federal excise tax on gasoline.

As recently as 1990 and 1993, Congress passed legislation dedicating a portion of gasoline tax revenue for deficit reduction. However, none of the current 18.4-cent-per-gallon tax imposed on gasoline is dedicated to the General Fund. One tenth of one cent per gallon is dedicated to the Leaking Underground Storage Tank Trust Fund; 2.86 cents per gallon is allocated for mass transit purposes and earmarked to the Mass Transit Account within the Highway Trust Fund; and the balance, 15.44 cents per gallon, is earmarked to the Highway Account, also within the Highway Trust Fund.

On July 29, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This act provided a six-year extension of the Highway Trust Fund excise taxes that were scheduled to expire in 2005. Thus, the gasoline excise tax is scheduled to expire after September 30, 2011. The act also established a Motor Fuel Tax Enforcement Advisory Commission. Among the commission's duties are to review motor fuel revenue collections, investigations related to motor fuel taxes, and to help develop and review legislative proposals with respect to motor fuel taxes.

For FY2011, the Congressional Budget Office estimates that revenues and interest credited to the Highway Trust Fund will total $36.9 billion, which will be divided into the Highway Account ($31.8 billion) and the Mass Transit Account ($5.1 billion). CBO also estimates that the fund's three primary revenue sources and their yields will be the gasoline tax ($24.0 billion), the diesel tax ($8.7 billion), and the tax on trucks and trailers ($2.2 billion).

On May 17, 2011, at a Senate Finance Committee hearing, a CBO official stated that "the trust fund will be unable to meet its obligations in a timely manner by the summer or fall of 2012, CBO projects, unless transfers similar to those in the past are made, other sources of revenue are identified, or spending is reduced."

This report will be updated as issues develop, legislation is introduced, or as otherwise warranted.

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Although excise taxes have long been a source of federal tax revenue, the federal manufacturers excise tax on gasoline was first incorporated into the federal tax structure by the Revenue Act of 1932, which became law on June 6, 1932.[1] A manufacturer's excise tax is one that is collected at the level of production. A tax imposed at the production or importation level provides ease in administration and revenue collection.[2]

Prior to the 1932 Act, there had been a reluctance on the part of federal officials and Congress to impose this tax at the federal level. Instead, they preferred to relinquish this revenue source to the states to help them finance their revenue needs. Oregon was the first state to levy a gasoline tax in 1919. As of January 1932, all of the states and the District of Columbia had enacted legislation imposing a tax on gasoline with rates that ranged from two to seven cents per gallon.

However, during the severe depression of the 1930s, federal revenues were sharply reduced and higher expenditures were made for relief and public works programs. As a result, the Secretary of the Treasury, in his annual report for FY1931, reported that the federal government had incurred a budgetary deficit of some $903 million that year. This marked the first year in more than a decade when federal receipts failed to exceed federal expenditures and produce a budgetary surplus. Moreover, the Secretary of the Treasury estimated then that even higher deficits were anticipated in the years immediately following: $2.1 billion in FY1932, and $1.4 billion in FY1933.

Gasoline Excise Tax for Deficit Reduction—1932

To correct this budgetary imbalance, the Secretary of the Treasury submitted comprehensive tax-raising and expenditure-reduction proposals for congressional action. Among the tax recommendations were those for legislation increasing individual and corporation income, estate and gift, excise, and other taxes. Included in the excise tax proposals was the request for a new federal manufacturer's excise tax on gasoline, to be levied at the rate of one cent per gallon and scheduled to end in 1934. It was estimated that adoption of such a tax would yield the U.S. Treasury approximately $165 million in revenues during FY1933.

The House of Representatives, in its consideration of and action on these revenue-raising proposals, initially refused to impose a new federal tax on gasoline. The Senate amended the House-passed bill, however, authorizing a gasoline tax at the rate of one cent per gallon. Congress retained the tax in the final version of the bill approved by the House and Senate Conference Committee and signed into law.

As approved, Section 617(a) of the Revenue Act of 1932[3] imposed a federal tax on gasoline sold by a producer or importer at the rate of one cent per gallon. Under Section 617(c) of this legislation, the term "producer" included a "refiner, compounder, or blender, and a dealer selling gasoline exclusively to producers of gasoline, as well as a producer." Gasoline was defined to include gasoline, benzyl, and any other liquids used primarily as a fuel to propel motor vehicles, motor boats, or airplanes. Section 629 of this act made this tax effective on June 21, 1932, for a temporary period, with provision for its end just over a year later on June 30, 1933. The *Annual*

[1] The author updated this report, which was previously written by Pamela J. Jackson.

[2] For an analysis of the economic effects of a change in the amount of the gasoline tax, see CRS Report R40808, *The Role of Federal Gasoline Excise Taxes in Public Policy*, by Robert Pirog.

[3] Revenue Act of 1932, P.L. 154, 72nd Congress, approved June 6, 1932.

Report of the Commissioner of Internal Revenue for FY1933 reported that the federal government derived $124.9 million from the excise tax on gasoline. Thus, the gasoline tax represented 7.7% of the total Internal Revenue collection of $1.62 billion derived from all sources during FY1933.

Shortly before the tax was scheduled to expire, Congress approved two bills that extended this tax for an additional year and increased its rate. Under P.L. 73 approved by the 73rd Congress,[4] Congress extended this tax until June 30, 1934. The National Industrial Recovery Act,[5] signed into law on the same day, included provisions governing the rate of this tax. Section 211(a) of this act authorized the increase in federal gasoline tax from one cent to 1.5 cents per gallon, effective June 17, 1933. Section 217(b) provided for this tax to be reduced to one cent per gallon on the first day of the calendar year following the date proclaimed by the President when either of the following occurred: (1) the close of the first fiscal year ending after 1933 when total federal receipts exceeded total federal expenditures, or (2) the repeal of the 18th amendment to the Constitution, establishing national prohibition (repeal would bring in additional revenues to the U.S. Treasury from alcohol taxes).

Subsequently, President Franklin D. Roosevelt proclaimed repeal of the 18th amendment to the Constitution on December 5, 1933. Therefore, under authority of Section 217(b) of the National Industrial Recovery Act, the federal gasoline tax reverted to its former rate of one cent per gallon on January 1, 1934.

Section 603 of the Revenue Act of 1934,[6] approved in the spring of 1934, continued this tax at the rate of one cent per gallon beyond its scheduled expiration date of June 30, 1934.

National Defense Requirements

The one-cent rate was maintained until just before the United States entered World War II, when, as a result of increased national defense requirements, Congress again took action increasing this tax. Section 210 of the Revenue Act of 1940[7] authorized an increase to 1.5 cents per gallon for the five-year period beginning on July 1, 1940, and continuing through June 30, 1945, as part of a defense tax.

The following year, under Section 521(a)(20) of the Revenue Act of 1941,[8] this rate was made permanent by elimination of the June 30, 1945, expiration date that had been specified in the Revenue Act of 1940.

The 1.5-cent per gallon rate continued for more than a decade until the outbreak of the Korean War, when Congress increased the rate to two cents per gallon under authority of Section 489 of the Revenue Act of 1951.[9] This rate became effective on November 1, 1951, and Congress

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[4] Act to Extend the Gasoline Tax for One Year, to Modify Postage Rates on Mail Matter and for other Purposes, P.L. 73, 73rd Congress, approved June 16, 1933.

[5] National Industrial Recovery Act, P.L. 67, 73rd Congress, approved June 16, 1933.

[6] Revenue Act of 1934, P.L. 216, 73rd Congress, approved May 10, 1934.

[7] Revenue Act of 1940, P.L. 656, 76th Congress, approved June 25, 1940.

[8] Revenue Act of 1941, P.L. 250, 77th Congress, approved September 20, 1941.

[9] Revenue Act of 1951, P.L. 183, 82d Congress, approved October 20, 1951.

authorized it to continue until March 31, 1954. After this date, Congress scheduled the rate to be reduced to its former rate of 1.5 cents per gallon.

Before this reduction took place, Congress passed the Excise Tax Reduction Act of 1954,[10] and under Section 601(a)(6) of this legislation, the two-cent per gallon rate was extended for an additional year—until March 31, 1955.

During the next two years Congress passed legislation granting one-year extensions of the two-cent per gallon tax on gasoline by approval of the Tax Rate Extension Act of 1955[11] (Section 3(a)(3)) and the Tax Rate Extension Act of 1956[12] (Section 3(a)(3)), which continued the rate first to March 31, 1956, and then to March 31, 1957.

P.L. 466, approved by the 84th Congress,[13] provided that the Treasury Department refund those taxes paid on gasoline used on farms for farming purposes purchased after December 31, 1955.

Highway Trust Fund

The Federal Aid Highway Act of 1956[14] provided for a significant expansion in the federal-aid highway program and authorized federal funding over a longer period to permit long-range planning. It was considered necessary to authorize the entire interstate highway program to assure orderly planning and completion of this network of highways throughout the United States as efficiently and as economically as possible. Consequently, this act authorized appropriations for the13-year period from FY1957 through FY1969 for this highway system. To make the federal aid highway program self-financing, the Highway Revenue Act of 1956[15] was incorporated as Title II of this legislation and imposed new taxes and increased others levied on highway users who directly benefitted from this program.

Section 205 of this Highway Revenue Act authorized an increase in the federal gasoline tax from two to three cents per gallon for the 16-year period from July 1, 1956, through June 30, 1972. After that, the Congress scheduled the tax to be reduced to 1.5 cents per gallon.

Section 209 of this act authorized the creation of the Highway Trust Fund, to which there was to be appropriated from the General Fund of the Treasury certain percentages of receipts derived from highway-user taxes: gasoline, diesel and special motor fuel, tread rubber, tires and inner tubes, trucks, buses, etc. One hundred percent of the federal gasoline tax receipts were transferred to the Highway Trust Fund.

It was argued that transferring such taxes to the Highway Trust Fund was necessary to cover anticipated expenditures to be made under the federal aid highway program for the 16-year period from FY1957 through FY1972. H.Rept. 2022 (84th Congress), issued on this legislation,

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[10] Excise Tax Reduction Act of 1954, P.L. 324, 83rd Congress, approved March 31, 1954.

[11] Tax Rate Extension Act of 1955, P.L. 18, 84th Congress, approved March 30, 1955.

[12] Tax Rate Extension Act of 1956, P.L. 458, 84th Congress, approved March 29, 1956.

[13] Act to Amend the Internal Revenue Code of 1954 to Relieve Farmers from Excise Taxes in the Case of Gasoline and Special Fuels Used on Farms for Farming Purposes, P.L. 266, 84th Congress, approved April l 2, 1956.

[14] Federal-Aid Highway and Highway Revenue Act of 1956, P.L. 627, 84th Congress, approved June 29, 1956.

[15] Ibid.

estimated that highway-user taxes would yield some $38.5 billion in revenues for this trust fund during this 16-year period—enough to cover anticipated expenditures of approximately $37.3 billion (during this same period) for the federal aid highway program.

This legislation also arranged for refunding a certain portion of federal gasoline taxes paid that were used for non-highway purposes or by local transit systems.

Since enactment of this legislation, Congress has continued to pass laws extending the life of the Highway Trust Fund and extending and increasing the rates imposed on gasoline.

Under Section 201(a) of the Federal Aid Highway Act of 1959,[16] the federal gasoline tax was increased from three to four cents per gallon, a change that was to be in effect from October 1, 1959, through June 30, 1961.

Under Section 201(b) of the Federal Aid Highway Act of 1961,[17] this four-cent rate was extended beyond June 30, 1961. The scheduled reduction to 1.5 cents per gallon, which the Highway Revenue Act of 1956 had authorized to take place on July 1, 1972, was deferred until October 1, 1972.

Following the 1961 act, the next law affecting the federal gasoline tax was the Federal-Aid Highway Act of 1970.[18] Under Section 303(a)(6) of this act, the scheduled reduction in the rate of this tax to 1.5 cents per gallon was deferred from September 30, 1972, to September 30, 1977.

Again in 1976, an extension of excise tax rates without the scheduled rate reductions allocated to the Highway Trust Fund was provided in Title III of the Federal Aid Highway Act of 1976.[19] The Interstate Highway System was obviously not going to be completed in 1977 (it was estimated in 1976 that it might be completed in 1988). Lack of time to study and report to Congress on modifications to the Highway Trust Fund led to the two-year extension. Congress was concerned that without this legislation funding would be interrupted. Thus, Congress delayed decision-making until it could gather additional information.

Two years later, Congress had not yet decided on modifications to the trust fund and its related taxes. The Ways and Means Committee accepted the recommendation of the Public Works Committee and approved an extension of the trust fund and the taxes payable to the fund. This five-year extension through September 30, 1984, became part of the Surface Transportation Assistance Act of 1978.[20]

Congress gathered extensive information on highway finance and related taxes in 1982. Two major studies were submitted to Congress. The first was a cost allocation study done by the Department of Transportation in May 1982. The second was a study of the excise tax structure that the Department of the Treasury provided to Congress in December 1982. Further, Congress

[16] Federal-Aid Highway Act of 1959, P.L. 86-342, approved September 21, 1959.

[17] Federal-Aid Highway Act of 1961, P.L. 87-61, approved June 29, 1961.

[18] Federal-Aid Highway Act of 1970, P.L. 91-605, approved December 31, 1970.

[19] Federal-Aid Highway Act of 1976, P.L. 94-280, approved May 5, 1976.

[20] Surface Transportation Assistance Act of 1978, P.L. 95-599, approved November 6, 1978.

held more than a dozen hearings before the passage of the Surface Transportation Assistance Act of 1982.[21]

The act contains what is commonly called the 4R Program: interstate reconstruction, resurfacing, restoration, and rehabilitation. The completion and selective expansion of the Interstate Highway System remained the primary goals under the bill. Congress raised the gasoline excise tax from its previous level of four cents per gallon to nine cents per gallon. With this increase, Congress eliminated some highway user charges while increasing others. The act also provided that one cent of the five-cent increase in the motor fuel taxes was to be allocated for mass transit purposes. The bill set up a special Mass Transit Account for expenditures made under the Urban Mass Transportation Act of 1964.

In 1986, in response to concerns about the cost for cleanup of leaking underground storage tanks containing petroleum products, Congress established the Leaking Underground Storage Tank Trust Fund.[22] This fund received revenues of 0.1 cent per gallon on the sale or use of gasoline (first effective January 1, 1987). Congress scheduled the tax to expire on the earlier of December 31, 1991, or the last day of the month in which the Secretary of the Treasury estimated that net revenues in the fund were at least $500 million. This additional tax ended after August 31, 1990, because the Leaking Underground Storage Tank Trust Fund had reached its net revenue target for cancellation.[23]

The Surface Transportation and Uniform Relocation Assistance Act of 1987[24] extended the highway-related excise taxes (including the tax on gasoline) through September 30, 1993.

Gasoline Excise Tax for Deficit Reduction

Under provisions of the Omnibus Budget Reconciliation Act of 1990 (OBRA90),[25] the tax rate on highway and motorboat fuels was increased by five cents per gallon. Thus, the tax increased from nine to 14 cents per gallon of gasoline. Half of the increase in revenues from the gasoline tax imposed on highway use vehicles was dedicated as additional funding for the Highway Trust Fund. The remaining half of revenues was deposited in the General Fund and dedicated for federal deficit reduction. Of the 2.5-cent increase dedicated to the Highway Trust Fund, 0.5 cents were dedicated to the Mass Transit Account in that trust fund. Thus, Congress raised the Mass Transit Account funding from one cent to 1.5 cents. OBRA90 also reinstated the Leaking Underground Storage Tank Trust Fund (LUST). The LUST tax recommenced at the same 0.1-cent-per-gallon tax rate.[26] The 14-cent tax rate was scheduled to expire on September 30, 1995, while the LUST tax was scheduled to terminate three months later on December 31, 1995.

[21] Surface Transportation Assistance Act of 1982, P.L. 97-424, approved January 6, 1983.

[22] Superfund Revenue Act of 1986, P.L. 99-499, approved October 17, 1986.

[23] Internal Revenue Service Announcement 90-82, released June 27, 1990.

[24] Surface Transportation and Uniform Relocation Assistance Act of 1987, P.L. 100-17, approved April 2, 1987.

[25] Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, approved November 5, 1990.

[26] This act also instituted a new 2.5-cent per gallon tax on fuels used in rail transportation effective on December 1, 1990. Rail transportation generally uses diesel fuel. All revenues from this new tax go to general fund revenues with the tax scheduled to expire on October 1, 1995.

The conventional view that had held since the establishment of the Highway Trust Fund, which was that the gasoline tax was a user tax, was challenged. With the passage of OBRA90, the gasoline tax returned to the role it served prior to 1957: a General Fund revenue source, at least in part.

The following year Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991.[27] The revenue title is the Surface Transportation Revenue Act of 1991. This act extended the highway-related excise taxes (including the tax on gasoline in Section 8002(a)(3)) for four years. Hence, this law extended the tax on gasoline (without an increase in tax rate) through September 30, 1999. In addition, under provisions of the act, states were permitted to spend their Highway Trust Fund grants on a broader range of alternative transportation modes and related infrastructure needs. This was done in response to the argument that highway users benefit from expenditures on mass transit and other transportation modes because the availability of these travel alternatives alleviates congestion on existing highways, which in turn reduces the need to build additional roadways.

Also included in provisions of ISTEA was the establishment of a new trust fund known as the National Recreational Trails Trust Fund. This fund receives tax transfers from the Highway Trust Fund that represent tax receipts (imposed on gasoline, diesel, and special motor fuels) collected from *non-highway* recreational fuel use. Examples of recreational fuels are those used in vehicles on recreational trails or back-country terrain, and non-business fuel used in outdoor recreational equipment, such as camp stoves.

Once again, the gasoline excise tax was changed under provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA93, Section 13241(a)).[28] Under provisions of OBRA93, the additional 2.5-cent gasoline tax dedicated for deficit reduction was transferred to the Highway Trust Fund beginning October 1, 1995. This additional 2.5-cent tax rate was extended from October 1, 1995, to September 30, 1999. The highway portion of the fund receives two cents, while the Mass Transit Account is credited with 0.5 cent of the increased funding. In addition, OBRA93 provided for a permanent, additional 4.3 cents per gallon tax on gasoline starting on October 1, 1993. Thus, the combination of the 2.5-cents OBRA90 gasoline tax rate and the permanent 4.3-cent OBRA93 gasoline tax rate resulted in a total of 6.8 cents per gallon dedicated to deficit reduction purposes between October 1, 1993, and October 1, 1995. Revenues collected from this 6.8-cent portion of the tax were placed in the General Fund of the U.S. Treasury.

As previously related, provisions of OBRA90 terminated the LUST tax rate of 0.1 cent on December 31, 1995. Thus, the 18.3-cent federal gasoline excise tax rate was in effect from January 1, 1996, to October 1, 1997, before increasing to 18.4 cents with the reintroduction of the LUST tax. This 18.3-cent rate includes the permanent 4.3 cents initially dedicated to federal deficit reduction but which now goes to the Highway Trust Fund.

Reversion from Deficit Reduction to User Tax Status

During the early months of 1996, the price of gasoline at the pump was rising and a renewed interest developed in federal gasoline excise taxes. Three principal views developed. The first

[27] Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, P.L. 102-240, approved December 18, 1991.

[28] Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, approved August 10, 1993.

view was that the 4.3 cents increase in federal excise taxes imposed under OBRA93 should be repealed. Proponents of repeal argued that the 4.3 cents repeal could lead to a similar reduction in gasoline pump prices. Two camps developed which supported retaining the tax. Some supporters of the tax expressed the view that while the 4.3-cent tax should be retained, the tax revenues should be returned to the Highway Trust Fund for long-term capital improvements. They argued for increased funding of the nation's highway infrastructure. Others expressed the view that the monies should continue to be collected and used for deficit reduction. This camp of supporters argued that the gasoline price increase was temporary and that over the long term prices would trend lower. Partially in response to this debate, the Chairman of the House Ways and Means Committee, Representative Bill Archer, appointed a bi-partisan group to examine the tax treatment of each of the transportation modes with a goal of rationalizing the current myriad tax rules applying to the transportation sector.

Included in the Taxpayer Relief Act of 1997[29] was a provision that returns the General Fund portion of the tax back to the Highway Trust Fund. This provision, first added by a Senate amendment (and modified in conference), provides that the 4.3-cent tax is divided between the Highway Account (3.45 cents) and the Mass Transit Account (0.85 cent). The provision was effective on October 1, 1997. Thus, of the total 18.3 cents dedicated to the Highway Trust Fund, 15.44 cents goes to the Highway Account and 2.86 cents to the Mass Transit Account.[30] As a consequence, the disposition of revenues was altered by the act so that all revenues now accrue to the Highway Trust Fund and none are applied to deficit reduction. Consumers experienced no price change due to enactment of this provision since the federal tax rate on gasoline remained the same.

In addition, the Taxpayer Relief Act of 1997 reinstated the Leaking Underground Storage Tank Trust Fund excise tax which had expired January 1, 1996.[31] The tax was reinstated at its prior tax rate of 0.1 cent per gallon on all types of motor fuels. The tax rate change was effective from October 1, 1997, through March 31, 2005.[32] The LUST excise tax was then extended for an additional seven months (through September 30, 2005).[33] Under a provision contained in the Energy Policy Act of 2005 the LUST tax is extended through September 30, 2011. The imposition of the gasoline tax is codified under IRC section 4081.

Although the component of the federal gasoline tax formerly (but no longer) applied to deficit reduction continues without an expiration date, the 14 cents scheduled to expire on September 30, 1999 has been extended. Congress not only extended the gasoline excise tax but also the other highway-related excise taxes. The House had proposed to extend the heavy truck tire tax until October 1, 2000, whereupon it would expire. However, in conference with the Senate, all the highway-related excise taxes were extended through September 30, 2005. The legislative vehicle for this extension was the Transportation Equity Act for the 21st Century[34] generally known as

[29] Taxpayer Relief Act of 1997, P.L. 105-34, approved August 5, 1997.

[30] A technical correction contained in the Transportation Equity Act for the 21st Century (discussed later in this report) provides that deposits are to be equal to 2.86 cents per gallon rather than the 2.85 cents provided in the 1997 Act.

[31] Ibid.

[32] For additional information and a discussion of the LUST tax, see CRS Report RS21201, *Leaking Underground Storage Tanks (USTs): Prevention and Cleanup*, by Mary Tiemann.

[33] Extension of the Leaking Underground Storage Tank Trust Fund Financing Rate, P.L. 109-6, approved March 31, 2005.

[34] Transportation Equity Act for the 21st Century, P.L. 105-178, approved June 9, 1998.

TEA-21. The revenue portion of this act (Title IX) was titled the Surface Transportation Revenue Act of 1998.

This act also provided that the Highway Trust Fund no longer earns interest on unspent balances (effective September 30, 1998). The balance of funds that exceed $8 billion in the Highway Account was canceled on October 1, 1998. In addition, TEA-21 provided that the National Recreational Trails Trust Fund established under ISTEA be repealed. In the absence of an appropriation of funds, no revenues had been available for expenditure. The conference agreement noted that similar expenditure purposes are provided by authorized amounts from the Highway Trust Fund.

Extensions in the 108th Congress

Lawmakers first enacted the Surface Transportation Extension Act of 2003 (P.L. 108-88), which was a short-term extension of the highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund. The five-month extension was signed into law by President Bush September 30, 2003. Four additional short-term extensions were enacted after the expiration of this initial extension. The Surface Transportation Extension Act of 2004 became P.L. 108-202 in February 2004. Part III of the Surface Transportation Extension Act of 2004, P.L. 108-263, was enacted in June 2004, and Part IV of the act, P.L. 108-280, became law at the end of July 2004. The Surface Transportation Extension Act of 2004, Part V became P.L. 108-310 and provided extensions through May 31, 2005, for those programs authorized by the Transportation Equity Act for the 21st Century (TEA-21). This last extension provided $31.8 billion in contract authority, of which $2.7 billion was for FY2004 and $29.1 billion was available for the eight-month period from October 1, 2004, through May 31, 2005. Under provisions of the Transportation Equity Act for the 21st Century, expenditures from the trust fund would have ceased if Congress had failed to approve these short-term extensions.[35]

The revenue sources for the Highway Trust Fund include six different excise taxes, which are taxes on the highway motor fuels, gasoline, diesel fuel, and kerosene; a retail sales tax on heavy highway vehicles; a manufacturers' excise tax on heavy vehicle tires;[36] and an annual use tax on heavy vehicles. These excises were not affected by the temporary extensions, since under the law at that time the excise taxes were not scheduled for expiration until September 30, 2005.

Extensions in the 109th Congress

The 109th Congress initially had until Memorial Day to complete work on the new highway bill. That extension included language that provided for the 2.5 cents per gallon tax on ethanol to be deposited into the Highway Trust Fund for one year. Those monies had previously been deposited into the general fund. That change was estimated to generate $940 million in new revenue for the

[35] For an additional historical perspective on extension legislation, see CRS Report RS21621, *Surface Transportation and Aviation Extension Legislation: A Historical Perspective*, by John W. Fischer and Robert S. Kirk.

[36] The American Jobs Creation Act of 2004 (P.L. 108-357) replaced the tax on tires from one based on tire weight to a tax based on tire load capacity. This legislation also added definitions of "taxable tires," "biasply tires" and "super single tires." Additional clarification of the definition for "super single tires" was provided with passage of the Energy Policy Act of 2005.

Highway Trust Fund. Also included was a one year extension of the budgetary fire walls that tie gas tax revenue to highway and transit programs, while at the same time waiving for one year the Byrd self-solvency test for the trust fund and releasing the $716 million the Federal Highway Administration was holding onto as a result of the trust funds failure of that test. Further, the extension "also included a new 'supplemental minimum guarantee' program that was designed to ensure that all states continue to receive their 90.5% minimum guaranteed rate of return on fuel taxes sent to the Highway Trust Fund."[37]

Again in the 109th Congress, it was necessary to pass a number of extensions so that the Highway Trust Fund could continue operations until enactment of a longer term re-authorizing measure. Accordingly, these extensions were known as the Surface Transportation Extension Acts of 2005.[38]

Just prior to the summer recess, Congress sent legislation (H.R. 3) to the President which extended trust fund expenditures through FY2009 and continued the highway related taxes through FY2011. The legislation also included provisions aimed at stopping fuel fraud, provided tax-exempt financing authority to finance highway projects and rail-truck transfer facilities, and modified a number of excise taxes (both highway and non-highway related). President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (the "Highway Act") into law on August 10, 2005. The act extended for six years the Highway Trust Fund excise taxes due to expire in 2005 until 2011. All of the excise taxes, including the federal excise tax on gasoline, were continued at the prior tax rates. The act established the Motor Fuel Tax Enforcement Advisory Commission which was scheduled to terminate on September 30, 2009. In other legislation, the Energy Policy Act of 2005 extended the Leaking Underground Storage Tank (LUST) Trust Fund financing rate for the same six year period that the highway excise taxes were extended. Thus, the LUST tax will expire after September 30, 2011.

Extensions in the 110th Congress

At the time of passage of SAFETEA-LU, tax changes, the unexpended balance in the trust fund and economic growth were expected to provide sufficient financing for the Highway Trust Fund. But shortfalls developed which required general fund contributions.[39] On September 15, 2008, P.L. 110-318, *To Amend the Internal Revenue Code of 1986 to Restore the Highway Trust Fund Balance*, was passed. This law transferred $8.017 billion from the U.S. Treasury to the Highway Trust Fund, which provided financing through the end of FY2008.

Extensions in the 111th Congress

According to the Congressional Budget Office:

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[37] Heather M. Rothman, "Highway Funding Extension Bill Cleared, With Provisions for AMT Relief, Expensing," *Daily Tax Report*, October 1, 2004, No. 190, p. G-11.

[38] Surface Transportation Extension Act of 2005, Part I, P.L. 109-14, approved May 31, 2005. Part II, P.L. 109-20, approved July 1, 2005. Part III, P.L. 109-35, approved July 20, 2005. Part IV, P.L. 109-37, approved July 22, 2005. Part V, P.L. 109-40, approved July 28, 2005. Part VI, P.L. 109-42, approved July 30, 2005.

[39] CRS Report R41490, *Surface Transportation Funding and Finance*, by Robert S. Kirk and William J. Mallett, p. 2.

> In 2010, the Hiring Incentives to Restore Employment Act (P.L. 111-147) authorized the most recent transfer from the general fund and the resumption of interest credits to the trust fund. That law also shifted certain refunds for tax-exempt use of motor fuels, such as fuel consumed by state and local governments, from being paid out of the Highway Trust Fund to being paid out of the general fund, also boosting trust fund balances. Because of the infusion of general revenues, at the end of 2010, the account balances were positive.[40]

On December 22, 2010, the *Continuing Appropriations and Surface Transportation Extension Act, 2011*, (H.R. 3082) became P.L. 111-188. This law extended SAFETEA-LU authorization of appropriations out of the Highway Trust Fund through March 4, 2011.

Actions in the 112th Congress

For FY2011, the Congressional Budget Office estimates that revenues and interest credited to the Highway Trust Fund will total $36.9 billion, which will be divided into the Highway Account ($31.8 billion) and the Mass Transit Account ($5.1 billion).[41] The three primary revenue sources will be the gasoline tax ($24.0 billion), the diesel tax ($8.7 billion), and the tax on trucks and trailers ($2.2 billion).[42] The tax on trucks and trailers will only finance highways.

On March 4, 2011, the *Surface Transportation Extension Act of 2011* (H.R. 662) became P.L. 112-5. The law provided an extension of federal-aid highway, highway safety, motor carrier safety transit, and other programs funded out of the Highway Trust Fund through September 30, 2011.

On May 17, 2011, the Senate Finance Committee held a hearing on the "Highway Trust Fund and Paying for Highways." Joseph Kile, Assistant Director for Microeconomic Studies at CBO, testified:

> The law that authorizes collection of taxes for and spending from the Highway Trust Fund is set to expire on September 30, 2011. Even if the provisions of that law are extended, the trust fund will be unable to meet its obligations in a timely manner by the summer or fall of 2012, CBO projects, unless transfers similar to those in the past are made, other sources of revenue are identified, or spending is reduced.[43]

Different options for financing highways were examined.[44]

On July 13, 2011, Representative Mica, chairman of the House Transportation and Infrastructure Committee, sent a letter to the U.S. Chamber of Commerce opposing the Chamber's support for a gasoline tax increase.[45] In his letter, he stated:

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[40] Congressional Budget Office, *The Highway Trust Fund and Paying for Highways*, Statement of Joseph Kile, Assistant Director for Microeconomic Studies, before the Senate Committee on Finance, May 17, 2011, p. 7.

[41] Ibid., p. 4.

[42] Ibid.

[43] Ibid., p. 1.

[44] Nicola M. White, "Finance Committee Seeks Ways to Fund Transportation Infrastructure," *Tax Notes*, May 23, 2011, p. 797. For an examination of different possible revenue sources for surface transportation infrastructure, see CRS Report R41490, *Surface Transportation Funding and Finance*, by Robert S. Kirk and William J. Mallett.

[45] Adam Snider, "U.S. Chamber's Support for Gas Tax Hike Imperils Surface Transport Bill, Mica Says, *Daily Tax Report*, August 19, 2012, p. G3.

> The reaction from National Chamber of Commerce representatives to the rollout of the Republican Surface Transportation Reauthorization outline was most disappointing and a potential setback to enacting a long term transportation reauthorization. During my years of service on the Transportation and Infrastructure Committee I have seen the National Chamber of Commerce evolve from an Association that would advocate strong infrastructure and responsible fiscal policy on behalf of its members to an organization whose primary purpose in the national infrastructure arena appears to be to lead the lobby for tax increases.[46]

Reportedly, Representative John Mica and Senator Barbara Boxer, chairwoman of the Senate Environment and Public Works Committee, have proposed long-term highway bills, which have substantial differences.[47]

On August 31, 2011, President Obama called on Congress to pass a clean extension of funding for the surface transportation law.[48] In response, Representative John L. Mica issued a press release that stated:

> Republicans have offered positive and financially responsible alternatives to get these measures moving. As Chairman of the House Transportation Committee, I will agree to one additional highway program extension, this being the eighth of the overdue transportation reauthorization.[49]

Issues

In economic theory, there are two principles often cited for determining how the burden of a tax ought to be distributed. The first is the ability-to-pay principle, which suggests that a tax ought to be positively related to an individual's economic welfare. The second principle, the benefit principle, suggests the burden should relate to an individual's return from the government good or service funded by the tax. Currently, an excise tax on gasoline seems to most closely follow the benefits principle. In fact, the excise tax has commonly been referred to as a "user fee." However, this is not the only economic rationale that could be forwarded in support of a gasoline tax. Some argue that gasoline taxes, and energy taxes, more generally, can be imposed to influence behavior, specifically as a mechanism to reduce, or internalize the costs of, social and environmental externalities such as congestion and pollution.[50] The economic benefits derived from the expenditure of funds for transportation infrastructure, while important to the analysis, are distinct from the associated costs and benefits related to the method of raising the necessary revenues.

Particularly in the short run, when the demand for gasoline is relatively inelastic, economists recognize any increase in the gasoline tax is generally passed forward to consumers in the form of higher prices. As consumers modify their behaviors to respond to the increase in price (depending

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[46] Representative John L. Mica, letter to Thomas J. Donohue, President and CEO of the U.S. Chamber of Commerce, July 13, 2011.

[47] Keith Laing and Bernie Becker, "Gas Tax Issue Could Be Next Political Fight in Congress," *The Hill*, vol. 18, no. 118, August 10, 2011, p. 4.

[48] Michael M. Gleeson, "Obama Calls for Clean Extension of Highway, Aviation Authorization and Taxes," *Tax Notes Today*, September 1, 2011, pp. 1-2.

[49] John Mica, *Statement on President's Transportation Remarks*, Press Release, August 31, 2011, p. 1.

[50] In economics, an externality arises when either the production or consumption of a good or service results in an indirect cost or benefit, which is not reflected in market prices.

upon the magnitude), economic theory would predict consumers would purchase less gasoline, all else being equal. As a result, producers and retailers may not be able to pass on the entire magnitude of the tax to consumers. Although consumers would likely bear the majority of the excise tax increase on gasoline, producers may have lower net revenues and, thus, share some portion of the burden.

On the following page appears **Table 1**, a complete summary of the gasoline tax rate changes.

Table 1. Summary of Changes in the Rate of the Federal Manufacturers' Excise Tax on Gasoline

Rate of Tax (in cents per gallon)	Period to Which Applicable
1	June 21, 1932, to June 16, 1933
1.5	June 17, 1933, to December 31, 1933
1	January 1, 1934, to June 30, 1940
1.5	July 1, 1940, to October 31, 1951
2	November 1, 1951, to June 30, 1956
3	July 1, 1956, to September 30, 1959
4	October 1, 1959, to March 31, 1983
9	April 1, 1983, to December 31, 1986
9.1	January 1, 1987, to August 31, 1990 (a)
9	September 1, 1990, to November 30, 1990
14.1	December 1, 1990 , to September 30, 1993
18.4	October 1, 1993, to December 31, 1995 (b)
18.3	January 1, 1996 (c), to September 30, 1997
18.4	October 1, 1997 (d), to September 30, 2011
4.3	October 1, 2011 and thereafter

Source: Prepared by the Congressional Research Service.

a. This act provided that the 0.1-cent per gallon tax will terminate on the earlier of December 31, 1991, or when the Secretary of the Treasury determines that taxes equivalent to at least $500 million in net revenues are in the Trust Fund. This additional tax terminated after August 31, 1990, because the LUST Trust Fund had reached its net revenue target for termination. (Internal Revenue Service Announcement 90-82, released June 27, 1990.)

b. Beginning on October 1, 1995, the revenues collected from the 2.5-cent "deficit reduction" rate are to be credited to the account of the Highway Trust Fund. Thus, while the gasoline excise tax rate holds constant at 18.4 cents, the distribution of amounts collected from the gasoline excise tax changes. The Highway Trust Fund will receive increased revenues as the rate credited to that fund increases from 11.5 to 14 cents. At this same time, the amount credited to the General Fund decreases from 6.8 to 4.3 cents.

c. Pursuant to provisions of OBRA90, the LUST tax terminated on December 31, 1995.

d. Beginning on October 1, 1997, the Taxpayer Relief Act of 1997 provides that amounts previously dedicated for deficit reduction be redirected to the Highway Trust Fund. Additionally, the LUST tax which had terminated on December 31, 1996 was re-authorized for the period October 1, 1997, through March 31, 2005. A seven month extension (P.L. 109-6) extends the tax until October 2005. Passage of the Energy Policy Act of 2005 extended the LUST financing tax rate through September 30, 2011.

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