# Federal Excise Taxes, Including the Slow Death of Expired Taxes

*by Brian Francis*

Over the last 20 years, several excise taxes were both instituted and allowed to expire or were repealed. These measures arose for a variety of reasons. The windfall profit tax, an excise tax on domestically produced crude oil, was a transitory measure during a period when price controls were being lifted from crude oil. Environmental taxes were used to fund the cleanup of polluted sites. Luxury taxes were put in place solely to raise revenue from the wealthy. During the course of their enactment, windfall profit, environmental, and luxury taxes generated over $90 billion in revenue.

Despite the fact that most of these taxes have not been active for several years, funds still flow through their respective accounts. Funds continue to ebb and flow, as different claims are resolved for or against the Government. Taxpayers may file late or amended returns for refunds after a tax is no longer active. Results of IRS enforcement activities (audits) may also lead to liability for a tax that has expired. Contested payments are eventually resolved through litigation. This article examines the history and current state of the windfall profit, several environmental, and luxury taxes. It also provides a list of excise taxes active in Fiscal Year 1999 and reports excise tax collections for Fiscal Year 1998.

## The Windfall Profit Tax

The Crude Oil Windfall Profit Tax Act of 1980 was signed by President Carter on April 2, 1980 [1]. It retroactively imposed a tax on the domestic production of crude oil after February 29, 1980. The Act came at a time when world oil prices were rising sharply and domestic price controls, which had been imposed as part of a 1971 anti-inflation policy, were being repealed. The intent was to tax a fair share of the added revenues enjoyed by oil companies as a result of high prices. Congress believed that a fair sharing of the costs of higher energy prices required that a part of the tax on oil producers and royalty owners should be used to finance assistance to low-income families. The Act included programs to provide such assistance.

Oil was taxed at different rates depending on the category or "tier" to which it was classified. A "base price" for oil was set at the market price in May 1979 and subsequently adjusted for inflation. Windfall profit was defined by the amount of revenue generated by the removal or selling price minus the amount attributable to the adjusted base price. The base price, adjusted for inflation, for tier one oil was tied to the upper tier ceiling price defined by Department of Energy price control regulations. This price applied to oil that was produced and sold in May 1979.

"Tier one" oil covered most domestic production; its windfall profit so defined was generally taxed at a rate of 70 percent. A 50-percent rate applied to independent producers. "Tier two" oil consisted of "stripper oil" — production from wells pumping less than 10 barrels daily and National Petroleum Reserve oil. The tax rate for tier two oil was 60 percent (30 percent for independents). Finally, "tier three" oil was newly discovered oil, as well as incremental tertiary oil. The latter was recovered by means (e.g., steam injection, alkaline flooding) not economically viable at the time. The tax rate for tier three oil was 30 percent.

Several types of oil were exempt from the windfall profit tax. Oil produced by State and local Governments, medical and educational charities, most Alaskan oil, and oil produced by Federally recognized Indian tribes were exempt. The Crude Oil Windfall Profit Act stipulated that a 33-month phaseout period for the tax begin as early as January 1988, but no later than January 1991 [2].

As it turned out, the windfall profit tax was repealed on August 23, 1988. Congress had designed the tax to raise $227.7 billion ($212.2 billion after various energy conservation tax incentives and other tax reductions), yet, at the time of its repeal, only about $80 billion had been reported on tax returns. The reason for this disparity (between actual versus forecast receipts) was due to the collapse of oil prices in the 1980's. Original projections were based on the price of oil equal to $30 per barrel in the fourth quarter of 1979 and increasing at the rate of inflation plus 2 percent each year. After the harsh lessons concerning oil in the 1970's (i.e., gasoline shortages and price hikes), both the discovery of new petroleum reserves and energy conservation measures by households, businesses, and government combined to put downward pressure on the price of crude oil.

*This article was written by Brian Francis, an economist with the Special Studies Statistical Data Section, under the direction of Beth Kilss, Chief.*

Indeed, the real price of crude oil in 1999 is at levels of 20 years ago [3].

From Fiscal Year 1989 through Fiscal Year 1998, over $846 million in net constant dollars have been paid out due to adjustments made to liabilities for windfall profit taxes previously paid. Note that the tax shown in Figure A is a net amount, that is, while total amounts for a given year may be negative, there are some positive flows into the U.S. Treasury as cases are resolved in favor of the Government. Although this tax was repealed over 10 years ago, it continues to live in the accounts of excise taxes administered by the Internal Revenue Service.

## Figure A

**Windfall Profit Excise Tax Liability, Fiscal Years 1980-1998**

[Money amounts are in millions of dollars]

| Year | Tax liability | Year | Tax liability |
|---|---|---|---|
| 1980 | 3,051.72 | | |
| 1981 | 16,930.55 | 1990 | -85.84 |
| 1982 | 22,035.93 | 1991 | -425.11 |
| 1983 | 15,660.08 | 1992 | -259.63 |
| 1984 | 8,120.27 | 1993 | -0.37 |
| 1985 | 5,073.16 | 1994 | -332.44 |
| 1986 | 8,866.97 | 1995 | -117.53 |
| 1987 | 14.91 | 1996 | 0.02 |
| 1988* | 372.85 | 1997 | -10.39 |
| 1989 | 30.00 | 1998 | -0.12 |

*The windfall profit tax was repealed August 23, 1988. Subsequent years represent actual collections.

## Environmental Excise Taxes

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) was designed to assign liability for the cleanup of certain hazardous waste sites. CERCLA also imposed excise taxes on crude oil and a variety of chemicals [4]. Receipts were transferred to the "Superfund," a Federal trust fund administered by the Environmental Protection Agency used to pay for cleanup of areas where: a) no financially viable party could be found, and b) where site cleanup needed to be expedited. These excise taxes went around twice; the first Superfund taxes were effective from 1980 until they expired at the end of 1985. Congress set a target of $1.4 billion to be raised over 5 years. However, this goal was not quite realized at the time of the first expiration in 1985. In 1986, Congress passed the Superfund Amendments and Reauthorization Act (SARA), which reestablished the Superfund from January 1, 1987, through December 31, 1991. This Act also established new taxes on certain imported chemicals, as well as raised the cap on the total amount of revenue to be collected to $6.7 billion. The Revenue Reconciliation Act of 1990 extended the Superfund through December 31, 1995, and raised the revenue cap again from the $6.7 billion authorized by SARA to $12 billion. As of the end of Fiscal Year 1998, over $10 billion have been posted to the Superfund trust account.

The Oil Spill Liability Trust Fund, which was administered by the U.S. Coast Guard, was instituted by the Omnibus Reconciliation Act of 1989. This fund was supported by a tax on crude oil at a rate roughly half that of the Superfund rate, or $.05 per barrel. The trust fund taxes were in effect from January 1, 1990, through December 31, 1994. It was created specifically to address oil spills and compensate individuals for damages. This need was heightened in March 1989 when the oil tanker Exxon Valdez spilled 11 million gallons of crude oil into Prince William Sound, Alaska. Figure B gives a summary of the tax liability generated by these taxes.

## Figure B

**Environmental Excise Tax Liability, Fiscal Years 1981-1998**

[Money amounts are in thousands of dollars]

| Type of environmental excise tax | 1981-1998 | 1981-1995 | 1996-1998 |
|---|---|---|---|
| | (1) | (2) | (3) |
| **Total** | **11,266,226** | **11,044,329** | **221,897** |
| **Superfund (expired effective January 1, 1996):** | | | |
| Petroleum, domestic & imported | 9,008,610 | 8,867,710 | 140,900 |
| Certain chemicals | 1,087,331 | 1,013,300 | 74,031 |
| Certain imported substances | 69,766 | 63,200 | 6,566 |
| **Oil Spill Liability Trust Fund (expired effective January 1, 1995)** | **1,100,519** | **1,100,119** | **400** |

## Luxury Taxes

The Revenue Reconciliation Act of 1990 established excise taxes on the first sale of expensive automobiles, boats, aircraft, jewelry, and furs [5]. Initially, this tax was set at 10 percent of the amount in excess of a given threshold price. These threshold prices were $30,000 for automobiles, $100,000 for boats, $250,000 for aircraft, and $10,000 for both furs and jewelry. Exemptions were given to State and municipal governments and persons using vehicles, boats, or aircraft for business purposes. The legislation stipulated that the new luxury taxes would be in effect from January 1, 1991, through December 31, 1999. In fact, four out of five of these taxes were repealed effective January 1, 1993. This occurred in part due to the damage done to the businesses providing these goods as wealthy individuals simply delayed their purchases. The luxury tax on automobiles (in 1998, the tax rate was 8 percent of the purchase price in excess of $36,000) is the only one of these measures still in effect. After a yearly phasedown, this tax will expire on December 31, 2002. Approximately $80 million in liability were reported for the other four luxury taxes while they were active. Since Fiscal Year 1994, over $2 billion in liabilities have been reported for all luxury taxes, including $4 million that were returned to taxpayers as a result of refunds and adjustments in excess of assessments and late payments. Figure C, below, shows the net result, in current dollars, of the luxury taxes.

## Figure C

**Posted Liabilities from Luxury Taxes, Fiscal Years 1991-1998**

[Money amounts are in thousands of dollars]

| Type of tax | 1991-1998 | 1991-1993 | 1994 -1998 |
|---|---|---|---|
| | (1) | (2) | (3) |
| **Total** | 2,948,869 | 887,220 | 2,061,649 |
| Passenger Vehicles | 2,872,864 | 807,130 | 2,065,734 |
| Boats (repealed January 1, 1993) | 34,161 | 35,904 | -1,743 |
| Aircraft (repealed January 1, 1993) | 900 | 918 | -18 |
| Jewelry (repealed January 1, 1993) | 39,414 | 41,570 | -2,156 |
| Furs (repealed January 1, 1993) | 1,530 | 1,698 | -168 |

## Excise Taxes in Fiscal Year 1998

Total collections for excise taxes in Fiscal Year 1998 amounted to $59.2 billion. This represents a 1-percent increase over the $58.7 billion collected in Fiscal Year 1997. The overall number of filers has also been increasing. Figure D, below, compares selected excise tax forms filed in two recent calendar years.

Over the next 5 to 10 years the filings of all the forms in Figure D are projected to increase. New excise taxes and the slow death of expiring excise taxes will make these projections a reality.

## Figure D

**Excise Tax Forms Filed with the Internal Revenue Service in Calendar Years 1997 and 1998**

| Tax form number and name | 1997 | 1998 | Percentage change |
|---|---|---|---|
| | (1) | (2) | (3) |
| **Total** | 801,100 | 835,200 | 4.3 |
| 11-C Occupational Tax and Registration for Wagering | 13,500 | 13,600 | 0.1 |
| 720 Quarterly Federal Excise Tax Return | 198,700 | 201,700 | 1.5 |
| 730 Tax on Wagering | 51,300 | 51,500 | 0.4 |
| 2290 Heavy Vehicles Use Tax Return | 537,600 | 568,400 | 5.7 |

## Excise Taxes in Fiscal Year 1999

Excise taxes in 1999 are listed in Figure E, along with the associated section of the Internal Revenue Code [6].

The taxes shown in Figure E, as well as the inactive taxes described above, are displayed in Table 20 in the historical section of the *SOI Bulletin*. The existing luxury (automobiles) and environmental excise taxes represent over $570 million in collections or about 1 percent of all excise tax collections in Fiscal Year 1998. The majority of this amount (74 percent) was due to luxury automobiles. The Administration is currently proposing to reinstate the Superfund and Oil Spill Liability excise taxes, arguing that these taxes should be reinstated due to "the continuing need for funds to remedy damages caused by the releases of hazardous substances [7]." The proposal calls for Superfund taxes to re-commence with the date of enactment and expire on October 1, 2009.

## Data Sources and Limitations

Windfall profit, environmental, and luxury excise taxes were reported on the *Quarterly Federal Excise Tax Return*, Form 720. Additionally, Form 6047, *Windfall Profit Tax*, was filed as an attachment to Form 720 and showed how the tax was computed. Data for windfall profits through 1986 were based on all returns that had tax liabilities of $1 million or more before adjustments and a 10-percent sample for all other returns. These data were subject to sampling and non-sampling error, which were controlled through a variety of methods. Amounts reported since repeal are directly from the accounts, i.e., not a sample.

Environmental tax filers submitted Form 6627, *Environmental Taxes,* in addition to Form 720. Environmental tax returns were not sampled, yet are still subject to non-sampling error. No additional schedule is required for luxury tax filers. For filing requirements see *Excise Taxes for 1999,* Internal Revenue Publication 510.

## Notes and References

[1] Each issue of the *Statistics of Income Bulletin* from Fall 1981, Volume 1, Number 2, through Fall 1986, Volume 6, Number 2, contains quarterly windfall profits tax liability and definitions relating to the windfall profits tax act.

[2] U.S. Congress, Joint Committee on Taxation, *General Explanation of the Crude Oil Windfall Profit Tax of 1980,* U.S. Government Printing Office, Washington, DC, 1981.

[3] U.S. Department of Energy, Energy Information Administration, *Annual Energy Review, 1998.*

[4] For more details, on these and other environmental excise taxes, see Boroshok, Sara P., "Environmental Excise Taxes, 1992," *Statistics of Income Bulletin*, Winter 1994-1995, Volume 14, Number 3.

[5] First sale refers to any sale that was not for resale.

[6] U.S. Congress, Joint Committee on Taxation, *Schedule of Present Federal Excise Taxes (As of January 1, 1999)*, U.S. Government Printing Office, Washington, DC March 1999.

[7] U.S. Department of the Treasury, *General Explanation of the Administration's Revenue Proposals*, February 1999.

SOURCE: IRS, Statistics of Income Bulletin, Summer 1999, Publication 1136 (9-99)

## Figure E

### Active Excise Taxes by Internal Revenue Code Section, Fiscal Year 1999

| Excise taxes administered by the Internal Revenue Service | Internal Revenue Code section | Excise taxes administered by the Internal Revenue Service | Internal Revenue Code section |
|---|---|---|---|
| **Retail excise taxes:** | | **Taxes related to private foundations:** | |
| Luxury passenger vehicles | 4001 | Net investment income | 4940 |
| Dyed diesel fuel for trains | 4041 | Other private foundations excise tax | 4941-4945 |
| Dyed diesel fuel for certain intercity buses | 4041 | Black Lung Benefit Trusts | 4951-4953 |
| Special motor fuels | 4041 | **Taxes on qualified pensions and other plans:** | |
| Compressed natural gas | 4041 | Failure to meet minimum funding standards | 4971 |
| Alcohol fuels | 4041 | Nondeductible contributions | 4972 |
| Fuels used commercially on inland waterways | 4042 | Excess contributions to individual retirement accounts | |
| Truck, trailer, and semitrailer chassis and bodies, and tractors | 4051 | and others | 4973 |
| **Manufacturers excise taxes:** | | Prohibited transactions | 4975 |
| Gas guzzlers | 4064 | Failure to distribute minimum amounts | 4974 |
| Tires | 4071 | Certain excess contributions | 4979 |
| Aviation gasoline | 4041 | Reversion of qualified plan assets to employer | 4980 |
| Gasoline except for use in gasohol | 4081 | Other transactions | various |
| Diesel fuel, except for trains and intercity buses | 4081 | Penalties | various |
| Gasoline for use in gasohol | 4081 | **Taxes on undistributed income of qualified** | |
| Gasohol | 4081 | **investment entities:** | |
| Aviation fuel except gasoline | 4091 | Real Estate Investment Trusts | 4981 |
| Aviation fuel (other than gasoline) for use in commercial | | Regulated Investment Companies | 4982 |
| aviation (other than foreign trade) | 4091 | | |
| Coal | 4121 | **Excise taxes reported by** | |
| Vaccine taxes | 4131 | **the Customs Service and the** | |
| Sport fishing equipment | 4161 | **Bureau of Alcohol, Tobacco and Firearms** | |
| Electric outboard motors, sonar devices | 4161 | | |
| Bows and arrows | 4161 | **Alcoholic beverages:** | |
| **Taxes on facilities and services:** | | Distilled spirits | 5001 |
| Telephone and teletypewriter services | 4251 | Wine | 5041 |
| Transportation of persons by air | 4261 | Beer | 5051 |
| Use of international travel facilities | 4261 | **Tobacco products:** | |
| Transportation of property by air | 4271 | Cigarettes | 5701(b) |
| Taxes on policies issued by foreign insurers | 4371 | Cigars | 5701(a) |
| **Taxes related to wagering:** | | Chewing tobacco and snuff | 5701(e) |
| Certain wagering | 4401 | Cigarette paper and tubes | 5701(c) |
| Occupational taxes | 4411 | Pipe tobacco | 5701(f') |
| **Certain other excise taxes:** | | **Firearms and ammunition:** | |
| Passenger transportation by water | 4471 | Pistols and revolvers | 4181 |
| Use tax on heavy vehicles classified by use and weight | 4481 | Other firearms | 4181; 5821 |
| **Environmental taxes:** | | Ammunition | 4181 |
| Ozone-depleting chemicals | 4681 | **Special occupations** | 5081; 5111; |
| Imported taxable products containing or manufactured using | | | 5121; 5276; |
| ozone-depleting chemicals | 4681 | | 5801 |