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Leaking Underground Storage Tank Trust Fund (LUST)[1]

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Summary

The *Leaking Underground Storage Tank (LUST) Trust Fund* provides money under Environmental Protection Agency (EPA)-state cooperative agreements to pay cleanup and related costs involving leaking petroleum tanks if no financially solvent owners can be found, or if the owner or operator refuses or is unable to comply with an urgent corrective order. Both EPA and the states use trust fund monies to oversee and enforce LUST corrective actions.

Primary financing for the trust fund comes from a 0.1 cent per gallon tax on motor fuels. The tax expired December 31, 1995, but was reinstated by the *Taxpayer Relief Act of 1997 (P.L. 105-34)* for the period October 1, 1997, through March 31, 2005.

On April 23, 1997, the House passed H.R. 688, a bill to broaden the range of cleanup and enforcement purposes for which LUST monies may be spent. The bill also requires that at least 85% of the annually appropriated monies from the trust fund be distributed by EPA to states. Companion legislation, S. 555, was introduced in the Senate on April 10, but no further legislative action has occurred.

The fund currently holds approximately $1 billion. Since the fund's inception, Congress has appropriated about one-third of the total monies available from the fund. The House has approved FY1998 appropriations of $60 million (H.R. 2158) and the Senate, $65 million (S. 1034). With the fund already earning about $50 million in interest each year and the reinstated tax expected to generate about $130 million a year, the balance in the trust fund can be expected to continue to grow.

[1] This report is not intended to track particular bills through the legislative process. For information about current legislation and its status, please consult the Bill Summary and Status file of the Legislative Information System (http://www.congress.gov). CRS Issue Brief 97020, *Environmental Protection Legislation in the 105th Congress*, tracks LUST bills.

Background

In response to concerns for environmental cleanup costs associated with leaking underground storage tanks containing petroleum products, Congress established the *Leaking Underground Storage Tank (LUST) Trust Fund* through the *Superfund Revenue Act of 1986*, Title V of P.L. 99–499. From 1987 through 1995, the fund received revenues from a tax of 0.1 cent a gallon on several categories of motor fuels: gasoline, diesel fuel (including train diesel fuels), special motor fuels (other than liquefied petroleum gas), fuels used in aviation, and fuels used in commercial transportation on the inland waterways, plus a 0.05 cent per gallon tax on methanol.

First effective January 1, 1987, the tax was scheduled to expire on the earlier of December 31, 1991, or the last day of the month in which the Secretary of the Treasury estimated that net revenues in the fund were at least $500 million. The tax terminated on August 31, 1990, because the trust fund had reached its net revenue target.[2] Under the *Revenue Reconciliation Act of 1990* (P.L. 101–508), the tax was reinstated at the same 0.1 cent per gallon rate, without a revenue ceiling, but with a termination date of December 31, 1995. Also to be deposited in the trust fund are any monies recovered from parties found responsible for leaking storage tanks, under provisions of the *Solid Waste Disposal Act* as amended by the *Superfund Amendments and Reauthorization Act of 1986* (P.L. 99–499).

The balance in the LUST fund has continued to grow past the $500 million target met in 1990. The fund currently holds approximately $1 billion. Interest earnings are approximately $50 million per year. While the 0.1 cent tax was in effect, it generated about $150 million per year. Thus, total annual receipts were roughly $200 million. Outlays made available from the fund were lower: $73 million in 1994; $70 million in 1995 (FY1995 was the last full year of excise tax revenues); and $68 million in 1996. Only about one-third of the monies available in the fund since its inception have been appropriated.

LUST Trust Fund Amendments Act (H.R. 688, S. 555)

H.R. 688, the *Leaking Underground Storage Tank Trust Fund Amendments Act of 1997*, was unanimously approved by the House Commerce Committee on April 16, 1997 (H.Rept 105-58). It was approved by the full House by voice vote on April 23, 1997.[3] The companion bill in the Senate, S. 555, was introduced on April 10, 1997, and referred to the Committee on Environment and Public Works.[4]

Under the existing Underground Storage Tank (UST) statute, UST owners and operators are required to meet certain leak detection and prevention standards by December 1998. These standards are a safeguard against future UST leaks. Currently, LUST fund monies cannot be used by the states to monitor compliance with these

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[2] Internal Revenue Service Announcement 90–82, released June 27, 1990.

[3] *Congressional Record*, Daily Edition, v. 143, no. 49, April 23, 1997. pp. H1750-H1753.

[4] H.R. 688 is similar to H.R. 3391, which passed the House in the 104th Congress by a voice vote on September 25, 1996, but received no action in the Senate.

standards. The trust fund now provides money for EPA or states, under cooperative agreements, to pay cleanup and related costs involving leaking tanks if no financially solvent owners can be found, or if the owner or operator refuses or is unable to comply with an urgent corrective order. States use these funds primarily for overseeing and enforcing LUST cleanups performed by responsible parties.

H.R. 688 and S. 555 would broaden the range of enforcement purposes for which states may expend LUST fund money. The bill also permits states to use LUST monies for state financial assurance programs in cases where a tank owner's ability to remain in business after paying cleanup costs would be significantly impaired. (Unlike the federal LUST fund, state assurance funds are often used to reimburse financially solvent owners and operators for some or all of the cost of remediating leaking UST sites.) The bill also allows states to use LUST funds to administer their assurance funds. However, states are prohibited from using monies to help individual owners and operators with 1998 UST compliance requirements so as not to place those that have already complied at a competitive disadvantage.

Because of rising enforcement needs and the possibility of increased funding, many in Congress wish to be assured that future appropriated monies will be used for environmental protection and cleanup, and not on administrative overhead. EPA has expressed concern over the requirement in the pending bills that EPA award at least 85% of appropriated amounts to the states each year. On average over the past years, the EPA has met the 85% requirement. However, EPA is concerned about having some flexibility to adjust to changes in appropriations levels on a year-to-year basis. The EPA would also like Congress to make additional appropriations from the trust fund if new uses of the LUST fund monies are approved.[5]

The President's FY 1998 Budget Proposal

The President's FY1998 budget stated that legislation would be proposed to extend the 0.1 cent LUST fund excise tax for 10 years, through September 30, 2007. The budget indicated that the Administration would propose legislation to expand the use of the fund to include other EPA (Environmental Protection Agency) programs that also address protecting groundwater from contamination.[6] (Such legislation was not introduced.) However, the priority of the fund would remain the cleanup of leaking underground storage tanks. The EPA requested an FY1998 appropriation of $71.2 million for the LUST Trust Fund. Of that, $67.9 million would have been for currently authorized LUST response activities primarily at the state level; the remaining $3.3 million would be used for management, enforcement, as well as research and development, etc.

The balance in the LUST trust fund would have continued to grow under the Administration's budget proposal for FY1998, which would have increased both outlays and revenues. The President's proposal would have added $53 million in outlays for other groundwater protection programs to the approximately $65 million in projected outlays

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[5] For additional information see CRS Report 97-471 ENR, *Leaking Underground Storage Tank Cleanup Issues*, by Mary Tiemann.

[6] U.S. Office of Management and Budget. *Budget of the United States Government, Appendix, Fiscal Year 1998*. February 6, 1997. pp. 944-945.

under the current LUST program for FY1998, for a total cash outgo of $118 million. The Budget projected $45 million from interest earnings plus $162 million from a reinstated tax of 0.1 cent per gallon, for total receipts of $207 million in FY1998. Thus, under the Administration's proposal, the projected net surplus for FY1998 was $89 million — or 55% of the $162 million in reinstated tax revenues. The Administration projected that the balance in the fund would rise from $998 million at the end of FY1997 to $1,081 million at the end of FY1998.

The presence of the large balance in the LUST fund has motivated representatives of the motor fuels industry that pays the tax to ask for higher appropriations for the LUST program and expanded uses of the trust fund. The Congressional Budget Office observed that enactment of H.R. 688 could lead to an increase in discretionary spending because of the new uses of LUST fund monies established by the bill, but that additional funding would still depend upon the appropriations process.[7]

In evaluating H.R. 688, the House Ways and Means Committee considered the balance of $1 billion adequate to finance the type of spending currently authorized from the LUST fund, as well as the expanded uses approved in H.R. 688, without reimposing the tax.[8] The Joint Committee on Taxation (JCT), in an April 16, 1997 committee print, noted that the authorizing committees of Congress had not communicated with either the House Ways and Means or Senate Finance Committees regarding a shortfall in amounts needed to authorize expenditures, or of any plans to expand or extend authorizations. The JCT print also noted that opponents feel that, if the tax is reimposed, it should be in conjunction with legislation authorizing expanded or extended spending from the LUST trust fund.[9]

Taxpayer Relief Act of 1997 (P.L. 105-34)

The revenue reconciliation bill approved by the House on June 26, 1997 (H.R. 2014) provided for the reinstatement of the LUST excise tax on transportation fuels of 0.1 cent per gallon for approximately 5 years — from the date of enactment until September 30, 2002. Unlike the House, but like the President's budget proposal, the version of the reconciliation proposal approved by the Senate on June 27 (S. 949) would have restored the LUST tax for 10 years — from October 1, 1997, through September 30, 2007.

In both the House and Senate tax bills, the extension of the LUST tax was used as a revenue raiser. Nonetheless, both the House Ways and Means and the Senate Finance committee reports accompanying their bill stated that the reason for reinstating the tax was

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[7] U.S. Congress. House. Committee on Commerce. *Leaking Underground Storage Tank Trust Fund Amendments Act of 1997*. Report to Accompany H.R. 688. H.Rept. 105-58, Part 1, 105th Cong., 1st Sess., April 17, 1997. Washington, U.S. Govt. Print. Off., 1997. pp. 3, 4.

[8] *Ibid*. p. 8.

[9] U.S. Congress. Joint Committee on Taxation. *Description and Analysis of Certain Revenue-Raising Provisions Contained in the President's Fiscal Year 1998 Budget Proposal*. JCS-10-97. Washington, U.S. Govt. Print. Off., April 16, 1997. pp. 88-89.

"to ensure the availability of funds to pay cleanup costs of leaking underground storage tanks."[10]

The conference agreement on the *Taxpayer Relief Act of 1997 (P.L. 105-34)* compromised on reinstating the LUST tax for 7 1/2 years — from October 1, 1997, through March 31, 2005. The Joint Committee on Taxation estimated that the tax will raise approximately $645 million over the 5 fiscal years 1998-2002, and $983 million over the full 7 1/2 year period of its reinstatement.

FY1998 Appropriations

The House has approved FY1998 appropriations of $60 million and the Senate $65 million (H.R. 2158/S. 1034), as part of the VA-HUD-Independent Agencies appropriation.[11] A September 1997 conference is scheduled. The President's February 1997 budget had requested $71.2 million to continue the currently authorized activities of the LUST Trust Fund. The President also requested an additional $53 million in funding for expanded programmatic uses of the LUST fund monies (which would have required authorizing legislation). The Congress's recommended appropriation for FY1998 is closer to the $59.4 million that was appropriated for the current fiscal year, 1997.

With the fund already earning about $50 million in interest each year and the reinstated tax expected to generate about $130 million a year, the balance in the trust fund can be expected to continue to grow even more rapidly than under the President's proposal which would have increased outlays substantially along with reinstating the tax.

H.R. 688, the LUST Fund Amendments Act passed by the House, would require that at least 85% of the appropriated amount be awarded to the states, leaving at most 15% for federal administrative purposes. The House Appropriations Committee recommended a limit on administrative expenditures of $9.1 million, equivalent to 15.2% of their recommended $60 million appropriation, leaving approximately 85% to be used by the states. The Senate Appropriations Committee recommended an additional $5 million appropriation to help the states meet the December 1998 deadline for storage tank upgrade compliance and a limit of $7.5 million on administrative expenses. The Senate Committee also expressed opposition to EPA's suggestions that LUST fund monies be used for other EPA programs, unless there is prior congressional authorization for such use.[12]

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[10] See both the House and Senate Reports. Committee on Ways and Means. *Report on Reconciliation Tax Bill Approved by Committee June 13, 1997*. p. 235 and Committee on Finance. *Revenue Reconciliation Act of 1997 (as reported by the Committee on Finance),* S. 949. , June 20, 1997. p. 163.

[11] See CRS Issue Brief 97019, *Environmental Protection Agency: FY1998 Budget*. During Senate passage, the provisions of S. 1034 were substituted for H.R. 2158.

[12] See both the House and Senate Committees on Appropriations Reports. *Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Bill, 1998.* H.Rpt. 105-175 on H.R. 2158, July 11, 1997. P. 69-70 and S.Rpt. 105-53 on S. 1034, July 17, 1997. p. 67-68.

The Use of Dedicated Excise Taxes[13]

Typically the revenues from each of the federal excise taxes on motor fuels are allocated to a particular trust fund depending upon the type of engine or vehicle for which the fuel was purchased.[14] In contrast, the LUST fund for environmental cleanup is financed by a small tax on all motor fuels, regardless of use.

The dedicated excise taxes on motor fuels serve two quite different roles. The excise taxes financing the nature-conservation-and-recreation and the transportation categories of trust funds can be described as "user taxes." They reflect the "benefits principle" of taxation and are intended to tax the current or potential beneficiaries of the government program. In contrast, the excise taxes financing the environmental cleanup funds — such as the LUST fund — and health damage compensation trust funds can be described as "liability taxes" or "damage taxes."

The main reason for governmental intervention with liability taxes is the difficulty in holding responsible private parties accountable. LUST Trust Fund monies are spent by the EPA and the states largely to oversee and enforce cleanups of leaking petroleum underground storage tank sites by responsible parties and, to a lesser extent, to undertake the cleanup a orphan sites or a sites that present an imminent threat to public health or the environment.

The inability to collect the full cost of addressing damages from those directly responsible means that others will have to bear some of the costs. The liability taxes typically cannot be levied specifically on the parties directly responsible for the damages or in accurate proportion to the damage they caused. Indeed, some of the companies responsible for causing the damage may no longer be in business. Instead, liability taxes are commonly levied on a product closely associated with causes of the damage. Politically, it may be preferable for the burden to fall on the associated industry and its customers rather than taxpayers at large.

To foster the link between a tax and its programmatic intent, liability excise tax revenues are dedicated to a trust fund whose purpose is spelled out in authorizing legislation. Over time, especially if a trust fund is growing, there are suggestions to expand the use of trust fund monies for additional new purposes — such as the proposed use of LUST fund monies to pay for other groundwater protection programs. Producers and consumers in the taxed industry may object to being asked to pay for expanded purposes beyond the original intent of the trust fund. Furthermore, those paying taxes into the LUST fund, as well as other trust funds with large balances, may question the recent budgetary practice of using the unspent revenues of there trust funds to cover tax cuts or spending in other parts of the U.S. budget.

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[13] For further discussion of the role of dedicated excise taxes, see *Excise Tax Financing of Federal Trust Funds*. CRS Report 93-6 E, by Nonna A. Noto and Louis Alan Talley.

[14] The trust funds and their corresponding motor fuels are as follows: Highway (gasoline, diesel fuel, and special motor fuels); Airport and Airway (aviation and jet fuel used in noncommercial aviation); Inland Waterways (fuels used in vessels operating on a designated inland waterway system); Aquatic Resources and Land-and-Water-Conservation (gasoline used in motorboats); and National Recreation Trails (fuel consumed in recreational trail vehicles).