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THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

October 10, 1986

MEMORANDUM FOR DONALD T. REGAN

FROM:

BERYL W. SPRINKEL

SUBJECT:

Superfund

Before the President has even signed the Tax Reform Act of 1986, Congress is preparing to pass a tax increase---the "superfund" hazardous-waste cleanup bill (HR 2005). The version of this bill agreed upon by the House and Senate conferees would fund the \$9 billion program with a variety of new taxes. Obviously, this is contrary to the Administration's clear, principled, and politically effective opposition to increasing taxes. The fact that the superfund bill raises taxes is the chief reason it should be opposed. In addition, the superfund taxes have a variety of other undesirable features.

(1) The tax on imported oil is higher than the tax on domestic oil, and amounts to an oil import fee. The President has built up a great deal of credibility by his courageous resistance to oil industry pressure for an import fee in response to recent lower oil prices. The principle should not be abandoned now. Aside from the inefficiency an oil import fee shares with other tariffs as a revenue source, it is very threatening to the friendly countries who sell oil to the United States (e.g., Mexico and Venezuela). The oil import fee alone would be grounds for rejecting the superfund tax package.

(2) The bill imposes a large tax on the petroleum industry. This is hardly what the industry needs at the present time. The rationale for taxing petroleum (and chemical feedstocks) is presumably that these sectors are the originators of what eventually becomes toxic waste. If the intention is to "make the polluters pay," however, superfund taxes should be levied directly on toxic waste creation. Most petroleum products do not become toxic wastes. Taxing petroleum to target polluters is like using a meat axe for heart surgery. Politically, Administration acquiescence in this tax will undermine our efforts to respond to the petroleum industry's distress in positive ways---repealing the windfall profit tax, eliminating restrictions on oil and gas contained in the Fuel Use Act, deregulating natural gas, etc.

(3) Superfund money will be used to clean up wastes created in the past. Hence, even if it were the case that the superfund taxes were levied strictly on polluters (which they are not), it

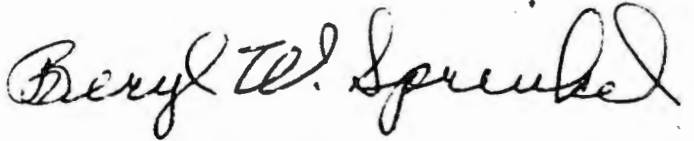
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(2) The bill imposes a large tax on the petroleum industry. This is hardly what the industry needs at the present time. The rationale for taxing petroleum (and chemical feedstocks) is presumably that these sectors are the originators of what eventually becomes toxic waste. If the intention is to "make the polluters pay," however, superfund taxes should be levied directly on toxic waste creation. Most petroleum products do not become toxic wastes. Taxing petroleum to target polluters is like using a meat axe for heart surgery. Politically, Administration acquiescence in this tax will undermine our efforts to respond to the petroleum industry's distress in positive ways---repealing the windfall profit tax, eliminating restrictions on oil and gas contained in the Fuel Use Act, deregulating natural gas, etc.

(3) Superfund money will be used to clean up wastes created in the past. Hence, even if it were the case that the superfund taxes were levied strictly on polluters (which they are not), it

would not be appropriate for current generators of wastes to bear a large fraction of the cost of past toxic waste externalities. Current producers of toxic wastes cannot change past decisions to generate wastes. Taxing current producers therefore is not consistent with a "polluters pay" rule. Furthermore, taxing current waste generators to pay for cleaning up past wastes surely will have an adverse impact on the current producers' international competitiveness and even their viability.

(4) The desire to spread the cost of cleaning up past pollution across the wider economy is the only possible rationale for raising some of the superfund money through a broad-based "environmental tax." This tax is to be imposed on the income base defined in the tax reform bill for use in computing the "alternative minimum tax." The broad based tax thus is levied on gross income, and no credits are allowable against it. Since most corporate tax revenue will not come through the "alternative minimum tax," the superfund broad-based tax treats corporate income differently from the way most of that income is treated in the 1986 tax reform bill. Manipulation of tax treatments within a week of passage of tax reform will make it difficult for business or the public to believe that the tax reform is now a "given," and will contribute to putting the tax system up for grabs again as soon as Congress returns next year.

(5) Finally, it may be belaboring the obvious, but there is no clear need for a \$9 billion superfund. Even if the cost/benefit basis for a fund this size were sound, EPA has indicated that it cannot spend nearly that amount in a responsible manner over the five-year period. Therefore, the bill already raises taxes beyond environmental needs. The precedent for further tax increases to support other politically motivated programs is built in.

The conclusion is clear. The President should veto the superfund bill.

cc: James C. Miller III, Office of Management and Budget
James A. Baker III, Department of the Treasury
Malcolm Baldrige, Department of Commerce
Edwin Meese III, Department of Justice
John S. Herrington, Department of Energy

MEMORANDUM

COUNCIL OF ECONOMIC ADVISERS

October 14, 1986

TO: BERYL W. SPRINKEL
FROM: STEPHEN J. DECANIO *SJD*
RE: SUPERFUND BROAD-BASED TAX

I would like to clarify a bit of my wording in the superfund memo of 10/10/86. The memo reads, "the broad based tax is levied on gross income, and no credits are allowable against it." It would have been more precise to state that the broad based tax is assessed against corporate income inclusive of a long list of tax preferences allowed under the (new) rules for computing the corporate income tax. Among these preferences are accelerated depreciation and 50% of "business untaxed reported profits." The amount of the environmental tax is 0.12% of the excess of alternative minimum taxable income over \$2 million.

The main point made in the memo concerning the broad-based tax, that it would treat corporate income differently from the way most such income will be treated under the 1986 Tax Reform Act, is unaffected by this clarification.

MEMORANDUM

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MEMORANDUM

COUNCIL OF ECONOMIC ADVISERS

Superseded

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The main point made in the memo concerning the broad-based tax, that it would treat corporate income differently from the way most such income will be treated under the 1986 Tax Reform Act, is unaffected by this clarification.

Memo clarification:

"Gross income" means ^{regular} ~~taxable~~ taxable income ~~plus~~ ^{without} certain preferences - regular depreciation but not accelerated depreciation; you have to add in $\frac{1}{2}$ ~~taxable~~ difference between book profits if book profits are ~~greater than~~ larger than the regular taxable income; you don't get to take account of net operating losses, etc.

EXCERPTS OF HR 2005, "SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986,"
AND OF JOINT EXPLANATORY STATEMENT OF CONFERENCE COMMITTEE.

FILED OCT. 3, 1986

(TEXT)

(Note: The excerpts include Title V (revenue provisions) of both the bill and the joint explanatory statement of conferees.)

**TITLE V—AMENDMENTS OF THE INTERNAL
REVENUE CODE OF 1986**

SEC. 501. SHORT TITLE.

This title may be cited as the "Superfund Revenue Act of 1986."

**PART I—SUPERFUND AND ITS REVENUE
SOURCES**

SEC. 511. EXTENSION OF ENVIRONMENTAL TAX.

(a) **IN GENERAL.**—Subsection (d) of section 4611 of the Internal Revenue Code of 1986 (relating to termination) is amended to read as follows:

"(d) APPLICATION OF TAXES.

"(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), the taxes imposed by this section shall apply after December 31, 1986, and before January 1, 1992.

"(2) **NO TAX IF UNOBLIGATED BALANCE IN FUND EXCEEDS \$3,500,000,000.**—If on December 31, 1989, or December 31, 1990—

"(A) the unobligated balance in the Hazardous Substance Superfund exceeds \$3,500,000,000, and

"(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the unobligated balance in the Hazardous Substance Superfund will exceed \$3,500,000,000 on December 31 of 1990 or 1991, respectively, if no tax is imposed under section 584, this section, and sections 4661 and 4671, then no tax shall be imposed under this section during 1990 or 1991, as the case may be.

"(3) **NO TAX IF AMOUNTS COLLECTED EXCEED \$6,650,000,000.**—

"(A) **ESTIMATES BY SECRETARY.**—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under section 59A, this section, and sections 4661 and 4671 and credited to the Hazardous Substance Superfund during the period beginning January 1, 1987, and ending December 31, 1991.

"(B) **TERMINATION IF \$6,650,000,000 CREDITED BEFORE JANUARY 1, 1992.**—If the Secretary estimates under subparagraph (A) that more than \$6,650,000,000 will be credited to the Fund before January 1, 1992, no tax shall be imposed under this section after the date on which (as estimated by the Secretary) \$6,650,000,000 will be so credited to the Fund."

"(b) **TECHNICAL AMENDMENT.**—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is hereby repealed.

"(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 1987.

SEC. 512. INCREASE IN TAX ON PETROLEUM

(a) **IN GENERAL.**—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1986 (relating to environmental tax on petroleum) are each amended by striking out "of 6.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) **INCREASE IN TAX.**—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.

"(1) **IN GENERAL.**—Except as provided in paragraph (2), the rate of the taxes imposed by this section is 8.2 cents a barrel.

"(2) **IMPORTED PETROLEUM PRODUCTS.**—The rate of the tax imposed by subsection (a)(2) shall be 11.7 cents a barrel."

(c) **ALLOWANCE OF CREDIT FOR CRUDE OIL RETURNED TO PIPELINE.**—Section 4612 of such Code (relating to definitions and special

rules) is amended by redesignating subsection (e) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) **CREDIT WHERE CRUDE OIL RETURNED TO PIPELINE.**—Under regulations prescribed by the Secretary, if an operator of a United States refinery—

"(1) removes crude oil from a pipeline, and

"(2) returns a portion of such crude oil into a stream of other crude oil in the same pipeline,

there shall be allowed as a credit against the tax imposed by section 4611 to such operator an amount equal to the product of the rate of tax imposed by section 4611 on the crude oil so removed by such operator and the number of barrels of crude oil returned by such operator to such pipeline. Any crude oil so returned shall be treated for purposes of this subchapter as crude oil on which no tax has been imposed by section 4611."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 1987.

SEC. 514. CHANGES RELATING TO TAX ON CERTAIN CHEMICALS

(a) **INCREASE IN RATE OF TAX ON XYLENE.**—The table contained in subsection (b) of section 4661 of the Internal Revenue Code of 1986 (relating to tax on certain chemicals) is amended by adding at the end thereof the following new sentence:

"For periods before 1992, the item relating to xylene in the preceding table shall be applied by substituting '10.13' for '4.87'."

(b) **EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.**

(1) Section 4662 of such Code (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) **EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.**—

"(1) **TAX-FREE SALES.**—

"(A) **IN GENERAL.**—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) **PROOF OF EXPORT REQUIRED.**—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) **CREDIT OR REFUND WHERE TAX PAID.**—

"(A) **IN GENERAL.**—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii) (I) such chemical was exported by any person, or

"(II) such chemical was used as a material in the manufacture or production of a substance which was exported by any person and which, at the time of export, was a taxable substance (as defined in section 4672(a)),

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) **CONDITION TO ALLOWANCE.**—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical or taxable substance (as so defined), or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsec-

tion."

(2) Paragraph (1) of section 4662(d) of such Code (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced for which would have been imposed by such section (b) or (e) of this section."

(c) **SPECIAL RULE FOR XYLENE.**—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (6) the following new paragraph:

"(7) **SPECIAL RULE FOR XYLENE.**—Except in the case of any substance imported into the United States or exported from the United States, the term 'xylene' does not include any separated isomer of xylene."

(d) **EXEMPTION FOR CERTAIN RECYCLED CHEMICALS.**—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (7) the following new paragraph:

"(8) **RECYCLED CHROMIUM, COBALT, AND NICKEL.**—

"(A) **IN GENERAL.**—No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) **EXEMPTION NOT TO APPLY WHILE CORRECTIVE ACTION UNCOMPLETED.**—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer at the unit at which the recycling occurs is uncompleted.

"(C) **REQUIRED CORRECTIVE ACTION.**—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) **SPECIAL RULE FOR GROUNDWATER TREATMENT.**—In the case of corrective action requiring groundwater treatment, such action shall be treated as completed as of the close of the 10-year period beginning on the date such action is required if such treatment complies with the permit or order applicable under subparagraph (C)(i) throughout such period. The preceding sentence shall cease to apply beginning on the date such treatment ceases to comply with such permit or order.

"(E) **SOLID WASTE.**—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal."

(e) EXEMPTION FOR ANIMAL FEED SUBSTANCES.

(1) **IN GENERAL.**—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (8) the following new paragraph:

"(9) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.

"(A) **IN GENERAL.**—In the case of—

- "(i) nitric acid,
 - "(ii) sulfuric acid,
 - "(iii) ammonia, or
 - "(iv) methane used to produce ammonia,
- which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) **QUALIFIED ANIMAL FEED SUBSTANCE.**—For purposes of this section, the term "qualified animal feed substance" means any substance—

- "(i) used in a qualified animal feed use by the manufacturer, producer, or importer,
- "(ii) sold for use by any purchaser in a qualified animal feed use, or
- "(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) **QUALIFIED ANIMAL FEED USE.**—The term "qualified animal feed use" means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) **TAXATION OF UNMANUFACTURED SALE OR USE.**—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(2) **REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.**—Subsection (d) of section 4662 of such Code (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) **USE IN THE PRODUCTION OF ANIMAL FEED.**—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(3) **CERTAIN EXCHANGES BY TAXPAYERS NOT TREATED AS SALES.**—Subsection (e) of section 4662 of such Code (relating to use by manufacturers) is amended to read as follows:

"(C) **USE AND CERTAIN EXCHANGES BY MANUFACTURER, ETC.**—

"(1) **USE TREATED AS SALE.**—Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) **SPECIAL RULES FOR INVENTORY EXCHANGES.**—

"(A) **IN GENERAL.**—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) **REGISTRATION REQUIREMENT.**—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) **INVENTORY EXCHANGE.**—For purposes of this paragraph, the term "inventory exchange" means any exchange in which 2 persons exchange property which is in the hands of each person, properly described in section 1221(1).

(4) **SPECIAL RULES RELATING TO HYDROCARBON STREAMS CONTAINING ORGANIC TAXABLE CHEMICALS.**—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (9) the following new paragraph:

"(10) **HYDROCARBON STREAMS CONTAINING MIXTURES OF ORGANIC TAXABLE CHEMICALS.**—

"(A) **IN GENERAL.**—No tax shall be imposed under section 4661(a) on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing a mixture of organic taxable chemicals.

"(B) **REMOVAL, ETC., TREATED AS USE.**—For purposes of this part, if any organic taxable chemical on which no tax was imposed by reason of subparagraph (A) is isolated, extracted, or otherwise removed from, or ceases to be part of, an intermediate hydrocarbon stream—

"(i) such isolation, extraction, removal, or cessation shall be treated as use by the person causing such event, and

"(ii) such person shall be treated as the manufacturer of such chemical.

"(C) **REGISTRATION REQUIREMENT.**—Subparagraph (A) shall not apply to any sale of any intermediate hydrocarbon stream unless the registration requirements of clauses (i) and (ii) of subsection (c)(2)(B) are satisfied.

"(D) **ORGANIC TAXABLE CHEMICAL.**—For purposes of this paragraph, the term "organic taxable chemical" means any taxable chemical which is an organic substance.

(5) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 1987.

(2) **REFUND OF TAX ON XYLENE FOR PERIODS BEFORE OCTOBER 1, 1985.**—

(A) **REFUND OF TAX PREVIOUSLY IMPOSED.**—

(i) **IN GENERAL.**—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1954 on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

(ii) **CONDITION TO ALLOWANCE.**—Clause (i) shall not apply to a sale of xylene unless the person who (but for clause (i)) would be liable for the tax imposed by section 4661 on such sale meets requirements similar to the requirements of paragraph (1) of section 6416(a) of such Code. For purposes of the preceding sentence, subparagraph (A) of section 6416(a)(1) of such Code shall be applied without regard to the material preceding "has not collected".

(B) **WAIVER OF STATUTE OF LIMITATIONS.**—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(C) **XYLENE TO INCLUDE ISOMERS.**—For purposes of this paragraph, the term "xylene" shall include any isomer of xylene whether or not separated.

(3) **INVENTORY EXCHANGES.**—

(A) **IN GENERAL.**—Except as otherwise provided in this paragraph, the amendment made by subsection (f) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) **RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.**—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1954.

(C) **EXCEPTION WHERE MANUFACTURER PAID TAX.**—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

(D) **REGISTRATION REQUIREMENTS.**—Section 4662(c)(2)(B) of such Code (as added by subsection (f)) shall apply to exchanges made after December 31, 1986.

(4) **EXPORTS OF TAXABLE SUBSTANCES.**—Subclause (iii) of section 4662(e)(2)(A)(iii) of such Code (as added by this section) shall not apply to the export of any taxable substance (as defined in section 4672(a) of such Code) before January 1, 1989.

(5) **SALES OF INTERMEDIATE HYDROCARBON STREAMS.**—

(A) **IN GENERAL.**—Except as otherwise provided in this paragraph, the amendment made by subsection (g) shall apply as if included in the amendments made by section 211 of the Hazardous Substances Response Revenue Act of 1980.

(B) **PURCHASER MUST AGREE TO TREATMENT AS MANUFACTURER.**—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall apply only if the purchaser agrees to be treated as the manufacturer, producer, or importer for purposes of subchapter B of chapter 38 of such Code.

(C) **EXCEPTION WHERE MANUFACTURER PAID TAX.**—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer of such stream paid the tax imposed by section 4661 with respect to such sale on all taxable chemicals contained in such stream.

(D) **REGISTRATION REQUIREMENTS.**—Section 4662(b)(10)(C) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1986.

SEC. 514. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) **REPEAL OF TAX.**—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1986 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) **REPEAL OF TRUST FUND.**—Section 332 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendments made by this section shall take effect on October 1, 1983.

(2) **WAIVER OF STATUTE OF LIMITATIONS.**—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

SEC. 518. TAX ON CERTAIN IMPORTED SUBSTANCES DERIVED FROM TAXABLE CHEMICALS.

(a) **GENERAL RULE.**—Chapter 38 of the Internal Revenue Code of 1986 is amended by adding after subchapter B the following new subchapter:

"Subchapter C.—Tax on Certain Imported Substances

"Sec. 4671. Imposition of tax.

"Sec. 4672. Definitions and special rules.

"SEC. 4673. IMPOSITION OF TAX.

"(a) **GENERAL RULE.**—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

"(b) **AMOUNT OF TAX.**—

"(1) **IN GENERAL.**—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals used as materials in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such taxable substance.

"(2) **RATE WHERE IMPORTER DOES NOT FURNISH INFORMATION TO SECRETARY.**—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(3) **AUTHORITY TO PRESCRIBE RATE IN LIEU OF PARAGRAPH (2) RATE.**—The Secretary may prescribe for each taxable substance a tax which, if prescribed, shall apply in lieu of the tax specified in paragraph (2) with respect to such substance. The tax prescribed by the Secretary shall be equal to the amount of tax which would be imposed by subsection (a) with respect to the taxable substance if such substance were produced using the predominant method of production of such substance.

"(c) **EXEMPTIONS FOR SUBSTANCES TAXED UNDER SECTIONS 4611 AND 4661.**—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

"(d) **TAX-FREE SALES, ETC. FOR SUBSTANCES USED AS CERTAIN FUELS OR IN THE PRODUCTION OF FERTILIZER OR ANIMAL FEED.**—Rules similar to the following rules shall apply for purposes of applying this section with respect to taxable substances used or sold for use as described in such rules:

"(1) Paragraphs (2), (3), and (9) of section 4662(b) (relating to tax-free sales of chemicals used as fuel or in the production of fertilizer or animal feed)

"(2) Paragraphs (2), (3), and (4) of section 4662(d) (relating to refund or credit of tax on certain chemicals used as fuel or in the production of fertilizer or animal feed).

"(4) **TAXATION.**—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

SEC. 512. DEFINITIONS AND SPECIAL RULES.

"(a) **TAXABLE SUBSTANCE.**—For purposes of this subchapter—

"(1) **IN GENERAL.**—The term 'taxable substance' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

"(2) **DETERMINATION OF SUBSTANCES ON LIST.**—A substance shall be listed under paragraph (1) if—

"(A) the substance is contained in the list under paragraph (3), or

"(B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that taxable chemicals constitute more than 50 percent of the weight of the materials used to produce such substance (determined on the basis of the predominant method of production).

"(3) **INITIAL LIST OF TAXABLE SUBSTANCES.**—

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

"(4) **MODIFICATIONS TO LIST.**—

"(A) **IN GENERAL.**—The Secretary may add substances to or remove substances from the list under paragraph (3) (including items listed by reason of paragraph (2)) as necessary to carry out the purposes of this subchapter.

"(B) **AUTHORITY TO ADD SUBSTANCES TO LIST BASED ON VALUE.**—The Secretary may, to the extent necessary to carry out the purposes of this subchapter, add any substance to the list under paragraph (3) if such substance would be described in paragraph (2)(B) if 'value' were substituted for 'weight' therein.

"(b) **OTHER DEFINITIONS.**—For purposes of this subchapter—

"(1) **IMPORTER.**—The term 'importer' means the person entering the taxable substance for consumption, use, or warehousing.

"(2) **TAXABLE CHEMICALS, UNITED STATES.**—The terms 'taxable chemical' and 'United States' have the respective meanings given such terms by section 4662(a).

"(c) **DISPOSITION OF REVENUE FROM PUERTO RICO AND THE VIRGIN ISLANDS.**—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4671.

"(d) **CLERICAL AMENDMENT.**—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter B the following new item:

"Subchapter C.—Tax on certain imported substances."

"(e) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 1989.

"(d) **STUDY.**—

"(1) **IN GENERAL.**—The Secretary of the Treasury or his delegate shall conduct a study of issues relating to the implementation of—

"(A) the tax imposed by the section 4671 of the Internal Revenue Code of 1986 (as added by this section), and

"(B) the credit for exports of taxable substances under section 4641(e)(2)(A)(ii)(iii) of such Code.

In conducting such study, the Secretary of the Treasury or his delegate shall consult with the Environmental Protection Agency and the International Trade Commission.

"(2) **REPORT.**—The report of the study under paragraph (1) shall be submitted not later than January 1, 1988, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 518. ENVIRONMENTAL TAX.

"(a) **IN GENERAL.**—Subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to income taxes) is amended by adding at the end thereof the following new part:

"PART VII—ENVIRONMENTAL TAX

"Sec. 59A. Environmental tax.

"SEC. 594. ENVIRONMENTAL TAX.

"(a) **IMPOSITION OF TAX.**—In the case of a corporation, there is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to 0.12 percent of the excess of—

"(1) the modified alternative minimum taxable income of such corporation for the taxable year, over

"(2) \$2,000,000.

"(b) **MODIFIED ALTERNATIVE MINIMUM TAXABLE INCOME.**—For purposes of this section, the term 'modified alternative minimum taxable income' means alternative minimum taxable income (as defined in section 55(b)(2)) but determined without regard to—

"(1) the alternative tax net operating loss deduction (as defined in section 56(d)), and

"(2) the deduction allowed under section 164(a)(5).

"(c) **SPECIAL RULES.**—

"(1) **SHORT TAXABLE YEARS.**—The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

"(2) SECTION IS NOT TO APPLY.—Section 15 shall not apply to the tax imposed by this section."

"(d) APPLICATION OF TAX.—

"(1) IN GENERAL.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

"(2) EARLIER TERMINATION.—The tax imposed by this section shall not apply to taxable years—

"(A) beginning during a calendar year during which no tax is imposed under section 4611(a) by reason of paragraph (2) of section 4611(e), and

"(B) beginning after the calendar year which includes the termination date under paragraph (3) of section 4611(e)."

(b) TECHNICAL AMENDMENTS.—

"(1) NO CREDITS ALLOWED AGAINST TAX.—

"(A) Paragraph (2) of section 26(b) of such Code, as amended by the Tax Reform Act of 1986, is amended by redesignating subparagraphs (B) through (J) as subparagraphs (C) through (K), respectively, and by inserting after subparagraph (A) the following new subparagraph:

"(B) section 59A (relating to environmental tax)."

"(B) Paragraph (3) of section 936(a) of such Code, as so amended, is amended by redesignating subparagraphs (A), (B), and (C) as subparagraphs (B), (C), and (D), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) section 59A (relating to environmental tax)."

"(2) TAX TO BE DEDUCTIBLE FOR INCOME TAX PURPOSES.—

"(A) Subsection (a) of section 164 of such Code (relating to deduction for taxes), as so amended, is amended by inserting after paragraph (4) the following new paragraph:

"(5) The environmental tax imposed by section 59A."

"(B) Subsection (a) of section 275 of such Code is amended by adding at the end thereof the following new sentence: "Paragraph (1) shall not apply to the tax imposed by section 59A."

"(3) LIMITATION IN CASE OF CONTROLLED CORPORATIONS.—Subsection (a) of section 7561 of such Code (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations), as amended by the Tax Reform Act of 1986, is amended—

"(A) by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof "and", and by inserting after paragraph (3) the following new paragraph:

"(4) one \$2,000,000 amount for purposes of computing the tax imposed by section 59A," and

"(B) by striking out "(and the amount specified in paragraph (3))" and inserting in lieu thereof "the amount specified in paragraph (3), and the amount specified in paragraph (4))."

"(4) AMENDMENTS TO ESTIMATED TAX PROVISIONS.—

"(A) TAX LIABILITY MUST BE ESTIMATED.—

"(i) Paragraph (1) of section 6154(c) of such Code, as so amended, is amended by striking out "and" at the end of subparagraph (A), by striking out "over" at the end of subparagraph (B) and inserting in lieu thereof "and", and by adding at the end thereof the following new subparagraph:

"(C) the environmental tax imposed by section 59A, over".

"(ii) Subsection (a) of section 6154 of such Code is amended by striking out "section 11" and inserting "section 11, 59A."

"(C) CONFORMING AMENDMENT TO OVERPAYMENT OF ESTIMATED TAX.—Subparagraph (A) of section 6425(c)(1) of such Code, as amend-

ed by the Tax Reform Act of 1986, is amended by striking out "plus" at the end of clause (i), by striking out "over" at the end of clause (ii) and inserting in lieu thereof "plus", and by adding at the end thereof the following new clause:

"(iii) the tax imposed by section 59A, over".

"(D) CONFORMING AMENDMENT TO PENALTY FOR FAILURE TO PAY ESTIMATED TAX.—Paragraph (1) of section 6655(f) of such Code (defining tax), as so amended, is amended by striking out "plus" at the end of subparagraph (A), by striking out "over" at the end of subparagraph (B) and inserting in lieu thereof "plus", and by adding at the end thereof the following new subparagraph:

"(C) the tax imposed by section 59A, over".

"(5) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Part VII. Environmental tax."

"(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 517. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section;

"(2) appropriated to the Superfund pursuant to section 517(b) of the Superfund Revenue Act of 1986, or

"(3) credited to the Superfund as provided in section 9602(b)."

"(b) TRANSFERS TO SUPERFUND.—There are hereby appropriated to the Superfund amounts equivalent to—

"(1) the taxes received in the Treasury under section 59A, 4611, 4661, or 4671 (relating to environmental taxes),

"(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(4) penalties assessed under title T of CERCLA, and

"(5) punitive damages under section 107(c)(3) of CERCLA.

"(c) EXPENDITURES FROM SUPERFUND.—

"(1) IN GENERAL.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

"(A) to carry out the purposes of—

"(i) paragraphs (1), (2), (5), and (6) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986,

"(ii) section 111(c) of CERCLA (as so in effect), other than paragraphs (1) and (2) thereof, and

"(iii) section 111(m) of CERCLA (as so in effect), or

"(B) hereafter authorized by a law which does not authorize the expenditure out of the Superfund for a general purpose not covered by subparagraph (A) (as so in effect).

"(2) EXCEPTION FOR CERTAIN TRANSFERS, ETC., OF HAZARDOUS SUBSTANCES.—No amount in the Superfund or derived from the Super-

fund shall be available or used for the transfer or disposal of hazardous waste carried out pursuant to a cooperative agreement between the Administrator of the Environmental Protection Agency and a State if the following conditions apply—

"(A) the transfer or disposal, if made on December 13, 1985, would not comply with a State or local requirement,

"(B) the transfer is to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act was issued after January 1, 1983, and before November 1, 1984, and

"(C) the transfer is from a facility identified as the McColl Site in Fullerton, California.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) LIMITATION ON AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Superfund which is outstanding at any one time shall not exceed an amount equal to the amount which the Secretary estimates will be equal to the sum of the amounts appropriated to the Superfund under subsection (b)(1) during the following 24 months.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made to the Superfund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

"(B) FINAL REPAYMENT.—No advance shall be made to the Superfund after December 31, 1991, and all advances to such Fund shall be repaid on or before such date.

"(C) RATE OF INTEREST.—Interest on advances made to the Superfund shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(c) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in CERCLA or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

"(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

- (1) 1987, \$250,000,000,
- (2) 1988, \$250,000,000,
- (3) 1989, \$250,000,000,
- (4) 1990, \$250,000,000, and
- (5) 1991, \$250,000,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(c) CONFORMING AMENDMENTS.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund), as amended by section 204 of this Act, is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) The term 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986."

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Hazardous Substance Superfund."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1987.

(2) SUPERFUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

SEC. 401. ADDITIONAL TAXES ON GASOLINE, DIESEL FUEL, SPECIAL MOTOR FUELS, FUELS USED IN AVIATION, AND FUELS USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS

(a) GENERAL RULE.—

(1) GASOLINE.—

(A) GASOLINE TAX BEFORE AMENDMENT BY TAX REFORM ACT OF 1986.—

(i) IN GENERAL.—Section 4081 of the Internal Revenue Code of 1986 (relating to imposition of tax on gasoline), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) IN GENERAL.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax at the rate specified in subsection (b).

(b) RATE OF TAX.—

(1) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

"(A) the Highway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon."

(ii) TERMINATION.—Section 4081 of such Code, as so in effect, is amended by adding

at the end thereof the following new subsection:

"(d) TERMINATION.—

"(1) HIGHWAY TRUST FUND FINANCING RATE.—On and after October 1, 1988, the Highway Trust Fund financing rate under subsection (b)(2)(A) shall not apply.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—

"(A) IN GENERAL.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (b)(2)(B) shall not apply after the earlier of—

"(i) December 31, 1991, or

"(ii) the last day of the termination month."

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is

the 1st month as of the close of which the Secretary estimates that the net revenues

from the taxes imposed by this section (to the extent attributable to the Leaking Under-

ground Storage Tank Trust Fund financing rate under subsection (b)(2)(B)), section

4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage

Tank Trust Fund financing rate under section 4042(b)) are at least \$500,000,000.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over

amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking

Underground Storage Tank Trust Fund for certain repayments and credits)."

"(d) TECHNICAL AMENDMENTS.—Subsection (c) of section 4081 of such Code, as so in effect, is amended—

"(1) by striking out 'subsection (a)' in paragraph (1), and inserting in lieu thereof

'subsection (b)', and

"(2) by striking out 'a rate' in paragraph (2) and inserting in lieu thereof 'a Highway

Trust Fund financing rate'."

"(B) GASOLINE TAX AS AMENDED BY TAX REFORM ACT OF 1986.—

"(1) IN GENERAL.—Subsections (a) and (b) of section 4081 of the Internal Revenue Code of 1986 (relating to imposition of tax on gaso-

line), as amended by the Tax Reform Act of 1986, are each amended by striking out 'of 9

cents a gallon' and inserting in lieu thereof 'at the rate specified in subsection (d)'."

"(2) INCREASE IN TAX.—Section 4081 of such Code, as amended by the Tax Reform Act of 1986, is amended by striking out subsection

(d), and inserting in lieu thereof the following new subsections:

"(d) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

"(A) the Highway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon."

"(e) TERMINATION.—

"(1) HIGHWAY TRUST FUND FINANCING RATE.—On and after October 1, 1988, the Highway

Trust Fund financing rate under subsection (d)(2)(A) shall not apply.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—

"(A) IN GENERAL.—The Leaking Under-

ground Storage Tank Trust Fund financing rate under subsection (d)(2)(B) shall not

apply after the earlier of—

"(i) December 31, 1991, or

"(ii) the last day of the termination month."

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is

the 1st month as of the close of which the

Secretary estimates that the net revenues

from the taxes imposed by this section (to

the extent attributable to the Leaking Under-

ground Storage Tank Trust Fund financing

rate under subsection (d)(2)(B)), section

4041(d), and section 4042 (to the extent at-

tributable to the Leaking Underground Storage

Tank Trust Fund financing rate under section

4042(b)) are at least \$500,000,000.

"(C) NET REVENUES.—For purposes of sub-

paragraph (B), the term 'net revenues' means the excess of gross revenues over

amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking

Underground Storage Tank Trust Fund for certain repayments and credits)."

"(d) TECHNICAL AMENDMENTS.—Subsection (c) of section 4081 of such Code, as amended

by the Tax Reform Act of 1986, is amended—

"(1) by striking out 'subsection (a)' in paragraph (1), and inserting in lieu thereof

'subsection (d)', and

"(2) by striking out 'a rate' in paragraph (2) and inserting in lieu thereof 'a Highway

Trust Fund financing rate'."

"(2) DIESEL AND SPECIAL MOTOR FUELS USED IN AVIATION.—Section 4041 of such Code

(relating to tax on special fuels) is amended

by redesignating subsection (d) as subsection (e) and by inserting after subsection (c)

the following new subsection:

"(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

"(1) LIQUIDS OTHER THAN GASOLINE, ETC., USED IN MOTOR VEHICLES, MOTORBOATS, OR

TRAINS.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax

of 0.1 cents a gallon on benzol, benzene,

naphtha, casing head and natural gasoline,

or any other liquid (other than kerosene, gas

oil, liquefied petroleum gas, or fuel oil, or

any product taxable under section 4081)—

"(A) sold by any person to an owner,

lessee, or other operator of a motor vehicle,

motorboat, or train for use as a fuel in such

motor vehicle, motorboat, or train, or

"(B) used by any person as a fuel in a

motor vehicle, motorboat, or train unless

there was a taxable sale of such liquid under

subparagraph (A)."

"(2) LIQUIDS USED IN AVIATION.—In addition

to the taxes imposed by subsection (c) and

section 4081, there is hereby imposed a tax

of 0.1 cents a gallon on any liquid—

"(A) sold by any person to an owner,

lessee, or other operator of an aircraft for

use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an

aircraft unless there was a taxable sale of

such liquid under subparagraph (A)."

The tax imposed by this paragraph shall not

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon.

"(3) EXCEPTION FOR FUEL TAXED UNDER SECTION 4041(d).—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use.

"(4) TERMINATION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply."

"(5) ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND, AIRPORT AND AIRWAY TRUST FUND, AND INLAND WATERWAYS TRUST FUND.—

"(1) HIGHWAY TRUST FUND.—

"(A) IN GENERAL.—Subsection (b) of section 9503 of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), there shall not be taken into account the taxes imposed by section 4041(d) and so much of the taxes imposed by section 4081 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate."

"(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 9503(c)(4) of such Code (defining motorboat fuel taxes) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081 (to the extent attributable to the Highway Trust Fund financing rate)".

"(2) AIRPORT AND AIRWAY TRUST FUND.—Subsection (b) of section 9502 of such Code (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended—

"(A) by striking out "subsections (c) and (d) of section 4041" in paragraph (1) and inserting in lieu thereof "subsections (c) and (e) of section 4041", and

"(B) by striking out "section 4081" in paragraph (2) and inserting in lieu thereof "section 4081 (to the extent attributable to the Highway Trust Fund financing rate)".

"(3) INLAND WATERWAYS TRUST FUND.—Paragraph (1) of section 9506(b) of such Code is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply only to so much of such taxes as are attributable to the Inland Waterways Trust Fund financing rate under section 4042(b)."

"(C) REPAYMENTS FOR GASOLINE USED ON FARMS, ETC.—

"(1) GASOLINE USED ON FARMS.—Subsection (h) of section 6420 of such Code (relating to termination) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section".

"(2) GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.—

"(A) TERMINATION NOT TO APPLY TO ADDITIONAL 0.1 CENT TAX.—Subsection (h) of section 6421 of such Code (relating to effective date), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section".

"(B) REPAYMENT OF ADDITIONAL TAX FOR OFF-HIGHWAY BUSINESS USE TO APPLY ONLY TO CERTAIN VESSELS.—Subsection (e) of section 6421 of such Code, as so in effect, is amended by adding at the end thereof the following new paragraph:

"(4) SECTION NOT TO APPLY TO CERTAIN OFF-HIGHWAY BUSINESS USES WITH RESPECT TO THE TAX IMPOSED BY SECTION 4081 AT THE LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—This section shall not apply with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate on gasoline used in any off-highway business use other than use in a vessel employed in the fisheries or in the whaling business."

"(3) FUELS USED FOR NONTAXABLE PURPOSES.—

"(A) Subsection (m) of section 6427 of such Code (relating to termination), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out "Subsections" and inserting in lieu thereof "Except with respect to taxes imposed by section 4041(d) and section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections".

"(B)(i) Section 6427 of such Code, as so in effect, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a)."

"(ii) Subparagraph (A) of section 1703(c)(1) of the Tax Reform Act of 1986 is amended—

"(I) by striking out "and (o)" and inserting in lieu thereof "(o), and (p)", and

"(II) by striking out "and (n)" and inserting in lieu thereof "(n), and (o)".

"(C) Paragraph (1) of section 6427(f) of such Code (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "at the rate" and inserting in lieu thereof "at the Highway Trust Fund financing rate".

"(D) CONTINUATION OF CERTAIN EXEMPTIONS FROM ADDITIONAL TAXES, ETC.—

"(1) Subsection (b) of section 4041 of such Code (relating to exemption for off-highway business use; reduction in tax for qualified methanol and ethanol fuel) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH TAXES IMPOSED BY SUBSECTION (d).—

"(A) OFF-HIGHWAY BUSINESS USE.—

"(i) IN GENERAL.—Except as provided in clause (ii), rules similar to the rules of paragraph (1) shall apply with respect to the taxes imposed by subsection (d).

"(ii) LIMITATION ON EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—For purposes of subparagraph (A), paragraph (1) shall apply only with respect to off-highway business use in a vessel employed in the fisheries or in the whaling business."

"(B) QUALIFIED METHANOL AND ETHANOL FUEL.—In the case of qualified methanol or ethanol fuel, subsection (d) shall be applied by substituting "0.05 cents" for "0.1 cents" in paragraph (1) thereof."

"(2) Paragraph (3) of section 4041(f) of such Code (relating to exemption for farm use) is amended by striking out "On and after" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), on and after".

"(3) The last sentence of section 4041(g) of such Code (relating to other exemptions) is amended by striking out "Paragraphs" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), paragraphs".

"(4)(A) The last sentence of section 4221(a) of such Code (relating to certain tax-free sales) is amended by striking out "4081" and inserting in lieu thereof "4081 (at the Highway Trust Fund financing rate)".

"(B) Subparagraph (C) of section 1703(c)(2) of the Tax Reform Act of 1986 is amended to read as follows:

"(C) Subsection (a) of section 4221 (relating to certain tax-free sales) is amended—

"(i) by inserting "or section 4081 (at the Highway Trust Fund financing rate)" before "section 4221" in the 1st sentence, and

"(ii) by striking out "4071, or 4081 (at the Highway Trust Fund financing rate)" in the last sentence and inserting in lieu thereof "or 4071".

"(5) Paragraph (2) of section 6416(b) of such Code is amended by inserting "or under paragraph (1)(A) or (2)(A) of section 4041(d)" after "section 4041(a)".

"(6) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 522. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding after section 9507 the following new section:

"SEC. 5508. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Leaking Underground Storage Tank Trust Fund", consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4041(d) relating to additional taxes on motor fuels,

"(2) taxes received in the Treasury under section 4081 (relating to tax on gasoline) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section,

"(3) taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section, and

"(4) amounts received in the Treasury and collected under section 9003(h)(6) of the Solid Waste Disposal Act.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986.

"(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

"(i) amounts paid under—

"(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

"(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

"(iii) section 6427 (relating to fuels not used for taxable purposes), and

"(iv) credits allowed under section 34, with respect to the taxes imposed by sections 4041(d) and 4081 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081).

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

"(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9507 the following new item:

"Sec. 9508. Leaking Underground Storage Tank Trust Fund."

"(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

PART III—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

SEC. 531. COORDINATION.

Notwithstanding any provision of this Act not contained in this title, any provision of this Act (not contained in this title) which—

(1) imposes any tax, premium, or fee,

(2) establishes any trust fund, or

(3) authorizes amounts to be expended from any trust fund,

shall have no force or effect.

And the House agree to the same.

That the House recede from its amendment to the amendment of the Senate to the title of the bill.

TITLE V. SUPERFUND FINANCING

A. HAZARDOUS SUBSTANCE RESPONSE TRUST FUND ("SUPERFUND")

1. TRUST FUND PROVISIONS

Prior and Present Law

Superfund financing sources

Amounts equivalent to excise taxes on petroleum and feedstock chemicals (described below) were deposited in the Hazardous Substance Response Trust Fund ("Superfund"). These taxes expired on September 30, 1985.

In addition to taxes, \$44 million was authorized to be appropriated to the Superfund from general revenues for each of fiscal years 1981-85 (an aggregate of \$220 million). Total tax and general revenue appropriations were intended to equal \$1.6 billion over the five year period.

The following additional amounts also are deposited in the Superfund:

(1) amounts recovered from parties responsible for hazardous substance releases;

(2) penalties assessed against responsible parties; and

(3) punitive damages for failure to provide removal or remedial action upon the order of the President.

Expenditure purposes

Amounts in the Superfund are available for expenditures incurred in connection with releases or threats of releases of hazardous substances into the environment.

Allowable costs include the following:

(1) Costs of responding to the presence of hazardous substances on land or in the water or air, including cleanup and removal of such substances and remedial action.

(2) Certain costs related to response, including epidemiologic studies and maintenance of emergency strike forces.

(3) Payment of assessment and damage claims for injury to, or destruction or loss of, natural resources belonging to or controlled by Federal or State governments. Not more than 15 percent of Superfund revenues attributable to taxes and general revenue appropriations may be used for the payment of natural resource assessment and damage claims.

Administrative provisions

Claims against the Superfund may be paid only out of the fund. If claims against the Superfund exceed the balance available for payment of those claims, the claims are to be paid in full in the order in which they are finally determined.

The Superfund has authority to borrow from general Treasury funds for the purposes of paying response costs in connection with a catastrophic spill or paying natural resource damage claims. Outstanding advances at any time may not exceed estimated tax revenues for the following 12 months; advances for paying natural resource claims may not exceed 15 percent of such revenues. All advances were required to be repaid by September 30, 1985.

The Superfund was created as a trust fund in the Treasury under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), but is not included under the trust fund code of the Internal Revenue Code.

Repayable advances

The Superfund taxes expired on September 30, 1985. Since that time, repayable advances have been made to the Superfund from general revenues under P.L. 99-270 (\$150 million advance), and P.L. 99-411 (\$48 million advance). These advances are to be repaid with interest with revenues derived from future Superfund financing sources.

House Bill

Superfund financing sources

Under the House bill, amounts equivalent to excise taxes on petroleum, feedstock chemicals, a new tax on imported chemical derivatives, and a new waste management tax, are to be deposited in the Superfund for fiscal years 1986-1990. Additional excise taxes on gasoline, diesel, and special motor fuels are to be used to fund a separate trust fund for leaking underground storage tanks.

In addition to taxes, \$316.6 million is authorized to be appropriated to the Superfund from general revenues for each of fiscal years 1988-1990 (an aggregate of \$1.583 billion). Total tax and general revenue appropriations, together with interest and estimated recoveries, are estimated to

equal \$10.46 billion over the five-year reauthorization period.

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The House bill generally retains the present-law Superfund expenditure purposes. However, no further expenditures are allowed for natural resource assessment and damage claims. Superfund moneys are also to be available for a number of additional expenditure purposes added by Title I of the House bill.

Administrative provisions

The Superfund is established as a trust fund under the Internal Revenue Code. Administrative provisions generally are the same as under present law; however, the Superfund has authority to borrow for any authorized expenditure purpose rather than only for certain emergency purposes as under present law. Advances are also not to be limited to estimated tax revenues for the following 12 months; they are under present law.

Transfer of hazardous waste

Under the House bill, no Superfund moneys are to be available for transfer of any hazardous substance from a facility at which a release (or threatened release) has occurred to a facility for which a final permit is in effect under section 3005(a) of the Solid Waste Disposal Act, if (1) such permit was issued after January 1, 1983, and before November 1, 1984; (2) the transfer is carried out pursuant to a cooperative agreement between the EPA and the State; and (3) fund moneys could not be used for the transfer, except for a provision contained in Title I of the House bill.

Effective date

The Superfund trust fund provisions are effective November 1, 1985.

Senate Amendment

Superfund financing sources

Under the Senate amendment, amounts equivalent to excise taxes on petroleum, feedstock chemicals, and a new Superfund excise tax on manufacturers are to be deposited in the Superfund for fiscal years 1986-1990. Total Superfund revenues for the five-year reauthorization period (including interest, but not recoveries) are intended to total \$7.4 billion.

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The Senate amendment retains the present-law Superfund expenditure purposes (including resource assessment and damage claims).

In addition to these expenditure purposes, Superfund moneys are to be available for a number of additional expenditure purposes added by Title I of the Senate amendment, including costs of health assessments and toxicological profiles; technical assistance grants (not to exceed \$75,000 per facility); matching grants to States for cleanup and stabilization of contaminated facilities (not to exceed \$1 million per year per State); a \$15 million pilot program for the removal of lead-contaminated soil; and research and training programs.

Administrative provisions

The Senate amendment generally follows the House bill. However, under the Senate amendment, outstanding advances to the Superfund are limited to estimated tax reve-

*This figure includes amounts deposited in the Leaking Underground Storage Tank Trust Fund.

nues for the following 12 months (as under present law), with all advances required to be repaid by December 31, 1990. The present-law 15-percent limit on borrowings to pay natural resource assessment and damage claims is also retained.

Transfer of hazardous waste

No provision.

Effective date

These provisions are effective on October 1, 1985.

Conference Agreement

Superfund financing sources

Under the conference agreement, amounts equivalent to excise taxes on petroleum and feedstock chemicals, a new excise tax on imported chemical derivatives, and a new environmental income tax are to be deposited in the Superfund.

In addition to taxes, \$250 million of general revenue appropriations are authorized for the Superfund for each of fiscal years 1987-1991, for an aggregate of \$1.25 billion. Total tax and general revenue appropriations to the Superfund, together with interest and estimated recoveries, are intended to equal \$8.5 billion over the five-year reauthorization period.¹

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The conference agreement follows the House bill in deleting natural resource damage and assessment claims as a Superfund expenditure purpose. Expenditures are permitted for the remaining present law expenditure purposes and other purposes added by Title I of the conference agreement. These include expenditures authorized under section 111(a)(1), (2), (4), (5), and (6) and section 111(c) (other than section 111(c)(1) and (2)) of CERCLA, as in effect on the date of enactment of the conference agreement. Expenditures also are permitted for purposes authorized by a later-enacted law which is consistent with the purposes of these provisions.

Administrative provisions

The conference agreement follows the House bill, except that advances to the Superfund (including advances in fiscal year 1986) may not exceed estimated tax revenues for the following 24 months. All advances must be repaid by December 31, 1991.

Transfer of hazardous waste

The conference agreement follows the House bill, with a clarifying amendment.

Effective date

The Superfund trust fund provisions are effective on January 1, 1987.

Regulations

A number of provisions of Title V of this conference agreement provide that the Secretary of the Treasury or his delegate is to prescribe regulations. Notwithstanding any of these references, the conferees intend that the Treasury may, prior to prescribing these regulations, issue guidance for taxpayers with respect to the provisions of the conference agreement by issuing Revenue Procedures, Revenue Rulings, forms and instructions to forms, announcements, or other publications or releases. The conferees expect that the Treasury will provide taxpayers with this guidance as soon as feasible.

2. PETROLEUM TAX

Prior Law

An excise tax of 0.79 cent per barrel was imposed on (1) crude oil received at a United

States refinery; and (2) petroleum products (including crude oil, natural and refined gasoline, refined and residual oil, and certain other liquid hydrocarbon products) imported into the United States for consumption, use, or warehousing. Revenues equivalent to the tax were deposited in the Superfund.

A credit against the petroleum tax was allowed if tax had previously been imposed with respect to the same product. The petroleum tax expired on September 30, 1985.

House Bill

The petroleum tax is reimposed at a rate of 11.9 cents per barrel and extended through September 30, 1990. The reimposition of the tax is effective on November 1, 1985.

Senate Amendment

The petroleum tax is extended at its prior-law rate.

The tax generally expires after September 30, 1990. The tax would terminate earlier than September 30, 1990, if cumulative Superfund receipts from taxes and interest during the 5-year period reach \$7.5 billion. The tax also would be suspended or terminated under certain circumstances if the unobligated balance of the Superfund exceeds \$2.225 billion on September 30, 1988, or \$3 billion on September 30, 1989. The extension of the tax is effective on October 1, 1985.

Conference Agreement

Reimposition of petroleum tax

Under the conference agreement, the petroleum tax is reimposed at a rate of 8.2 cents per barrel for domestic crude oil, and 11.7 cents per barrel for imported petroleum products (including imported crude oil).² Revenues equivalent to the tax are to be deposited in the Superfund.

The petroleum tax generally expires on December 31, 1991. The tax would terminate earlier than that date if cumulative Superfund tax receipts during the reauthorization period equal or exceed \$6.65 billion. Additionally, if (1) on December 31, 1989 or December 31, 1990, the unobligated balance of the Superfund exceeds \$3.5 billion, and (2) the Secretary of the Treasury, in consultation with the EPA Administrator, determines that such unobligated balance will exceed \$3.5 billion on December 31 of the next following calendar year if no Superfund taxes are imposed during the intervening calendar year, then no tax is to be imposed during the intervening calendar year.

Credit for oil returned to pipeline

The conference agreement directs the Treasury Department to provide rules allowing a credit against the petroleum tax if a refiner removes crude oil from a pipeline, and subsequently returns a portion of such crude oil into a stream of crude oil in the same pipeline. The amount of this credit is to equal the product of (1) the rate of tax imposed on the crude oil removed from the pipeline by the operator and (2) the number of barrels of crude oil returned to the pipeline by the operator. Petroleum for which a credit is received is treated as not having been subject to tax. This provision is intended to allow a credit in appropriate cases, without requiring the tracing of specific quantities of previously taxed crude oil which is mixed with other crude oil in the pipeline stream.

Effective date

These provisions are effective on January 1, 1987. The credit for certain crude oil re-

turned to a pipeline is to apply to crude oil removed from a pipeline after that date.

3. TAX ON FEEDSTOCK CHEMICALS

Prior Law

Imposition of tax

An excise tax was imposed on the sale of 42 organic and inorganic substances ("feedstock chemicals") by a manufacturer, producer, or importer, at the rates listed in Appendix A (attached). The tax rates were set in 1980 and were limited to the lower of 2 percent of estimated wholesale prices or a cap equal to (1) \$4.87 per ton for petrochemicals, and (2) \$4.45 per ton for inorganic feedstocks. (Certain chemicals were taxed at lower rates.)

The feedstock chemicals tax applied to chemicals manufactured in the United States (as defined for purposes of the petroleum tax) or imported into the United States for consumption, use or warehousing. If a taxpayer used a taxable feedstock prior to sale, the tax was imposed on such use.

If one taxable chemical was used to produce a second, the tax on the first chemical was allowed as a credit against the second tax (to the extent of that second tax). The feedstock chemicals tax expired on September 30, 1985.

Exceptions to tax

Exceptions to the feedstock chemicals tax were provided for:

- (1) butane or methane used as a fuel;
- (2) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used to produce fertilizer;
- (3) sulfuric acid produced solely as a by-product of (and on the same site as) air pollution control equipment;
- (4) any taxable feedstock to the extent derived from coal;
- (5) petrochemicals used to manufacture or produce motor fuel, diesel fuel, aviation fuel, or jet fuel; and
- (6) cupric sulfate, cupric oxide, cuprous oxide, zinc chloride, zinc sulfate, barium sulfide or lead oxide which exist in transitory form in the process of refining nontaxable metal ores or compounds into other (or purer) nontaxable compounds.

Treatment of exported feedstocks

No exemption was provided for exports of taxable feedstocks.

Tax treatment of xylene

The Treasury Department had taken the position that xylene includes separated isomers of xylene for purposes of the feedstocks tax. Thus, the production (or use) of such isomers constituted a taxable event.

Treatment of inventory exchanges

Under proposed Treasury regulations, exchanges of taxable chemicals were treated as sales of such chemicals.

House Bill

Reimposition of tax

The feedstock chemicals tax is reimposed subject to the modifications below, and extended through September 30, 1990.

Tax is imposed on prior-law feedstocks and, additionally, lead. The tax rates are set at the lower of 2.0 percent, of current estimated wholesale price or a cap equal to \$6.25 for all chemicals (except xylene, discussed below), but not lower than the prior-law rate for any taxed chemical (see Appendix A).

Beginning in 1987, the tax rates are to be indexed annually for inflation, as measured by the average producer price index for organic or inorganic chemicals; however, tax rates are not to be reduced below the 1986 rates.

Under a special rule, the tax on nitric acid used by the producer to produce nitrocellulose could not exceed 24 cents per ton. The

¹ This figure does not include amounts deposited in the Leaking Underground Storage Tank Trust Fund, described below.

² Imported crude oil, which is subsequently received at a United States refinery, is to be taxed at the higher import rate only.

reimposition of the tax is effective on November 1, 1985.

Exceptions to tax

The exception for coal-derived feedstocks is repealed; other prior-law exceptions are retained. A conforming amendment is made adding lead to the substances which are exempt from tax if they exist in transitory form as part of a refining process.

In addition to the prior-law exceptions, exceptions to the feedstocks tax are provided for the following substances:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used (or sold for ultimate use) in the manufacture or production of animal feed; and

(2) domestically recycled nickel, chromium, cobalt, or lead. (This exception does not apply for a period during which a required corrective action under RCRA or CERCLA has not been completed by the taxpayer.)

Effective date.—These provisions are effective on November 1, 1985.

Treatment of exported feedstocks

Taxable feedstocks sold for export by the manufacturer or producer, or for resale by a second purchaser for export, are exempt from tax.

If tax is paid on a chemical, and the chemical is later exported, a credit or refund is allowed to the person who paid the tax.

Effective date.—This provision is effective on November 1, 1985.

Tax treatment of xylene

It is clarified that, except for imports and exports, xylene does not include separated isomers for purposes of the feedstock tax. Separation of xylene isomers constitutes use of a mixed stream of xylene and is treated as a taxable event.

Effective date.—This provision generally is effective November 1, 1985.

Taxes previously imposed on xylene (i.e., since April 1, 1981) are to be refunded or credited (with interest) to the taxpayers. To compensate for lost revenues, the tax rate on xylene is prospectively increased above the \$6.25 per ton rate that otherwise would apply under the House bill (see Appendix A).

Treatment of inventory exchanges

Subject to registration and notification requirements, if inventories of taxable chemicals are exchanged, tax is imposed only upon the later sale or use of the chemical by the person receiving the chemical in the exchange. This rule does not apply if the receiving person would not be taxable on the sale of the chemical, unless such treatment would be as a result of the exemption for exported feedstocks (described above).

Effective date.—The amendment regarding inventory exchanges applies retroactively to the original effective date of the feedstocks tax. However, the amendment applies to any exchange before January 1, 1986, only if (1) the manufacturer, producer, or importer did not treat the exchange as a taxable sale, and (2) the recipient agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to inventory exchanges apply to exchanges after December 31, 1985.

Senate Amendment

Extension of tax

Under the Senate amendment, the feedstocks tax is extended at its prior-law rates (see Appendix A).

The tax generally expires after September 30, 1990. Provisions are made for earlier suspension or termination of the tax under the same conditions as the petroleum tax (see A.2., above).

Effective date.—The extension of the tax is effective on October 1, 1985.

Exceptions to tax

The Senate amendment retains the prior-law exceptions to the feedstock tax, including the exception for coal-derived feedstocks.

As under the House bill, exceptions to the tax are added for:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used (or sold for ultimate use) in the manufacture or production of animal feed; and

(2) domestically recycled nickel, chromium, or cobalt. (Lead is not taxed under the Senate amendment.)

The exception for recycled substances does not apply for any period during which the taxpayer has been notified that it is a potentially responsible party for a site listed on the National Priorities List, unless the taxpayer is in compliance with all orders, notices, and judgments (under RCRA or CERCLA) with respect to the site.

Effective date.—This provision is effective on October 1, 1985.

Treatment of exported feedstocks

The Senate amendment is the same as the House bill.

Effective date.—This provision is effective on October 1, 1985.

Tax treatment of xylene

No provision.

Treatment of inventory exchanges

The Senate amendment is the same as the House bill but does not include the requirement that, for pre-1986 exchanges, the recipient must agree to be treated as the taxable person in order for the amendment to apply.

Conference Agreement

Reimposition of tax

The conference agreement follows the Senate amendment by reimposing the tax on feedstock chemicals at its prior-law rates (except in the case of xylene, discussed below). No tax is imposed on lead or on any other chemical not taxed under prior law.

The tax on feedstock chemicals generally expires on December 31, 1991. The tax would be suspended or terminated earlier than that date under the same conditions as the petroleum tax.

Effective date.—The reimposition of the tax is effective on January 1, 1987.

Exceptions to tax

The conference agreement follows the Senate amendment by retaining the present law exception for coal-derived feedstocks. Other present law exceptions also are retained.

The conference agreement follows the House bill and the Senate amendment by providing additional exceptions for:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if such chemicals are used (or sold for ultimate use) in the manufacture or production of animal feed; and

(2) domestically recycled nickel, chromium, or cobalt.

As under the House bill, the recycling exception does not apply for any period during which a required corrective action under RCRA or CERCLA with respect to the recycling unit has not been completed by the taxpayer. Under a special rule, corrective actions (or the portions of corrective actions) relating to contamination of groundwater are to be treated as completed, for purposes of the recycling exception only, 10 years after the date on which the corrective action is required by the EPA Administrator (or a State acting pursuant to an authorized program). This special rule applies only if the taxpayer is in compliance with all orders, notices, and judgments under RCRA or CERCLA with respect to the site.

Effective date.—These provisions are effective on January 1, 1987.

Treatment of exported feedstocks

The conference agreement follows the House bill and the Senate amendment.

In addition to exempting feedstocks, the conference agreement allows a credit or refund (without interest) of taxes on feedstock chemicals which are used as materials in the manufacture or production of certain exported substances. The exported substances which trigger this credit or refund are to be the same as the substances taxed under the new tax on imported chemical derivatives (described in A.4 below). The credit or refund is to be made to the person who paid the feedstocks tax.*

Effective dates.—The exception for exported feedstocks is effective on January 1, 1987.

The allowance of a credit or refund for feedstocks used in the manufacture or production of certain exported substances is effective on January 1, 1989.

Tax treatment of xylene

The conference agreement follows the House bill.

Effective date.—This provision generally is effective on January 1, 1987.

Taxpayers who previously paid the tax imposed on xylene (i.e., from April 1, 1981, through September 30, 1985) may file claim for refund of the tax (with interest). The statute of limitations is extended to permit such refunds or credits. Such credits or refunds apply, under the conference agreement, only if the person who would otherwise be liable for the tax meets requirements similar to the general Code rules regarding credits or refunds of manufactures or retailers' excise taxes (sec. 6416(a)).⁶ However, if the manufacturer separately stated the tax and the purchaser did not pay the tax, then the refund or credit is allowable to the manufacturer. To compensate for lost revenues, the tax rate on xylene is temporarily increased, only for the duration of the five-year reauthorization period, from \$4.87 to \$10.13 per ton.

Treatment of inventory exchanges

The conference agreement follows the House bill.

Effective date.—The amendment regarding inventory exchanges applies retroactively to the original effective date of the feedstocks tax (April 1, 1981). However, the amendment applies to any exchange before January 1, 1987, only if (1) the manufacturer, producer, or importer did not treat the exchange as a taxable sale, and (2) the recipient agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to inventory exchanges apply to exchanges after December 31, 1986.

Treatment of mixed hydrocarbon streams containing taxable feedstocks

Under the conference agreement, no tax is imposed on any organic taxable chemical while it is part of an intermediate hydrocarbon stream containing a mixture of different organic taxable chemicals. Instead, the

* As in the case of exported feedstocks, this person is required to repay the amount of tax to the exporter, or obtain the exporter's written consent to the credit or refund, in order to receive the credit or refund.

⁶ In general, sec. 6416(a) allows a credit or refund only if the person who paid the tax establishes under regulations that he (1) has not included the tax in the price of the article and has not collected the amount of tax from the purchaser, or (2) has repaid the amount of tax to the ultimate purchaser of the article, or obtained his written consent to the purchase or refund.

isolation, extraction, or other removal of an organic taxable chemical from such a stream (or any other event causing the chemical to cease being part of the stream) is treated as a taxable use by the person causing such removal, and the tax is imposed on such person. This provision applies only if registration and certification requirements, similar to those imposed with respect to inventory exchanges, are satisfied. For purposes of this provision, organic taxable chemicals include any taxable feedstock chemical which is an organic substance.*

Effective date.—This provision applies retroactively to the original effective date of the feedstocks tax (April 1, 1981). As in the case of the rule regarding inventory exchanges, the provision applies to sales of any intermediate hydrocarbon stream before January 1, 1987, only if (1) the manufacturer, producer, or importer of the mixed hydrocarbon stream did not treat the sale of such stream as a taxable sale, and (2) the purchaser agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to mixed hydrocarbon streams are effective on January 1, 1987.

4. TAX ON IMPORTED CHEMICAL DERIVATIVES

Prior Law

Crude oil, certain petroleum products, or taxable feedstock chemicals imported into the United States were subject to the petroleum or feedstocks tax (see A.2. and A.3., above). No tax was imposed on imports of products that are derived from these materials.

House Bill

Imposition of tax

A tax is imposed on the sale of any listed chemical derivative by the importer thereof. The initial list includes 47 chemical derivatives (see Appendix B).

The Secretary of the Treasury is to list any other imported substances determined to have more than 50 percent of their value derived from petroleum or taxable feedstock chemicals used as materials or process fuel. This determination is to be based on the predominant method of production. The Treasury may delist substances (including initially listed substances) as necessary to carry out the purposes of the tax.

Substances are taxable only if listed at the time of sale or use by the importer.

Amount of tax

The amount of tax is—

(1) the amount of tax which would have been imposed under the feedstocks tax on the taxable chemicals used as materials or process fuel, if such taxable chemicals had been sold in the United States, for an equivalent use; or

(2) if the importer does not furnish sufficient information to determine the tax under (1) above, 5 percent of the appraised value of the imported substance at the time of import.

Procedure and definitions

The tax is imposed on the importer of a listed substance at the time such substance is sold or used. No tax is imposed on the same sale or use.

The United States includes Puerto Rico and specified U.S. possessions (as defined for purposes of the petroleum and feedstock taxes).

Revenues from the tax are not covered over to Puerto Rico or the Virgin Islands under section 7652 of the Code.

* Taxable organic chemicals include the first 11 listed substances in section 4661 of the Code (acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphthalene, propylene, toluene, and xylene).

Termination date

The tax terminates on September 30, 1990.

Effective date

The tax on imported chemical derivatives is effective on January 1, 1987.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally follows the House bill with an amendment.

Under the conference agreement, the amount of tax imposed on a listed imported chemical derivative is the amount of tax which would have been imposed by the feedstocks tax on the taxable chemicals used as materials (and not process fuel) if such taxable chemicals had been sold in the United States for an equivalent use.

If the importer does not furnish sufficient information (at such time and manner as the Secretary may require) the amount of tax is 5 percent of the customs value of the imported chemical derivative.

Under the conference agreement, a chemical derivative must be listed by the Secretary of the Treasury in order to be subject to this tax.

An initial list of taxable substances is specified in the statute. This initial list includes the 47 chemical derivatives in the House bill, as well as acrylonitrile and methanol. The Secretary may delist substances (including statutorily listed substances) as necessary to carry out the purposes of the tax; however, acrylonitrile may not be delisted.

In addition, the Secretary is to add chemical derivatives to this list if taxable feedstocks (under sec. 4661) comprise over 50 percent of the molecular weight of the raw materials used to produce the chemical derivative. The Secretary is to make this determination on the basis of the predominant method of production (with respect to imported derivatives) using stoichiometric material consumption assuming a 100-percent yield.

The Secretary may also add a chemical derivative to the list if taxable feedstocks comprise over 50 percent of the value of the raw materials used to produce the chemical derivative.

The provision is effective for imports of chemical derivatives on or after January 1, 1989.

The conference agreement also provides that the Secretary shall conduct a study of issues related to the implementation of the tax on imported chemical derivatives and the credit allowable for taxable feedstocks used in the production of exported chemical derivatives. This study is to be done after consultation with both the Administrator of the Environmental Protection Agency and the International Trade Commission. The report of the study is to be submitted to the House Committee on Ways and Means the Senate Committee on Finance no later than January 1, 1988.

5. WASTE MANAGEMENT TAX

Present Law

No provision. (A dry-weight tax on hazardous waste was imposed for purposes of funding the Post closure Liability Trust Fund, discussed in A.7. below; the authority to collect this tax expired on September 30, 1985.)

House Bill

Imposition of tax

Under the House bill, an excise tax is imposed on the disposal, treatment or export of hazardous waste. A "back-up" tax, discussed below, is also imposed on hazardous waste that is not otherwise the subject of a taxable event within 270 days of generation,

and that is not exempt from the waste management tax.

The tax is imposed on (1) the receipt of hazardous waste at a qualified hazardous waste management unit, (2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and (3) the export of hazardous waste from the United States. A "qualified hazardous waste management unit" means the specified area of land or structure which isolates hazardous wastes within a qualified hazardous waste management facility, and which is subject to interim status or final permit requirements under subtitle C of the Solid Waste Disposal Act. A "qualified hazardous waste management facility" means any facility (as defined under subtitle C of the Solid Waste Disposal Act) which has received a permit or interim status under section 3005(c) of the Solid Waste Disposal Act or an authorized State program.

Hazardous waste is defined as any waste which is listed or identified under section 3001 of the Solid Waste Disposal Act as of the date on enactment, and which is not subsequently delisted. Thus, wastes the regulation of which has been suspended under present law (e.g., certain mining wastes) are not subject to the tax.

Tax rates

Under the House bill, the amount of tax imposed per ton of hazardous waste (on a wet-weight basis) is determined in accordance with the following table:

If the taxable event is:		
Land disposal (as defined in sec. 4661)		
For calendar year	1985	1986
1987	43	415
1988	39	415
1989	42	415
1990	44	415
1991	47	415

The land disposal rate applies to hazardous waste received at a landfill, surface impoundment, waste pile, or land treatment unit, each as defined by EPA pursuant to sections 3004 and 3005 of the Solid Waste Disposal Act. The land disposal rate does not apply to surface impoundments which are part of waste water treatment systems or of deep well injection units.

The lower (i.e., \$4.15 per ton) tax rate applies to all other taxable events, including (1) ocean disposal of hazardous waste, (2) export of hazardous waste, and (3) receipt of hazardous waste at other qualified hazardous waste management units (i.e., other than for land disposal) including deep well injection facilities. For this purpose, deep well injection facilities include any containers, tanks, or surface impoundments principally used to treat or store hazardous waste before underground injection.

Exemptions and credits

Waste water treatment.—Hazardous waste received at a waste water treatment unit is exempt from tax unless a corrective action order remains uncompleted with respect to the facility. A waste water treatment unit is any qualified hazardous waste management unit which is an integral and necessary part of a waste water treatment system, other than a unit which receives concentrated treatment residues for storage or final disposition.

The exemption for waste water treatment units is not allowed with respect to any activity conducted at a facility (or part thereof) while a required corrective action remains uncompleted with respect to such facility (or part of such facility). If a corrective action is uncompleted, tax is imposed at a rate of 15 cents per ton on waste received at the waste water treatment unit.

Incineration.—A credit or refund of tax (without interest) is provided for waste that

is incinerated on land (or the equivalent of incineration on land) within 90 days after the date on which such waste is first received at a qualified hazardous waste management unit.

Qualified chemical fuels or solvents.—A credit or refund is provided (without interest) for tax imposed on waste used in the production of any qualified chemical fuel or solvent for use in any commercial or industrial application. A qualified chemical fuel or solvent is any chemical fuel or solvent determined by the Administration not to be hazardous.

Recycling of batteries.—A credit or refund (without interest) is provided for tax paid on the receipt of a battery at a qualified hazardous waste management unit if recycling of such battery commences within 90 days of receipt.

Corrective and remedial actions.—Exemptions are provided in the following cases:

(1) receipt or export of hazardous waste pursuant to corrective actions required by an order or permit issued by the EPA Administrator under the Solid Waste Disposal Act (or by a State under an authorized program);

(2) receipt or export of hazardous waste pursuant to a proposed or final closure plan approved by the Administrator or an authorized State;

(3) receipt or export of hazardous waste pursuant to a removal or remedial action under CERCLA, if the response action has been selected or approved by the EPA Administrator; or

(4) receipt or export of hazardous waste pursuant to an action to correct an emergency situation arising from a product spill which is certified by the Administrator to the Secretary as carrying out the purposes of CERCLA.

Federally owned facilities.—Hazardous waste received at a federally owned facility is not subject to the tax.

Payment of tax.—The waste management tax is payable by (1) the owner or operator of a qualified hazardous waste management unit; (2) in the case of ocean disposal, the owner or operator of the vessel or aircraft engaged in ocean disposal; or (3) in the case of export, the exporter of hazardous waste.

Termination date

The waste management tax generally expires on September 30, 1990.

Effective date.—The tax is effective with respect to hazardous waste received or exported after December 31, 1985.

"Backup" tax on generation and hazardous waste

A "backup" tax is imposed on hazardous waste which 270 days after generation has not been (1) received at a qualified hazardous waste management unit, (2) received for transport from the United States for the purpose of ocean disposal, or (3) exported from the United States. The generator of the waste is liable for the tax.

The backup tax is imposed at the rate applicable for land disposal. However, the Treasury Department may prescribe regulations which provide exemptions from the backup tax (or a reduced rate) as may be consistent with the purposes of the backup tax.

The backup tax does not apply to waste generated after September 30, 1990.

Effective date.—The backup tax is effective with respect to hazardous waste generated after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

4. ENVIRONMENTAL TAX

Present Law

Alternative minimum taxable income

Under the conference agreement on the Tax Reform Act of 1986 (H.R. 3838),¹ as passed by the House on September 25, 1986, and the Senate on September 27, 1986, an alternative minimum tax is imposed on corporations. The tax rate is 20 percent, and there is a \$40,000 exemption amount (phased out at the rate of 25 cents on the dollar for alternative minimum taxable income in excess of \$150,000).

The items of tax preference include accelerated depreciation in excess of the alternative depreciation system for property (other than transitional property) placed in service after 1986; intangible drilling costs (with an offset for 65 percent of net oil and gas income); percentage depletion (in excess of the adjusted basis of the property); bad debt reserve deductions for financial institutions; use of the completed contract method of accounting and of the installment method; capital construction funds for shipping companies; 60 month amortization of certified pollution control facilities; and mining exploration and development costs. Tax-exempt interest on newly issued private activity bonds (but not qualified 501(c)(3) bonds) and undepreciated appreciation on depreciable contributions of appreciated property, also are preference items.

For 1987 through 1989, one half of the excess of pre-tax book income of the taxpayer (including members of a group filing a consolidated tax return for the year), over other alternative minimum taxable income, is a preference. After 1989, pre-tax book income is replaced for this purpose by adjusted current earnings.

These provisions apply generally to taxable years beginning after December 31, 1986. The treatment of interest on private activity bonds as a preference item applies to bonds issued after August 7, 1986, except that in the case of certain bonds treated as governmental under prior law, such treatment applies to bonds issued on or after September 1, 1986.

Manufacturer's excise tax

Present law imposes selective excise taxes on the sale by the manufacturer of tires, petroleum products, coal, and certain recreational equipment.

House Bill

No provision.

Senate Amendment

Imposition of tax

The Senate amendment imposes an excise tax on the sale, lease, or transfer of tangible personal property by the manufacturer of the property, in connection with a trade or business (Superfund Excise Tax). Revenue equivalent to the tax are to be deposited in the Superfund.

The tax is equal to 0.08 percent of the sales price of, or gross lease payments for, the property (i.e., \$8 of tax per \$10,000 of taxable amount). Tax is also imposed (at the same 0.08-percent rate) on importers of tangible personal property based on the customs value plus duties (or, if no customs value is available, the fair market value) of the imported property.

For purposes of the tax, "manufacturing" includes mining, raw material production, and the production of tangible personal property. Manufacturing does not include services incidental to storage or transportation of property; preparation of food in a restaurant or other retail establishment; or incidental preparation of property by a wholesaler or retailer. "Tangible personal property" includes natural gas and other gaseous products and materials. Tangible

personal property does not include electricity, unprocessed agricultural products, or unprocessed food products.

The tax is deductible from Federal income taxes.

Credit against tax

A credit equal to 0.08 percent of the taxpayer's qualified inventory costs is allowed against the tax.

"Qualified inventory costs" are amounts paid or incurred for purchases of tangible personal property and which are allocable to the inventory of a manufacturer using the full absorption accounting method (unless otherwise provided in regulations). Property manufactured for lease is treated in the same manner as property manufactured for sale.

In lieu of any allowance for depreciation or amortization, qualified inventory costs include amounts paid or incurred for depreciable or amortizable property (i.e., expensing treatment).

A taxpayer who includes the cost of tangible personal property in qualified inventory costs is treated as the manufacturer of the property if the property is subsequently sold or leased.

Credits may be carried forward to later taxable years, but may not be refunded.

Exemptions

Small manufacturers.—A manufacturer with \$5 million or less of annual taxable receipts is effectively exempt from the tax, by means of a minimum \$4,000 allowable credit. This minimum credit is not available to importers, is not refundable, and may not be carried over.

Small imports, exports, and tax-exempt entities.—Additional exemptions from the tax are provided for the following: (1) import shipments with an aggregate value of \$10,000 or less; (2) exports from the United States; and (3) items sold or leased (but not imported) by governmental units or organizations exempt from taxation under section 501(c)(3) (other than in unrelated trades or businesses).

Termination date

The tax terminates after December 31, 1990. The tax would be suspended or terminated earlier under similar conditions as the petroleum and feedstock chemical taxes (see A.2 and A.3, above).

Effective date

The tax is effective on January 1, 1986.

Conference Agreement

The conference agreement provides a new environmental tax generally based on corporate alternative minimum taxable income ("AMTI"). AMTI is defined in the same manner as in the Tax Reform Act of 1986 (H.R. 3838), which the conferees expect will be signed into law before the effective date of this provision.

The amount of tax is equal to 0.12 percent (\$12 of tax per \$10,000 of AMTI) of the excess of AMTI, without regard to net operating losses and the deduction for this tax, over \$2 million. The \$2 million exemption is aggregated for taxpayers that are component members of a controlled group of corporations (as defined in sec. 1563). The environmental tax is imposed whether or not the taxpayer is subject to the alternative minimum tax. The environmental tax is deductible from gross income. No credits are allowable against the environmental tax. In addition, the rules for estimated tax, penalties, and refunds that apply to the corporate income tax also apply to the environmental tax.

The environmental tax is effective for taxable years beginning after December 31, 1986. The environmental tax is not imposed if any taxable year beginning during a cal-

end year in which the petroleum and chemical feedstocks taxes are not imposed. Thus, the environmental tax is not imposed in taxable years beginning after December 31, 1991, and will be terminated (or suspended) sooner if the petroleum and chemical feedstocks taxes are terminated (or suspended) before this date. The effective date and termination provisions are designed to impose the environmental tax for the same number of taxable years, regardless of when a corporation's taxable year begins. Rules for the imposition of the environmental tax for taxable years of less than 12 months shall be prescribed by the Secretary.

7. LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND TAX

Present Law

Petroleum releases and releases of natural or synthetic gases are not covered by the Superfund. (Some petroleum releases are specifically covered by other environmental laws.)

Excise taxes are imposed on gasoline and special motor fuels (9 cents per gallon), diesel fuel (15 cents per gallon), aviation gasoline (12 cents per gallon), aviation jet fuel (14 cents per gallon), and fuel used on inland waterways (10 cents per gallon). Revenues from these fuel taxes are dedicated to specific trust funds.

House Bill

Establishment of trust fund

A separate Leaking Underground Storage Tank Trust Fund is established, to be available for cleanup and related costs associated with leaking underground storage tanks containing petroleum products.

This Trust Fund generally is intended to be used to pay cleanup and related costs involving tanks where no solvent owner can be found, or when the owner or operator refuses or is unable to comply with an urgent corrective order. This Trust Fund would also be available to provide grants to States carrying out these purposes.

Financing of trust fund

The Leaking Underground Storage Tank Trust Fund is to be funded by:

(1) An additional 0.2-cent per gallon tax on gasoline, diesel fuel, and special motor fuels sold by a producer or importer; liquid fuels (other than gasoline) used in motor vehicles, motor boats, and trains; liquid aviation fuels; and fuels used in commercial transportation on inland waterways. These additional taxes generally use the tax base and collection procedures of the present law excise taxes on these fuels (Code secs. 4041, 4042, and 4981).

(2) Interest on balances in this Trust Fund.

(3) Recoveries from responsible parties under section 9003(h) of the Solid Waste Disposal Act.

Termination of tax

The additional taxes expire on September 30, 1990. However, no further taxes are to be imposed if, before September 30, 1990, cumulative revenues from these taxes exceed \$850 million.

Effective date

These provisions are effective on November 1, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill in establishing a Leaking Underground Storage Tank Trust Fund. The conference agreement also follows the House bill as to the financing of the Trust Fund, except that the tax is imposed at the rate of 0.1 cent per gallon. This tax is not imposed on liquefied petroleum gas. A reduced rate of 0.05 cent per gallon is imposed on methanol.

This provision is effective on January 1, 1987. It expires on December 31, 1991. If, prior to the date, the net revenues from the taxes impose to fund the Leaking Underground Storage Tank Trust Fund exceed \$500 million, then those taxes will expire on the last day of the month in which that occurs.

B. POST-CLOSURE LIABILITY TRUST FUND AND TAX

Present Law

A separate trust fund, the Post-Closure Liability Trust Fund, is to assume completely the liability of owners and operators of hazardous waste disposal facilities that have been granted permits and have been properly closed under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The Trust Fund also may be used to pay certain monitoring and maintenance costs.

Revenues from an excise tax on hazardous waste were deposited in the Trust Fund. The tax of \$2.13 per dry weight ton expired on September 30, 1985.

House Bill

The House bill repeals the Post-Closure Liability Trust Fund and tax, effective October 1, 1983 (the original effective date of the tax). To effect this retroactive repeal, taxpayers who paid this tax may file claims for refunds of the tax, plus interest.

Senate Amendment

The Senate amendment repeals the Post-Closure Liability Trust Fund and tax effective October 1, 1985, and transfers the unobligated balance in this Trust Fund to the Superfund. Amounts in the Trust Fund are to be refunded (proportionately to taxes paid, but without interest) effective March 1, 1989, unless by that date the Congress authorizes a transfer or assumption of post-closure liability in response to a study required to be made by EPA.

Conference Agreement

The conference agreement follows the House bill. The statute of limitations is extended so that taxpayers who paid this tax may file claims for refunds.

C. OIL SPILL LIABILITY TRUST FUND AND TAX

1. OIL SPILL LIABILITY TRUST FUND

Present Law

Funds relating to oil spill damages and cleanups have been created under various Federal statutes, including:

(1) section 311(k) of the Federal Water Pollution Control Act (Clean Water Act) (\$35 million revolving fund for oil spill cleanups, supported by fines, penalties, and general revenue appropriations);

(2) the Trans-Alaska Pipeline Authorization Act (\$100 million fund, financed primarily by a 5-cents-per-barrel fee on oil passing through the pipeline);

(3) the Deepwater Port Act of 1974 ("Deepwater Port Liability Fund") (\$100 million fund, financed by a 2-cents-per-barrel fee on oil loaded at a deepwater port); and

(4) the Outer Continental Shelf Act Amendments of 1978 ("Offshore Oil Pollution Compensation Fund") (\$200 million fund with respect to offshore oil spills, financed by a maximum 3-cents-per-barrel fee on owners of offshore oil).

There is no general oil spill liability and compensation trust fund.

House Bill

In general

An Oil Spill Liability Trust Fund is established in the Treasury, to be funded in part

by a 1.3-cents-per-barrel excise tax on domestic crude oil and imported petroleum products.

Amounts in the Oil Spill Fund are available for removal costs, certain damages sustained by U.S. claimants, and certain related costs associated with oil spills. Claimants generally would have the option of proceeding against the responsible party or recovering against the Fund, which could then proceed against the responsible party. The legislation would constitute an exclusive remedy for claims covered by the Fund.

Liability of responsible parties is to be on a strict, joint, and several basis, with liability limits consistent with international agreements.

Excess amounts remaining in the fund created by section 311(k) of the Federal Water Pollution Control Act are transferred to the general fund of the Treasury.

Uses of fund

Amounts in the Oil Spill Fund are available only for the following purposes:

(1) Payment of costs incurred in cleaning up or preventing oil pollution from vessels or offshore facilities ("removal costs"), under the Federal Water Pollution Control Act, the Deepwater Port Act, and the Intervention on the High Seas Act.

(2) Claims for injury to, or destruction of, real or personal property.

(3) Claims for loss of subsistence use of natural resources.

(4) Payment of otherwise uncompensated economic loss sustained by any U.S. claimant as a result of oil spills from vessels or offshore facilities. Compensable damages would include lost earnings and profits if: (a) the loss is 25 percent or more of the claimant's earnings; or (b) in the case of seasonal activities, 25 percent of seasonal earnings are derived from affected activities.

(5) Payment of contributions to the International Fund for Compensation for Oil Pollution Damage, if the conventions establishing this fund come into force with respect to the United States. Under regulations, contributions to the International Fund would be allowed only in proportion to the portion of such Fund used for purposes that are consistent with the uses of the domestic Oil Spill Fund.

(6) Administrative costs, but only to the extent necessary for an incidental to the implementation of the Comprehensive Oil Pollution Liability and Compensation Act.

Payments to any governmental unit, under any item above, are permitted only for removal costs and administrative expense related to removal costs.

The liability of the Oil Spill Fund could not exceed \$300 million for any single incident. Additionally, no payment could be made (except for removal costs) to the extent that the payment would reduce the Fund balance below \$30 million.

Claims against the Fund could be paid out of the Oil Spill Fund only. If the Fund is insufficient to pay all claims, claims are to be paid in full in the order in which finally determined.

Revenue sources

Under the House bill, the following amounts are to be deposited in the Oil Spill Fund:

(1) Amounts equivalent to a 1.3-cent-per-barrel excise tax on domestic crude oil and imported petroleum products, using the tax base for the Superfund petroleum tax (see C.2., above).

(2) Amounts recovered, collected, or received from responsible parties under the Comprehensive Oil Pollution Liability and Compensation Act. (Penalties with respect to payment of taxes would not be deposited in the Oil Spill Fund.)

(3) Amounts remaining in the Deepwater Port Liability Fund and the Offshore Oil

* Similar provisions are included in H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, as reported by the House Committee on the Budget on July 31, 1985 (H. Rep. 99-727), and as passed by the House on September 24, 1986.

Pollution Compensation Fund, as of the date of enactment.

(4) Interest earned on Oil Spill Fund investments.

(5) The proceeds of authorized borrowing by the Oil Spill Fund, not to exceed \$300 million in outstanding indebtedness at any time.

(6) Penalties and recoveries under the Federal Water Pollution Control Act.

Administrative provisions

The Oil Spill Liability Trust Fund is established as a trust fund in the Internal Revenue Code.

The Trust Fund is authorized to borrow, as repayable advances, up to \$300 million at any one time to carry out the purposes of the Fund.

Effective date

The Oil Spill Fund trust fund provisions are effective on January 1, 1986.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision of the House bill.

2. OIL SPILL TAX

Present Law

No provision. (A tax on petroleum was imposed for deposit in the Superfund; see A.2., above.)

House Bill *

Imposition of tax

An^a excise tax of 1.3 cents per barrel is imposed on domestic crude oil and imported petroleum products, in addition to the 11.9 cents per barrel tax imposed on this base for the Superfund (see A.2., above). This tax uses the same tax base, and is subject to the same administrative provisions, as the Superfund petroleum tax.

A non-transferable credit against the oil spill tax is allowed to the extent of prior contributions for persons who contributed to the Deepwater Port Liability Fund or the Offshore Oil Pollution Compensation Fund. (The balance in these funds is to be transferred to the Oil Spill Fund.)

Termination of tax

This tax terminates after September 30, 1990.

Effective date

The tax is effective after December 31, 1985.

Senate Amendment

No provision. (The Senate amendment continues the prior-law Superfund petroleum tax.)

Conference Agreement

The conference agreement does not include the provision of the House bill.

D. TAX-EXEMPT BONDS FOR HAZARDOUS WASTE TREATMENT FACILITIES

Present Law

Tax-exempt industrial development bonds ("IDBs") may be issued to finance solid waste disposal facilities (sec. 103(b)(4)(E)). Facilities for the disposal of liquid or gaseous waste (including liquid and gaseous hazardous wastes) do not qualify for this financing.

Under the conference agreement on the Tax Reform Act of 1986 (H.R. 3838),¹⁰ as passed by the House on September 25, 1986, and the Senate on September 27, 1986, tax-exempt private activity bonds may be issued

to finance qualified hazardous waste facilities. These include facilities for the land incineration or the permanent entombment of hazardous waste, which facilities are subject to final permit requirements under subtitle C of Title II of the Solid Waste Disposal Act, as in effect on the date of enactment of the conference agreement. Tax-exempt financing is available under this provision only for facilities (or the portion of a facility) to be used by the general public, and is subject to certain limitations, including the volume and other limitations applicable to private activity bonds generally.

House Bill

No provision.

Senate Amendment

The Senate amendment allows tax-exempt IDBs to be issued to finance facilities for the treatment of hazardous waste, as these terms are defined under sec. 1004 of the Solid Waste Disposal Act (i.e., RCRA). This exemption is limited to facilities which are subject to final permit requirements under RCRA. Bonds issued under this provision would be subject to the volume and other restrictions applicable to solid waste IDBs under present law.

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

Conference Agreement

The conference agreement does not include the provision of the Senate amendment.

E. HAZARDOUS WASTE REMOVAL COSTS TREATED AS QUALIFYING DISTRIBUTIONS BY PRIVATE FOUNDATIONS

Present Law

To avoid penalty excise taxes, a private foundation must annually make expenditures or grants for charitable purposes in an amount (the "distributable amount") equal to 5 percent of the fair market value of its investments (Code sec. 4942).

House Bill

No provision.

Senate Amendment

Subject to certain limitations, the distributable amount of a private foundation (under sec. 4942) is to be reduced by amounts paid or incurred or set aside by the foundation for removal or remedial action with respect to a hazardous substance released at a facility that was owned or operated by the foundation.

This provision is effective for taxable years beginning after December 31, 1982.

Conference Agreement

The conference agreement does not include the provision of the Senate amendment.

F. STUDIES

1. ALTERNATIVE FINANCING MECHANISMS

Present Law

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), EPA prepared the following study: "The Feasibility and Desirability of Alternative Tax Systems for Superfund: CERCLA section 301(a)(1)(G) Study," United States Environmental Protection Agency (December 1984).

House Bill

No provision.

Senate Amendment

The General Accounting Office (GAO) is directed to report by January 1, 1988, its findings on various mechanisms for financing the Superfund, including a study on the effect of a tax on hazardous waste on the generation and disposal of such waste.

Conference Agreement

The conference agreement does not include the provision in the House bill.

2. EFFECT OF WASTE MANAGEMENT TAX

Present Law

No provision.

House Bill

The Secretary of the Treasury is directed to study the effects of the waste management tax on the ability of domestic manufacturers to compete in international trade, and to report to Congress by July 1, 1986.

Senate Bill

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

3. STUDY OF LEAD POISONING

Present Law

No provision.

House Bill

The House bill directs the Administrator of the Agency for Toxic Substances and Disease Registry to study the nature and extent of lead poisoning in children from environmental sources, and to report to Congress by March 1, 1986. The cost of this study is authorized to be paid out of the Superfund.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

G. APPENDICES

APPENDIX A—EXCISE TAX RATES ON FEEDSTOCK CHEMICALS UNDER PRIOR LAW AND HOUSE BILL

Substance	Prior law rate	House bill proposed fiscal year 1986 rate ¹
Organic substances		
Acetylene	4.87	6.25
Benzene	4.87	6.25
Butadiene	4.87	6.25
Butane	4.87	5.54
Butylene	4.87	6.25
Ethylene	4.87	6.25
Heptane	3.44	3.44
Hexathylene	4.87	6.25
Propylene	4.87	6.25
Toluene	4.87	6.25
Xylene	4.87	11.19
Inorganic substances		
Ammonia	2.64	4.20
Antimony	4.45	6.25
Asphosny trioxide	3.75	6.25
Arsenic	4.45	6.25
Acetic trioxide	3.41	6.25
Boronic sulfide	2.30	6.25
Bromine	4.45	6.25
Cadmium	4.45	6.25
Chlorine	2.70	4.03
Chromium	1.52	1.52
Chromium	4.45	6.25
Cobalt	4.45	6.25
Cupric oxide	3.59	6.25
Cupric sulfate	1.87	6.25
Lead oxide	3.97	6.25
Hydrochloric acid	.29	1.24
Hydrogen fluoride	4.23	6.25
Lead	0	6.25
Lead oxide	4.14	6.25
Mercury	4.45	6.25
Nickel	4.45	6.25
Nitric acid	.74	3.90
Phosphorus	4.45	6.25
Potassium dichromate	1.69	6.25
Potassium hydrosulfide	.22	6.25
Sodium dichromate	1.87	6.25
Sodium hydroxide	.78	3.72
Stannic chloride	2.12	6.25
Stannous chloride	2.85	6.25
Sulfuric acid	.26	1.03
Zinc chloride	2.17	6.25
Zinc sulfate	1.90	6.25

¹ Proposed rates would be indexed for inflation, beginning in 1987, but would not be reduced below the rates stated in the table.

² Coal-derived benzene, naphthalene, toluene, and xylene are exempt under current law. These substances would be taxed at the indicated rates under the bill.

³ Tax rate on xylene reflects increase to compensate for repeal of tax prior to 1986.

¹⁰ Similar provisions are included in H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, as reported by the House Committee on the Budget, July 31, 1986, and as passed by the House on September 24, 1986.

¹¹ See H. Rep. 99-841, September 18, 1986.

APPENDIX B: INITIAL LIST OF TAXABLE SUBSTANCES FOR PURPOSES OF IMPORTED DERIVATIVES TAX UNDER HOUSE BILL

Cumene; Styrene; Ammonium nitrate; Nickel oxide; Isopropyl alcohol; Ethylene glycol; Vinyl chloride; Polyethylene resins, total; Polybutadiene; Styrene-butadiene, latex; Styrene-butadiene, snpf; Synthetic rubber, not containing fillers; Urea; Ferronickel; Ferrocromium nov 3 pct; Ferrochrome ov 3 pct carbon; Unwrought nickel; and Nickel waste and scrap.

Wrought nickel rods and wire; Nickel powders; Phenolic resins; Polyvinylchloride resins; Polystyrene resins and copolymers; Ethyl alcohol for nonbeverage use; Methylene chloride; Polypropylene; Propylene glycol; Formaldehyde; Acetone; Propylene oxide; Polypropylene resins; Ethylene oxide; Ethylene dichloride; Cyclohexane; Isophthalic acid; and Maleic anhydride.

Phthalic anhydride; Ethyl methyl ketone; Chloroform; Carbon tetrachloride; Chromic acid; Hydrogen peroxide; Polystyrene homopolymer resins; Melamine; Acrylic and methacrylic acid resins; Vinyl resins; and Vinyl resins, NSPP.

ESTIMATED REVENUE EFFECTS OF H.R. 2005, AS APPROVED BY THE CONFERENCE COMMITTEE, FISCAL YEARS 1987-92

(In millions of dollars)

Item category	1987	1988	1989	1990	1991	1992	Total
Superfund taxes:							
Petroleum tax	379	547	551	554	557	578	2,759
Chemical feedstocks	91	280	251	299	309	25	1,365
Environmental tax	218	418	987	328	573	798	2,522
Tax on imported chemical derivatives			15	19	19	6	51
Total Superfund tax receipts	688	1,255	1,342	1,090	1,458	570	6,703
Leaking underground storage tank fund							
fund tax on gasoline							
other motor fuels (0.1 cents per gal)	80	130	132	131	140	150	563
Total tax revenues to trust funds	727	1,375	1,474	1,321	1,476	570	7,263
Net increase in budget receipts (after income tax effects)	583	1,031	1,106	1,148	1,307	478	5,603

-- End of Text --

-- End of Section J --

Randy Coleman - Superfund
Legislative Peram at OMB.

Look in Record Oct 3, p 89032

Get in letters on this one.

Try to put in months at addresses.
Initial them on the sheets.

Randy Coleman.

Address letter to Miller as ~~formal~~
formal request for views on enrolled bill.

Here is our recommendation on enrolled.
Do this ASAP. Before we

Run 7230 of new OB

Send to Randy Coleman.

Steve -

—
This explains the alternative minimum tax. Let me know if you need more information.

Diana

(The Senate plan was used
by the Conference Committee)



THE SENATE ALTERNATIVE MINIMUM TAX: DOES IT SNARE ONLY THE TAX 'ABUSER'?

by Robert B. Lucke,
Mark R. Eisenach,
and Larry L. Dildine

The authors are members of the Tax Economics Department of the Office of Government Services in the Washington, D.C. office of Price Waterhouse. This article is a substantial extension and expansion of work performed for clients of Price Waterhouse. The views expressed are those of the authors alone, however.

In this article, the authors chronicle the results of a simulation of the depreciation preference in the Senate alternative minimum tax (AMT) on five standard companies with several variations on each to account for debt financing, growth, profitability, maturity, and the business cycle. They conclude that the AMT will have the greatest impact on young, growing, capital intensive companies. They also find that it likely will have a pro-cyclical impact, increasing as the economy worsens and decreasing as the economy improves. Although many firms will pay some alternative minimum tax, most of them will soon cease to be AMT payers. Furthermore, the AMT credit against the regular income tax will result in a refund of most of the AMT that arises from the depreciation preference. The authors conclude that the net gain to the government (and the net cost to corporate taxpayers) of the AMT on the depreciation preference is the interest value of the AMT from time of payment to time of credit against the regular tax.

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The alternative minimum tax (AMT) system included in the tax reform bill (as passed by the Senate on June 24, 1986) has many consequences for the taxation of corporations that are not readily apparent. Proposed out of the perception that a number of U.S. corporations do not pay their "fair share" of taxes, the system devised is one that will have an impact on a large number of corporations not usually considered to be tax "abusers." Two provisions greatly increase the size of the net: the preference for accelerated depreciation and the preference for book income.

The purpose of this paper is to examine the AMT for corporations by modeling several prototype manufacturing and service companies, using varying assumptions as to their profitability, asset composition, age, and growth patterns. We look at the size and timing of minimum tax payments, if any, as well as the long-run implications of the AMT for these companies. We also examine the impact of the AMT if certain proposed changes in the calculation of the book income and depreciation preference items are adopted.

I. Summary of the Results

In general, we find that a much wider net is cast by the Senate AMT than may have been intended by its creators. Whereas the corporate AMT is a creature that was demanded largely because of perceived low taxes paid by oil and gas companies, financial institutions, or defense contractors, among others, it is apparent that the AMT is likely to affect many other sectors as well. Our analysis applies to companies whose only preference is accelerated depreciation (including the depreciation component of the book income preference).

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Several conclusions can be drawn about the characteristics of the companies that will be subject to the AMT.

- Those companies that invest heavily in machinery and equipment, such as manufacturers and transportation companies, are likely targets for the AMT. Our sample nondurable goods manufacturer and airline are two cases where the AMT applies under many different variations of firm characteristics. This result arises because depreciable property that comprises a large share of the balance sheet for these companies has a short life for the regular tax and a long life for the AMT, generating large preferences under the AMT.
- Firms that are growing are likely to have an AMT liability because they will have relatively large amounts of accelerated depreciation preferences. With a modest real growth rate of five percent, four out of the five companies examined were subject to the AMT for periods ranging from two to 16 years. Conversely, declining companies, even if profitable, are less likely to be subject to the extra tax.
- Also, companies that have been founded in recent years are more likely to be on the AMT than companies founded long ago. Our sample companies that are founded today would be subject to the AMT for periods ranging from eight to 21 years.
- The AMT hits firms that have low rates of return harder than highly profitable companies. Moreover, the AMT will have a much larger impact on a firm when it has a slowdown in earnings. In effect, the AMT works to raise the tax rate when earnings decline.

In addition, the analysis produces some results that have important implications for the amount of federal revenue that is generated by the depreciation preference.

- The AMT raises most of its depreciation-generated revenue during the transition period to the new system. Because of the bunching of the depreciation preference in the early years, companies may be subject to the AMT solely because of the transition rules.

The federal revenue effect of the depreciation preferences will be minimal over a period longer than . . . five year[s].

- There will be few, if any, companies permanently on the AMT solely because of the depreciation preference. Every one of our sample companies is eventually off of the AMT, although the time frame can be as long as 47 years.
- Since a minimum tax credit for timing preferences is used to offset the regular tax in future years, the federal revenue effect of the depreciation preferences will be minimal over a period longer than the five-year horizon used for revenue estimating purposes. The longer-run revenue gain from the AMT may be much smaller than indicated by simple reference to five-year revenue estimates.

II. How Does the Senate AMT Work?

The Senate AMT starts with regular taxable income and adds certain tax preference items to arrive at alternative minimum taxable income (AMTI), which is multiplied by a tax rate of 20 percent to get the alternative minimum tax. Historically, these preference items have been defined so as to apply to companies in a narrow range of industries, such as oil and gas producers or real estate operators. However, the newly defined preferences for accelerated depreciation on personal property and for "untaxed reported book profits" (referred to as the "book income" preference) could apply to virtually any company. Also, the AMT structure is combined with a fairly narrow spread between the "regular" tax rate and the AMT rate (33 percent as compared to 20 percent). These features of the Senate AMT cast a wide net, with the result that very many companies may be affected by the AMT.

A much wider net is cast by the Senate AMT than may have been intended by its creators.

In general, the depreciation preference is computed as the difference between accelerated depreciation (allowed under the regular tax system), and straight-line depreciation computed over longer tax lives, which are generally the ADR midpoint tax lives.

Table 1 shows how the depreciation preference calculation changes over the transition period. In the years up to 1981, depreciation for the regular tax is the same as book depreciation because the company is assumed to be in steady state. After the change to ACRS in 1981, regular tax depreciation allowances are accelerated while book depreciation remains the same. In 1987, depreciation calculations are made under the new Senate depreciation system. While book depreciation remains level, regular tax depreciation remains accelerated for four years. AMT depreciation allowances are less than regular tax depreciation for eight years until they become equal in 1995 and years thereafter. Thus, the depreciation preference will be positive in each of the years up to 1995 in this example, at which point the preference will be zero.

Since nearly all companies undertake some form of investment in depreciable property, most are likely to generate a depreciation tax preference. For any given asset, straight-line depreciation allowances will eventually exceed accelerated allowances (often called the "turn-around"), and a company will have a "negative" preference for the AMT for that particular asset, but not necessarily for all assets. In the early years of the new tax system, before depreciation has "turned around" for any asset, depreciation preferences will be much larger than after the system has settled down. Thus, as shown in the table, the large timing differential associated with accelerated depreciation is found in the first few years but disappears, in this case by 1995. The depreciation differential will disappear for firms in steady state; firms with nominal growth will continue to have a positive differential.

Table 1
Comparison of Tax, Minimum Tax, and Book Depreciation

Year	Gross Income	Depreciation			Net Income		
		Book	Regular	AMT	Book	Regular	AMT
1976	1,325	625	625	n/a	700	700	n/a
1977	1,325	625	625	n/a	700	700	n/a
1978	1,325	625	625	n/a	700	700	n/a
1979	1,325	625	625	n/a	700	700	n/a
1980	1,325	625	625	n/a	700	700	n/a
1981	1,325	625	641	n/a	700	684	n/a
1982	1,325	625	641	n/a	700	684	n/a
1983	1,325	625	665	n/a	700	660	n/a
1984	1,325	625	713	n/a	700	612	n/a
1985	1,325	625	780	n/a	700	545	n/a
1986	1,325	625	724	n/a	700	601	n/a
1987	1,325	625	704	618	700	621	707
1988	1,325	625	724	516	700	601	809
1989	1,325	625	694	445	700	631	880
1990	1,325	625	642	298	700	683	927
1991	1,325	625	589	352	700	736	973
1992	1,325	625	625	430	700	700	895
1993	1,325	625	625	508	700	700	817
1994	1,325	625	625	586	700	700	739
1995	1,325	625	625	625	700	700	700

NOTE: The firm has 40 percent of its assets in property with an eight-year ADR midpoint. The other 60 percent of its assets are considered inventories and land. The capital stock is \$10,000, the before-tax real return is seven percent, and the economic depreciation rate is 15.63 percent.

The Senate AMT also includes a preference for book income as reported by firms on their financial statements. The preference is defined as one-half of the excess of book income over AMT income (computed after all other preferences have been included except the book income item). In the example shown in Table 1, there is no book income preference due to depreciation in any year, as book income is always less than or equal to AMT income. Unlike the preference for accelerated depreciation, the book preference is not measured symmetrically; that is, the excess of book income is counted in the AMT base only when the excess is positive.

For the steady-state firm shown in Table 1, book depreciation equals \$625 per year. As expected, tax depreciation, because it is accelerated, exceeds book depreciation, and the difference between the two represents the benefit of accelerated depreciation. For many assets, AMT depreciation will be less than book depreciation in the initial years of the tax system. As a result, the tax base for the AMT will exceed book income—probably an unintended consequence. For example, in 1989, book income is \$700, taxable income is \$631, and AMTI is \$880; minimum taxable income exceeds book income by about 25 percent.

One possible option for reducing the bunching of AMT income in the early years is to recalculate the AMT depreciation for assets placed in service prior to 1987. The result would be a stream of depreciation allowances that is more level over time and does not drop significantly in the first few years of the new tax system.

The amount of minimum tax paid is measured as the excess of the AMT over the regular tax. This amount can be carried over to future years as an "alternative minimum tax credit" to be used against the regular tax. The minimum tax credit can only arise from those preferences that are caused by timing differences, such as those from

accelerated depreciation deductions or completed contract accounting. Permanent differences such as those created by percentage depletion cannot generate a minimum tax credit. As a result, over the long term the amount of minimum tax paid will be zero for those taxpayers that are eventually on the regular tax and that incur a minimum tax only because of timing differences. This result implies that most federal revenues that are raised because of accelerated depreciation in the AMT will eventually be repaid through the minimum tax credit.

III. An Analytic Approach to the Senate AMT

In order to examine the impact of the Senate AMT on corporations, we developed a model that simulates the income stream for several different types of companies and applies the relevant tax laws over a long period. For analytic purposes, we created sample companies that earn a normal rate of return and varied the parameters that describe those sample companies so as to show the sensitivity of the AMT to different situations.

A. Five Kinds of Companies

Since the AMT will not affect all types of firms equally, it is useful to model several "companies" in different industries to understand what attributes of a company will drive it toward the minimum tax. We start with a company that is a "standard" firm that is barely on the minimum tax. This company is founded in 1940 so that it has reached maturity (steady state) by the time tax law is changed in 1987. The level of taxes paid in each year is determined under the appropriate tax law for that year, and the level of minimum taxes under new law is calculated for the period 1987 to 2030.

We simulate companies in four industries: retail trade, durable goods manufacturing, nondurable goods manufacturing, and air transportation. The key differences be-

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tween these firms will be the composition of their balance sheets; some will have more depreciable assets than others, and each has different types of depreciable assets.

The base case for each of the companies in the simulation earns the same before-tax rate of return on assets (seven percent real, 11 percent nominal with a four percent inflation rate). By fixing the income stream to arrive at the same rate of return for each firm, it is possible to compare the relative effect of the AMT on different types of companies. This base case will be compared to several variants that are derived by modifying the parameters that define the base case, as discussed below.

1. A Standard Company. The balance sheet composition for the "standard" company is chosen so that this company is just barely subject to the AMT in one year. By defining the standard company in this way it is possible to see the effect of varying the asset composition to those found in the other companies. The standard company is by no means unusual. It has 18 percent land and inventories (last-in first-out (LIFO) accounting is used so that only the real holding gain is taxed; i.e., the gain due to inflation goes untaxed), 25 percent real property (35-year ADR midpoint), 15 percent light trucks (4-year ADR midpoint), 20 percent short-lived equipment (6-year ADR midpoint), and 22 percent long-lived equipment (16-year ADR midpoint). This company is financed with 30 percent debt, with an assumed nominal interest rate on debt of nine percent (five percent real interest rate plus four percent inflation). Initially, we assume that the company has no real growth.

2. A Retail Trade Company. The base case for this and the other companies is similar to that for the standard company except for the composition of the assets. A retail trade company will have more of its assets in inventories than the other companies. As a result, it will have a smaller preference item for the AMT. This company will have 40 percent land and inventories, 35 percent real property (35-year ADR midpoint), 10 percent light trucks (4-year ADR midpoint), five percent furniture (10-year ADR midpoint), and 10 percent equipment (9-year ADR midpoint). The retail trade company is least likely to be subject to the AMT because it has a high proportion of its assets in real property and nondepreciable assets.

3. A Durable Goods Manufacturer. The durable goods manufacturer has more real property and nondepreciable assets than the standard company. This company has 20 percent of its assets in inventories and land, 40 percent in real property (35-year ADR midpoint), 15 percent in special tools (3-year ADR midpoint), 15 percent in 15-year machinery, and 10 percent in 12-year machinery. The total of 25 percent of assets in long-lived equipment makes this manufacturer somewhat likely to be on the AMT.

4. A Nondurable Goods Manufacturer. The nondurable goods manufacturer has more long-lived equipment. It has 20 percent of its assets in inventories and land, 30 percent in real property (35-year ADR midpoint), five percent in special tools (4-year ADR midpoint), 20 percent in 10-year machinery, and 25 percent in 12-year machinery. With 45 percent of its property in long-lived machinery, this manufacturer is second to the airline in terms of the likelihood of being on the minimum tax.

5. An Airline. The airline has the highest concentration of depreciable assets of all of our sample companies. This firm has 15 percent of its property in inventories and land, 10 percent in real property (35-year ADR midpoint),

65 percent in aircraft (12-year ADR midpoint), and 10 percent in computer equipment (6-year ADR midpoint). Because of its high percentage of depreciable equipment, the airline is the most likely of the examples to be on the AMT.

B. Variations on the Five Companies

We look at several variations that can affect the likelihood of a company being a minimum taxpayer. These include differences in rates of return, effects of business cycles, and variations in net debt ratio, growth, and age of company. In addition, we examine the impact of using an alternative method for depreciating personal property under the minimum tax.

1. High-Debt Companies. The net debt ratio is defined as the excess of debt over financial assets divided by total assets. Since debt and financial assets are treated symmetrically by the tax code for corporations, it is possible to use a single debt ratio that takes into account both debt and financial assets. We begin the simulations with a net debt ratio of 30 percent in the base case. This ratio is changed to 40 and 60 percent to see how leverage affects the likelihood of a company becoming a minimum taxpayer. Companies that are *more highly leveraged* are more likely to be minimum taxpayers than those that are not.

Younger firms are much more likely to be subject to the AMT.

2. High and Low Profitability Companies. The base case for each company will be one that earns a seven percent before-tax real rate of return. With an assumed inflation rate of four percent, the nominal before-tax rate of return will be 11 percent. We run simulations after altering this parameter (1) by lowering the before-tax nominal rate of return to nine percent, and (2) by raising the nominal rate of return to 13 percent. In general, we find that *less profitable companies* are more likely to be subject to the minimum tax.

3. Cyclical Companies. Inducing a business cycle is another way of analyzing how the likelihood of a company being on the AMT is closely related to its profitability. For this analysis, we create a business cycle that varies the before-tax nominal rate of return from 11 percent in 1987 to eight percent in 1988, four percent in 1989, eight percent in 1990, and back to 11 percent for the years 1991 and beyond. In this case we find that in *less profitable years* the companies will be more likely to be subject to the minimum tax because the preference items will comprise a relatively large proportion of taxable income.

4. High and Low Growth Companies. One issue that has not yet been studied carefully is how rapidly growing companies might be affected by the alternative minimum tax. Since the amount of depreciation preference is entirely a question of the timing of deductions, companies that are growing or declining will be affected differently from companies that experience no growth. Our base case represents a company that has no growth. Two variants on the base case are (1) five percent growth over the period 1980 to 1990, and (2) three percent decline over the same period. We find that *growing companies*

are more likely to be subject to the AMT because of the large depreciation preference generated by these firms.

5. New and Mature Companies. Closely related to the growth of a firm is a company's age. Our base case company is assumed to have been founded in 1940. By selecting a date so distant, the entire first generation of property placed in service has been fully depreciated for tax purposes by the time there is a change to a new tax system. Two variants on the base case involve changing the date of the company's founding to (1) 1976, and (2) 1986. *Younger firms* are much more likely to be subject to the AMT because they have a relatively high proportion of tax depreciation to taxable income.

C. Details of the Analysis

The income statement for the standard company over the period 1981 to 1995 is shown in Table 2. This company is assumed to have started operations in 1940 with an investment of \$10 million and has maintained the size of the investment in real terms over the period. By selecting a starting date in 1940, the firm is in "steady state" before any changes are made to tax law.

This firm's balance sheet began in 1940 with the following items: \$1.8 million in land and inventories, \$2.5 million in real property, \$1.5 million in light trucks, \$2.0 million in short-lived property, and \$2.2 million in long-lived property. The firm has a net debt ratio of 30 percent.

Income and tax calculations are shown in the two sections of Table 2. First, we show the calculation of pre-

tax return on assets. The calculation is a simple one, where economic depreciation is subtracted from receipts to arrive at the pre-tax return. (The economic depreciation rate for each asset is determined by dividing 1.25 by the ADR midpoint life.) For example, in 1982, receipts are \$9.404 million, economic depreciation is \$5.839 million, and the before-tax return is \$3.565 million. The real rate of return of seven percent can be calculated by dividing the before-tax return in 1982 (\$3.565 million) by the average stock in 1981 and 1982 ((\$51.928 million + \$49.931 million) / 2).

The second part of Table 2 shows the tax calculations for the base case of the standard company. For the year 1982, this company has receipts of \$9.404 million, tax depreciation of \$5.343 million, interest expense of \$1.375 million, leaving taxable income of \$2.686 million. There are no carryovers of net operating losses, so tax before credits will be 46 percent of \$2.686 million, or \$1.236 million; \$0.452 million of investment tax credits are generated in 1982 and there are no ITC carryovers, so the regular tax after credits is reduced to \$0.784 million.

The Senate tax reform proposal is used to calculate tax liabilities after 1986 (with the exception of the ITC repeal effective 1/1/86). In 1987, a blended tax rate of 39.5 percent is used to calculate the regular tax, after which the Senate rate of 33 percent is used.

The tax calculations for 1989 and 1990 show how the AMT operates. The company has receipts of \$12.376 million, regular tax depreciation of \$7.355 million, and in-

Table 2
Income Statement for Standard Company

	Inflation rate	=	4%		Asset composition:													
	Real growth rate	=	0%		Trucks	=	15%											
	Debt Share	=	30%		Short-lived equipment	=	20%											
	Pretax real rate of return	=	7%		Long-lived equipment	=	22%											
	Initial capital stock	=	\$10 million		Real property	=	25%											
	First year	=	1940		Inventories and land	=	18%											
Year	1980	1982	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995		
Total assets	48,010	49,931	51,928	54,005	56,165	58,412	60,748	63,178	65,705	68,333	71,067	73,910	76,866	79,941	83,138	86,464		
Pretax income calculations																		
+ Receipts	8,695	9,043	9,404	9,781	10,172	10,579	11,002	11,442	11,900	12,376	12,871	13,386	13,921	14,478	15,057	15,659		
- Economic depreciation	5,399	5,615	5,839	6,073	6,316	6,569	6,831	7,105	7,389	7,684	7,992	8,311	8,644	8,990	9,349	9,723		
= Pretax return on assets	3,296	3,428	3,565	3,708	3,856	4,010	4,171	4,337	4,511	4,691	4,879	5,074	5,277	5,488	5,708	5,936		
Tax calculations																		
+ Receipts	8,695	9,043	9,404	9,781	10,172	10,579	11,002	11,442	11,900	12,376	12,871	13,386	13,921	14,478	15,057	15,659		
- Depreciation	4,876	5,128	5,343	5,611	5,898	6,193	6,508	6,824	7,152	7,491	7,841	8,201	8,571	8,951	9,341	9,741		
- Interest	1,271	1,322	1,375	1,430	1,487	1,547	1,609	1,673	1,740	1,810	1,882	1,957	2,035	2,117	2,202	2,290		
= Taxable income	2,548	2,593	2,686	2,740	2,787	2,839	2,884	2,935	2,990	3,045	3,111	3,179	3,249	3,320	3,393	3,469		
+ Regular tax	1,172	1,193	1,236	1,031	1,098	1,076	1,253	1,203	967	1,060	1,060	1,221	1,213	1,276	1,340	1,405		
- ITC carryover	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
- ITC earned	291	434	452	470	489	508	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A		
- ITC used	291	434	452	470	489	508	0	0	0	0	0	0	0	0	0	0		
- Minimum tax credit used	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0	0	2	0	0	0	0		
= Tentative regular tax	881	758	784	561	609	568	1,253	1,203	967	1,060	1,058	1,221	1,213	1,276	1,340	1,405		
Minimum tax calculations																		
Minimum depreciation	4,876	5,128	5,343	5,611	5,898	6,193	6,508	6,824	7,152	7,491	7,841	8,201	8,571	8,951	9,341	9,741		
Book depreciation	4,726	4,883	5,078	5,281	5,493	5,712	5,941	6,178	6,426	6,683	6,950	7,228	7,517	7,818	8,130	8,456		
Book preference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Minimum NOL generated	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Minimum taxable income	2,548	2,593	2,686	2,740	2,787	2,839	2,725	3,661	4,506	5,308	5,072	5,191	4,941	4,897	5,069	5,245		
Tentative minimum tax	510	519	537	448	477	468	545	732	901	1,062	1,014	1,038	988	979	1,014	1,049		
Tax	881	758	784	561	609	568	1,253	1,203	967	1,062	1,058	1,221	1,213	1,276	1,340	1,405		

Note: Amounts in thousands of dollars.

The minimum tax does not apply prior to 1987.

Minimum tax calculations shown for 1980-1986 are for illustrative purposes only.

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terest of \$1.810 million to arrive at \$3.211 million of taxable income and \$1.060 million of regular tax liability. The AMT calculation shows that there is AMT depreciation of \$5.258 million, leaving AMT income of \$5.308 million and an AMT liability of \$1.062 million. Thus, this company owes only \$0.002 million of minimum tax, a credit for which is allowed in 1990 against the regular tax. This is a company just barely subject to the AMT.

The measure used to evaluate the overall impact of the Senate AMT on a company is the difference between the present values of taxes paid under the regular tax and the minimum tax. Since the minimum tax credit eventually refunds the nominal amount of minimum taxes paid by companies that are not permanent AMT taxpayers, a fair examination requires that the analysis be carried forward enough years for the AMT to turn around. At that point, it is possible to measure the total cost to the company of the Senate AMT by evaluating the present value of the excess taxes paid. The cost to a company (and revenue gain to the government) is not the amount of AMT taxes paid, but the interest on the taxes during the period between when the tax is paid and when it is eventually refunded.

These calculations do not . . . include any of the costs of compliance or tax planning.

In the example, the present value of regular taxes (discounted at the before-tax rate of return of 11 percent) is \$15.834 million, and the present value of the minimum tax is *de minimis*. The reason that the minimum tax has so little effect is that it applied in only one year (barely), and it was immediately refunded the following year through the AMT credit. In many cases where the minimum tax is refunded through the credit we will find that in present value terms the effect of the AMT is small. These calculations do not, of course, include any of the costs of compliance or tax planning associated with the additional complexity introduced by the AMT.

IV. Detailed Results

Our analysis provides some evidence on the likelihood of being a minimum taxpayer for different types of corporations. These results are arranged in the following

order. First, we examine how the asset mix of the company affects its taxpaying status, with all of the other factors held constant, as shown in Table 3. A total of four variations on the standard case are shown, providing five examples for the analysis.

Next, the net debt ratio of the five companies is changed to a level of 40 percent and a level of 60 percent. The results are shown in Table 4. Then, the base cases are altered by moving the nominal before-tax rates of return to nine percent and 13 percent; the results of this variation are in Table 5. Table 6 shows the results of inducing a business cycle downturn in the years 1988 to 1990.

The growth and age characteristics of the company are changed to see how they affect the tax status of the company. The results of these variations are shown in Tables 7 and 8. Table 9 holds the results of a possible option to modify the Senate AMT by allowing companies to restate their AMT depreciation so that pre-1987 assets are depreciated according to the AMT rules.

A. The Five Companies

Table 3 contains the results of changing the distribution of assets from that of the standard company. The AMT effect is expressed in terms of both the percent increase in taxes paid due to the AMT and the number of years that the taxpayer is affected by the AMT. As shown in the table, changing the asset mix from the standard case has little or no effect except for the case of the airline company, which experiences a tax increase of 3.1 percent over the regular tax. That is, it pays 3.1 percent more tax (in present value terms) because of the AMT.

It is interesting to note that while the increase in taxes for the airline appears to be relatively small, it will be affected by the AMT for a long period, from 1988 to 1998. The only other company that is affected by the AMT is the nondurable goods manufacturer. It is affected by the AMT for three years, but the effect on the present value of taxes is negligible.

Companies with a higher proportion of property that has short lives for regular tax purposes but long lives for AMT purposes are most likely to be subject to the minimum tax. Conversely, companies with a greater share of assets in long-lived property, such as real estate, and nondepreciable property, such as inventories and land, are less likely to face the additional tax. Thus, it is clear that the airline and the manufacturer of nondurable goods are the companies most likely to be subject to the minimum tax based on the composition of their assets. These results form the basis of comparisons for analyzing the effects of the variations below.

Table 3
The Effect of the Senate AMT on Five Kinds of Companies

	Percent Increase	Years
Standard Company	(1)	1
Retail Trade Company	0.0%	0
Durable Goods Manufacturer	0.0%	0
Nondurable Goods Manufacturer	(1)	3
Airline	3.1%	11

(1) Percentage increase is less than 0.05 percent.

Note: Percent Increase—The percentage increase in the present value of taxes paid due to the AMT.
Years—The number of years that the company is a minimum taxpayer.

B. Variations

1. High-Debt Companies. The amount of debt on the balance sheet of a company may have a large bearing on the likelihood of that company being subject to the AMT. Table 4 presents the effects on each of our sample companies of increasing the net debt ratio from 30 percent in the base case to 40 percent and then to 60 percent.

When the net debt ratio is increased to 40 percent the impact on those companies paying the minimum tax at the 30 percent debt ratio is increased; those companies not subject to the AMT at 30 percent debt are still not affected. The standard company has a 0.1 percent increase in the present value of its taxes due to the Senate AMT, while the nondurable goods manufacturer will see a 0.7 percent increase, and the airline will incur a 6.7 percent increase. Equally important, the standard company is subject to the AMT for four years, the nondurable goods manufacturer for seven years, and the airline for 14 years.

Increasing the net debt ratio to 60 percent has an even more pronounced effect. In addition to those affected at the 40 percent level, the nondurable goods manufacturer will now be subject to the AMT. As shown in Table 4, the standard company has its taxes rise by an additional 4.4 percent tax due to the AMT, the durable goods manufacturer by 0.5 percent, the nondurable goods manufacturer by 10.1 percent, and the airline by 52 percent. Also, the standard company will be affected by the minimum tax for 12 years, the durable goods manufacturer for six years, the nondurable goods manufacturer for 18 years, and the airline for 47 years. The retailer is still not subject to the AMT in these examples.

The main reason that increasing the debt ratio has such a pronounced effect on placing the companies on the AMT is that larger interest payments reduce taxable income. As a result, the depreciation and book income preferences tend to be greater in proportion to taxable income.

2. High and Low Profitability Companies. More profitable companies are less likely to be subject to the Senate AMT because the regular tax will rise faster than the AMT when taxable income is increased (because of the higher tax rate for the regular tax). For this variation we examine the five companies with before-tax rates of return of nine and 13 percent, compared with 11 percent for the base case.

Our companies that earn 13 percent before tax have taxable income high enough such that they are not likely to be subject to the AMT (see Table 5). Only the airline company is affected, but much less so than in the base case. For the same reason that increasing debt tends to make companies more likely to be on the AMT because of lower taxable incomes, companies with higher incomes are not as likely to be subject to the AMT because the regular tax rises faster than the AMT in relation to increases in taxable income.

Similarly, all of the "low-profit" companies, except the retail trade firm, are subject to the AMT at some point in time. For the standard company, the tax increases by 1.0 percent, the durable goods company by less than 0.05 percent, the nondurable goods company by 2.5 percent, and the airline by 16.4 percent. None of these companies, however, will be a minimum taxpayer *ad infinitum*. The standard company has an AMT liability for eight years, the durable goods company for one year, the nondurable

Table 4
The Effect of the Senate AMT on High-Debt Companies

	30% Debt Ratio		40% Debt Ratio		60% Debt Ratio	
	Percent Increase	Years	Percent Increase	Years	Percent Increase	Years
Standard Company	(1)	1	0.1%	4	4.4%	12
Retail Trade Company	0.0%	0	0.0%	0	0.0%	0
Durable Goods Manufacturer	0.0%	0	0.0%	0	0.5%	6
Nondurable Goods Manufacturer	(1)	3	0.7%	7	10.1%	18
Airline	3.1%	11	6.7%	14	52.0%	47

(1) Percentage increase is less than 0.05 percent.

Note: Percent Increase—The percentage increase in the present value of taxes paid due to the AMT.
Years—The number of years that the company is a minimum taxpayer.

Table 5
The Effect of the Senate AMT on High and Low Profitability Companies

	11% ROR		9% ROR		13% ROR	
	Percent Increase	Years	Percent Increase	Years	Percent Increase	Years
Standard Company	(1)	1	1.0%	8	0.0%	0
Retail Trade Company	0.0%	0	0.0%	0	0.0%	0
Durable Goods Manufacturer	0.0%	0	(1)	1	0.0%	0
Nondurable Goods Manufacturer	(1)	3	2.5%	11	0.0%	0
Airline	3.1%	11	16.4%	26	0.3%	5

(1) Percentage increase is less than 0.05 percent.

Note: Percent Increase—The percentage increase in the present value of taxes paid due to the AMT.
Years—The number of years that the company is a minimum taxpayer.

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goods company for 11 years, and the airline for 26 years. Clearly, the AMT poses more than a slight transition problem for these companies.

3. Cyclical Companies. Even the most stable of industries must contend with business cycles. This simulation projects a fluctuation in income over the period 1988 to 1990, where the before-tax return is eight percent in 1988, four percent in 1989, eight percent in 1990, and back to 11 percent for the remaining years. The results of the simulation are presented in Table 6.

All of the companies were subject to the AMT at some point due to the fluctuation in the income stream.

Not surprisingly, all of the companies were subject to the AMT at some point due to the fluctuation in the income stream. The increase in the present value of taxes under the AMT was 1.6 percent for the standard company, 0.2 percent for the retail trade company, 0.5 percent for the durable goods manufacturer, 2.4 percent for the nondurable goods manufacturer, and 7.9 percent for the airline.

Compared to the base case, the AMT affects these companies over a much longer period due to the business cycle. The standard company is affected for six years (one year in the base case), the retail trade company for two years (zero years), the durable goods manufacturer for four years (zero years), the nondurable goods

manufacturer for eight years (two years), and the airline for 14 years (11 years).

The important conclusion from these results is that the AMT will be activated by downturns in business. Thus, the tax tends to be pro-cyclical in the sense that the companies most burdened by the AMT are those that are already experiencing reduced profits.

4. Growing and Declining Companies. The rate of growth of a company will also have a strong bearing on whether or not that company is subject to the Senate AMT. Companies that are growing have more depreciation deductions and preference items per dollar of income and are thus more likely to be on the AMT.

Table 7 contains the results generated by the model for companies with a growth rate of five percent and a decline rate of three percent, as compared to no growth in the earlier analysis. With five percent growth, all of the companies except for the retail trade company will find themselves subject to the AMT. The standard company has an AMT liability for six years with a 1.3 percent increase in the present value of taxes, the durable goods manufacturer is on for two years with an increase of less than 0.05 percent, the nondurable goods manufacturer is on for nine years with an increase of 2.7 percent, and the airline is on for 16 years with an increase of 15.0 percent.

Companies that are declining (negative growth rates) find themselves less likely to be on the AMT. In fact, in our simulation only the airline will be on the minimum tax in the case of the three percent decline. The present value of the additional AMT for the airline is negligible, and the tax would be a factor for only four years.

The general conclusion of these results is that growing companies are more likely to pay the AMT. The AMT provides an extra barrier to firms expanding their markets, but exact little penalty on slow-moving or declining companies.

Table 6
The Effect of the Senate AMT on Cyclical Companies

	Steady-State		Cyclical	
	Percent Increase	Years	Percent Increase	Years
Standard Company.....	(1)	1	1.6%	6
Retail Trade Company.....	0.0%	0	0.2%	2
Durable Goods Manufacturer	0.0%	0	0.5%	4
Nondurable Goods Manufacturer.....	(1)	3	2.4%	8
Airline.....	3.1%	11	7.9%	14

(1) Percentage increase is less than 0.05 percent.

Note: Percent Increase—The percentage increase in the present value of taxes paid due to the AMT.
Years—The number of years that the company is a minimum taxpayer.

Table 7
The Effect of the Senate AMT on Growing and Declining Companies

	0% Growth		5% Growth		-3% Growth	
	Percent Increase	Years	Percent Increase	Years	Percent Increase	Years
Standard Company	(1)	1	1.3%	4	0.0%	0
Retail Trade Company	0.0%	0	0.0%	0	0.0%	0
Durable Goods Manufacturer	0.0%	0	(1)	2	0.0%	0
Nondurable Goods Manufacturer	(1)	3	2.7%	9	0.0%	0
Airline	3.1%	11	15.0%	16	(1)	4

(1) Percentage increase is less than 0.05 percent.

Note: Percent Increase—The percentage increase in the present value of taxes paid due to the AMT.
Years—The number of years that the company is a minimum taxpayer.

5. New and Mature Companies. A question closely related to the effect of growth on the impact of the Senate AMT is the effect of a firm's maturity. The base case starts with a company that was founded in 1940 so that it would be in steady state by the time that the tax law was changed. Because the entire first generation of property had been fully depreciated, the company has constant real taxable income that increases by the rate of inflation.

But how does the AMT affect those companies that are not as old? An important part of this exercise is to examine the AMT pattern for companies that are start-up firms. The early depreciation deductions have large effects on taxable income, and our results are similar to the section above where the companies are subject to business cycles.

We select two later starting dates for our five companies, 1976 and 1986. First, we examine the effect of the AMT on the companies founded in 1976. Each of the three "1940 companies" that were on the AMT would be subject to a greater burden if they had been established in 1976 (see Table 8). The standard company would find the present value of its taxes increased by 0.8 percent by the AMT and would be on it for three years, the nondurables manufacturer would face an increase of 0.2 percent over four years, and the airline would face an increase of 17.4 percent over 18 years. The standard company and the airline are on the AMT partly because carryovers of investment tax credits can be used to offset the regular tax but not the AMT. Hence, the regular tax has a tendency to stay beneath the AMT.

The effects on a company that is established in 1986 are much more severe. Each of the five companies would find itself burdened by the AMT for an extended period of

time (see Table 8). All of these "1986 companies" have tax losses in the first few years, due to ACRS depreciation on the initial investment, and are on the AMT for a number of years. The standard company would face increased taxes of 9.2 percent over 11 years, the retail trade company would have an increase of 3.3 percent over eight years, the durable goods manufacturer would have an increase of 6.8 percent over 11 years, the nondurable goods manufacturer by 15.4 percent over 16 years, and the airline by 32.8 percent over 21 years.

6. Policy Option. The final set of simulations redefines the minimum tax preference for depreciation to be the difference between tax depreciation and depreciation restated historically according to the AMT depreciation rules (i.e., depreciation on old assets would be recalculated so that both old and new assets would be depreciated using the straight-line method over ADR midpoint lives). This AMT depreciation allowance would more nearly approximate the book depreciation amounts shown in Table 1. The most important effect of using this measure would be to reduce the bulge in AMT income during the first few years after enactment that is due only to the timing differences associated with changing tax systems.

We use this option to analyze the effect of the AMT on the base case for each of the five companies. The results of the policy change are shown in Table 9. As expected, those companies (the standard company and nondurable goods manufacturer) that were barely on the minimum tax in the base case are no longer subject to the additional tax. The only company that finds itself on the tax is the airline, which experiences a 0.5 percent increase in taxes over three years of minimum taxes.

Table 8
The Effect of the Senate AMT on New and Mature Companies

	Founded 1940		Founded 1976		Founded 1986	
	Percent Increase	Years	Percent Increase	Years	Percent Increase	Years
Standard Company	(1)	1	0.8%	3	9.2%	11
Retail Trade Company	0.0%	0	0.0%	0	3.3%	8
Durable Goods Manufacturer	0.0%	0	0.0%	0	6.8%	11
Nondurable Goods Manufacturer	(1)	3	0.2%	4	15.4%	16
Airline	3.1%	11	17.4%	18	32.8%	21

(1) Percentage increase is less than 0.05 percent.

Note: Percent Increase—The percentage increase in the present value of taxes paid due to the AMT.
Years—The number of years that the company is a minimum taxpayer.

Table 9
The Effect of a Senate AMT Policy Option on the Base Case

	Senate Bill		Policy Option	
	Percent Increase	Years	Percent Increase	Years
Standard Company	(1)	1	0.0%	0
Retail Trade Company	0.0%	0	0.0%	0
Durable Goods Manufacturer	0.0%	0	0.0%	0
Nondurable Goods Manufacturer	(1)	3	0.0%	0
Airline	3.1%	11	0.5%	3

(1) Percentage increase is less than 0.05 percent.

Note: Percent Increase—The percentage increase in the present value of taxes paid due to the AMT.
Years—The number of years that the company is a minimum taxpayer.

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Overall, this policy option would reduce the overstatement of AMT income that occurs in the first few years after enactment of the Senate bill. However, this option will produce little or no relief to those companies that are newly established and have minimal prior depreciation to restate.

V. Conclusions

This analysis demonstrates several important points about the AMT for corporations. First, the new depreciation system of the Senate AMT is likely to have its greatest effect in the first few years after enactment. Many companies will be subject to the AMT in the first 10 years, but will not again be subject to the extra tax. Most of the companies affected during this period would not be considered "tax abusers" by any common use of that term.

Many companies . . . subject to the AMT in the first 10 years . . . would not be considered 'tax abusers.'

Second, the AMT will have greater effects on growing firms than firms that are static or declining. Since growing firms tend to invest more, they will generate relatively more "preferences" and be subject to higher minimum taxes. Further, new companies will be disproportionately affected by the AMT. This result occurs because older firms are generating a substantial share of their income from assets that have already been fully depreciated (for tax purposes).

Third, firms that have investments concentrated in long-lived equipment are most likely to be subject to the tax. As a result, manufacturing and transportation com-

panies by their nature are likely targets. By contrast, firms with relatively large investments in inventories, real property, or shorter-lived equipment are less likely to be affected.

Finally, the Senate AMT places an increased burden on firms that have low profitability, for whatever reason. This result implies that the tax will tend to increase during economic downturns and diminish during recovery.

PRIOR COVERAGE

For prior *Tax Notes* coverage of the pending alternative minimum taxes see:

"Fundamental Flaws in the Minimum Tax Depreciation Preference," by Ernest S. Christian, Jr., George Schutzer, and Kathleen M. Niles, July 14, 1986, p. 151.

"What Tax Shelter Transition Phase-In Rule? The Senate is Fooling the Public on Existing Investments," by Byrle M. Abbin and James Sharp, July 7, 1986, p. 57.

"Thinking About Senator Packwood's Alternative Minimum Tax for Corporations," by Emil M. Sunley, April 28, 1986, p. 395.

"Making Timing Adjustments Subject to the Alternative Minimum Tax Requires a Principled Transition Rule," by John B. Jones, Jr., April 21, 1986, p. 285.

"A Brief Critique of the Ways and Means Alternative Minimum Tax Proposal," by Byrle M. Abbin, October 28, 1985, p. 415.

"Tax Reform and the Not So Minimum Tax Proposals," by Byrle M. Abbin, Stephen R. Corrick, and Linda Gould, July 22, 1985, p. 443.

"Major Tax Proposals Before the 99th Congress," by Margo Thorning, July 8, 1985, p. 195.

"Proposal for an Alternative Minimum Tax for Corporations," by Emil M. Sunley, February 15, 1982, p. 363.



WASHINGTON ROUNDUP

TAXWISE GIVING URGES GRASS ROOTS EFFORT TO SAVE NONITEMIZER CHARITABLE DEDUCTION. Presto! It's gone. Such is the present status of the nonitemizer charitable deduction reported by Taxwise Giving in a July 31, 1986 Legislative Alert. Taxwise Giving says that the House conferees have decided to surrender the deduction authorized in the House-passed bill and that the Senate bill abolishes the deduction. Further, Taxwise Giving reports, House conferees are still set on subjecting appreciated property gifts to the minimum tax. The publication calls on "everybody [to] please immediately telephone all members of the [Conference] Committee at their Washington, D.C. offices," in a last ditch effort to keep the non-itemizer charitable deduction.

The Taxwise Giving Legislative Alert has been placed in the August 11, 1986 *Tax Notes Microfiche Database* as Doc 86-5414.

UNCERTAINTY OVER TAX REFORM DELAYS BENEFITS FOR EMPLOYEES. Nearly 30 percent of employers recently surveyed have curtailed plans to improve employee benefit packages because of uncertainty over tax reform legislation, according to a study prepared by the Employers Council on Flexible Compensation (ECFC). "Possibly as many as three workers in 10 are being denied improved employee benefits because of uncertainty over the course of tax reform," ECFC Chairman Ken Feltman said in an August 6 press release. The ECFC surveyed 216 employers from 108 Fortune 1000 companies employing some 830,000 individuals.

The ECFC press release and a copy of the survey have been placed in the August 18, 1986 *Tax Notes Microfiche Database* as Doc 86-5482.

PPI

1980:3

1980:3

1985:3

←



~~Book Value~~

Based on income reported to stockholders. —
don't depreciate according to tax law,
but according to what they actually
think economic depreciation is. Hence,
earnings are higher than income reported
to shareholders.

— 86 Tax law got rid of investment
tax credit, but

Becky Norton Dunlop

10/7/86

Superfund - what should we do on this?

CEA should go on record with Chief of Staff.
Will be Regan's decision. Will lose 4
Senate seats if it's vetoed. Do it on
merits, not on politics.

Problem is momentum. While we sit on
process other side is lobbying.

Nothing to prevent CEA from Beryl
from weighing in.

Clip the WST + send it to him.

Don Clarey of White House Staff.

→ May send note to Don Clarey.

Becky Will have memo for AG with
WST editorials.

So, I should draft a memo
on this, making the points that
need to be made.

She wants action, CEA to take some
initiative

Rob Fairweather - Superfund

10/3/86

11.7¢ tax on import

8.2¢ on domestic.

Still includes the broad-based tax.

8.5 billion for Superfund

.5 billion for leaky underground
storage ~~in~~ tanks.

Will go to floor Monday.

Check with

Becky Norton Dunlop
Asst to Meese
633-1721

Jaqueline Schaeffer — * 3742

Describe VAT and environmental income tax.

Take a look at Cong. Record for Friday
all members of Congress warning the
President not to veto.

Senate vote was 88-8 for conf.
report.

Reference — House portion

H-9124 of Cong. Rec. for Friday

\$ 5.5 billion is the limit of what
EPA can responsibly manage. In
testimony by EPA. Mentioned also by
Senator Wallop

Outright veto + send it back.
Split off funding from authorization.
of Senate votes against conf.
vote is low.

Sen. Simpson.

Authorization for use of funds is theoretically in Adm. hands, but that is not what is practically true.

~~Appropriations have to be made~~
Fund is accumulated but authorizations to spend 'have to come from Congress.

10/7/86

R. Quijano - PEMEX

Superfund - tax on oil. Reading is that yesterday - Pres. Spokesman that RR opposes the legislation.

Canadians, Venezuela, & Mexico.
Others will repeat it next week.

EIA Meeting next week.

If the continuing resolution

Natural Resources Legis. Countervailing subsidy if Natl. Gas sold at lower price than it's sold in the world market.

PEMEX - Mexico

State Dept.

USTR

position of EPA
is Admin. position.

~~DOE~~
Commerce

Venezuela, Norway will air in Int. Energy Association meeting next week.

Robert Fairweather
Superfund -

9/29/86

Program side - how to spend the money. Through.

Tax - how to finance it.
\$8.5 billion

Senate: broad-based tax as
tax on ~~all~~ ultimate min tax
income under tax reform bill.

House: Tax on petroleum + on
waste disposal.

Senate has agreed to \$500 million
over 5 yrs. on petroleum; House
\$2.5 billion over 5 yrs.

~~ARMAN says the main~~

Arm - will recommend
disapproval if it's a broad-based
tax.

(4) unclear if conference will
resolve diff. May pass program
component only. But program
about to shut down unless gets
some money in trust fund

Adam has said veto of petrol^{banded tax} also.

Veto: Broad-based tax such VAT or petroleum

Talk to Randy Davis - political boss of Fairweather.

Don't know when the vote will be. Everything has to happen this week or next. Tax conferees could get together today, or they may be working on debt ceiling.

If RR. vetoes the bill, he shuts down the program.

In first yr., receipts will be much larger than outlays.
\$500 million deficit reduction.
Miller said, "Don't let them do it."

* Adam. Does not have an \$8.5 billion funding alternative, we don't have an alternative, we are sticking with \$5.2 billion over 5

yr based on waste disposal tax +
tax on petroleum feedstocks.

Hill bills are more expensive
ways to get the same cleanup.

Most logical is ~~the~~ waste tax, but
no one thinks it will raise even
\$3 billion.

Superfund - closer to an agreement on a tax.

Broad-based tax

Significant increase in oil tax. $.79¢/\text{bbl}$ to $6¢/\text{bbl}$.

New tax on imported oil $12¢/\text{bbl}$ tax.

\$7.2 billion over 5 yrs.

Deal not yet been struck.