

110TH CONGRESS  
2D SESSION

# S. 2890

To amend the Internal Revenue Code of 1986 to provide for a highway fuel tax holiday.

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## IN THE SENATE OF THE UNITED STATES

APRIL 17, 2008

Mr. MCCAIN (for himself, Mr. KYL, Mr. BURR, Mr. GRAHAM, Mr. MARTINEZ, Mr. WARNER, Mr. CHAMBLISS, Mr. LIEBERMAN, and Mr. SUNUNU) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for a highway fuel tax holiday.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. HIGHWAY FUEL TAX HOLIDAY.**

4 (a) TEMPORARY SUSPENSION OF HIGHWAY FUEL  
5 TAXES ON GASOLINE AND DIESEL FUEL.—

6 (1) IN GENERAL.—Section 4081 of the Internal  
7 Revenue Code of 1986 (relating to imposition of tax  
8 on gasoline, diesel fuel, and kerosene) is amended by  
9 adding at the end the following new subsection:

1       “(f) TEMPORARY SUSPENSION OF TAXES ON GASO-  
2 LINE AND DIESEL FUEL.—

3               “(1) IN GENERAL.—During the applicable pe-  
4 riod, each rate of tax referred to in paragraph (2)  
5 shall be reduced to zero cents per gallon.

6               “(2) RATES OF TAX.—The rates of tax referred  
7 to in this paragraph are—

8                       “(A) the rate of tax otherwise applicable to  
9 gasoline under clause (i) of subsection  
10 (a)(2)(A), determined with regard to subsection  
11 (a)(2)(B) and without regard to subsection  
12 (a)(2)(C),

13                      “(B) the rate of tax otherwise applicable to  
14 diesel fuel under clause (iii) of subsection  
15 (a)(2)(A), determined with regard to subsection  
16 (a)(2)(B) and without regard to subsection  
17 (a)(2)(C), and

18                      “(C) the rate of tax otherwise applicable to  
19 diesel fuel under paragraph (1) of section  
20 4041(a) with respect to fuel sold for use or  
21 used in a diesel-powered highway vehicle.

22               “(3) APPLICABLE PERIOD.—For purposes of  
23 this subsection, the term ‘applicable period’ means  
24 the period beginning on May 26, 2008, and ending  
25 on September 1, 2008.

1           “(4) MAINTENANCE OF TRUST FUND DEPOS-  
2           ITS.—In determining the amounts to be appro-  
3           priated to the Highway Trust Fund under section  
4           9503 and to the Leaking Underground Storage  
5           Tank Trust Fund under 9508, an amount equal to  
6           the reduction in revenues to the Treasury by reason  
7           of this subsection shall be treated as taxes received  
8           in the Treasury under this section or section 4041.”.

9           (2) EFFECTIVE DATE.—The amendment made  
10          by this subsection shall take effect on the date of the  
11          enactment of this Act.

12          (b) FLOOR STOCK REFUNDS.—

13               (1) IN GENERAL.—If—

14                       (A) before the tax suspension date, a tax  
15                       referred to in section 4081(f)(2) of the Internal  
16                       Revenue Code of 1986 has been imposed under  
17                       such Code on any liquid, and

18                       (B) on such date such liquid is held by a  
19                       dealer and has not been used and is intended  
20                       for sale,

21           there shall be credited or refunded (without interest)  
22           to the person who paid such tax (hereafter in this  
23           subsection referred to as the “taxpayer”), against  
24           the taxpayer’s subsequent semi-monthly deposit of  
25           such tax, an amount equal to the excess of the tax

1 paid by the taxpayer over the amount of such tax  
2 which would be imposed on such liquid had the tax-  
3 able event occurred on the tax suspension date.

4 (2) TIME FOR FILING CLAIMS; CERTIFICATIONS  
5 NECESSARY TO FILE CLAIMS.—

6 (A) IN GENERAL.—No credit or refund  
7 shall be allowed or made under this sub-  
8 section—

9 (i) unless claim therefore is filed with  
10 the Secretary before the date which is 6  
11 months after the tax suspension date, and

12 (ii) in any case where liquid is held by  
13 a dealer (other than the taxpayer) on the  
14 tax suspension date, unless the taxpayer  
15 files with the Secretary—

16 (I) a certification that the tax-  
17 payer has given a credit to such deal-  
18 er with respect to such liquid against  
19 the dealer's first purchase of liquid  
20 from the taxpayer subsequent to the  
21 tax suspension date, and

22 (II) a certification by such dealer  
23 that such dealer has given a credit to  
24 a succeeding dealer (if any) with re-  
25 spect to such liquid against the suc-

1                   ceeding dealer's first purchase of liq-  
2                   uid from such dealer subsequent to  
3                   the tax suspension date.

4                   (B) REASONABLENESS OF CLAIMS CER-  
5                   TIFIED.—Any certification made under sub-  
6                   paragraph (A) shall include an additional cer-  
7                   tification that the claim for credit was reason-  
8                   ably based on the taxpayer's or dealer's past  
9                   business relationship with the succeeding deal-  
10                  er.

11                  (3) DEFINITIONS.—For purposes of this sub-  
12                  section—

13                         (A) the terms “dealer” and “held by a  
14                         dealer” have the respective meanings given to  
15                         such terms by section 6412 of such Code; ex-  
16                         cept that the term “dealer” includes a pro-  
17                         ducer, and

18                         (B) the term “tax suspension date” means  
19                         May 26, 2008.

20                  (4) CERTAIN RULES TO APPLY.—Rules similar  
21                  to the rules of subsections (b) and (c) of section  
22                  6412 of such Code shall apply for purposes of this  
23                  subsection.

24                  (c) FLOOR STOCKS TAX.—

1           (1) IMPOSITION OF TAX.—In the case of any  
2 liquid on which tax would have been imposed under  
3 section 4081 of the Internal Revenue Code of 1986  
4 during the applicable period but for the amendment  
5 made by subsection (a), and which is held on the  
6 floor stocks tax date by any person, there is hereby  
7 imposed a floor stocks tax in an amount equal to the  
8 tax which would be imposed on such liquid had the  
9 taxable event occurred on the floor stocks tax date.

10           (2) LIABILITY FOR TAX AND METHOD OF PAY-  
11 MENT.—

12           (A) LIABILITY FOR TAX.—A person hold-  
13 ing a liquid on the floor stocks tax date to  
14 which the tax imposed by paragraph (1) applies  
15 shall be liable for such tax.

16           (B) METHOD OF PAYMENT.—The tax im-  
17 posed by paragraph (1) shall be paid in such  
18 manner as the Secretary shall prescribe.

19           (C) TIME FOR PAYMENT.—The tax im-  
20 posed by paragraph (1) shall be paid on or be-  
21 fore the date which is 6 months after the floor  
22 stocks tax date.

23           (3) DEFINITIONS.—For purposes of this sub-  
24 section—

1 (A) HELD BY A PERSON.—A liquid shall  
2 be considered as “held by a person” if title  
3 thereto has passed to such person (whether or  
4 not delivery to the person has been made).

5 (B) GASOLINE AND DIESEL FUEL.—The  
6 terms “gasoline” and “diesel fuel” have the re-  
7 spective meanings given such terms by section  
8 4083 of such Code.

9 (C) FLOOR STOCKS TAX DATE.—The term  
10 “floor stocks tax date” means September 2,  
11 2008.

12 (D) APPLICABLE PERIOD.—The term “ap-  
13 plicable period” means the period described in  
14 section 4081(f)(3) of such Code.

15 (4) EXCEPTION FOR EXEMPT USES.—The tax  
16 imposed by paragraph (1) shall not apply to gasoline  
17 or diesel fuel held by any person exclusively for any  
18 use to the extent a credit or refund of the tax im-  
19 posed by section 4081 of such Code is allowable for  
20 such use.

21 (5) EXCEPTION FOR FUEL HELD IN VEHICLE  
22 TANK.—No tax shall be imposed by paragraph (1)  
23 on gasoline or diesel fuel held in the tank of a motor  
24 vehicle.

1           (6) EXCEPTION FOR CERTAIN AMOUNTS OF  
2 FUEL.—

3           (A) IN GENERAL.—No tax shall be im-  
4 posed by paragraph (1)—

5                 (i) on gasoline (other than aviation  
6 gasoline) held on the floor stocks tax date  
7 by any person if the aggregate amount of  
8 gasoline held by such person on such date  
9 does not exceed 4,000 gallons, and

10                (ii) on diesel fuel held on such date by  
11 any person if the aggregate amount of die-  
12 sel fuel held by such person on such date  
13 does not exceed 2,000 gallons.

14           The preceding sentence shall apply only if such  
15 person submits to the Secretary (at the time  
16 and in the manner required by the Secretary)  
17 such information as the Secretary shall require  
18 for purposes of this subparagraph.

19           (B) EXEMPT FUEL.—For purposes of sub-  
20 paragraph (A), there shall not be taken into ac-  
21 count fuel held by any person which is exempt  
22 from the tax imposed by paragraph (1) by rea-  
23 son of paragraph (4) or (5).

24           (C) CONTROLLED GROUPS.—For purposes  
25 of this paragraph—

1 (i) CORPORATIONS.—

2 (I) IN GENERAL.—All persons  
3 treated as a controlled group shall be  
4 treated as 1 person.

5 (II) CONTROLLED GROUP.—The  
6 term “controlled group” has the  
7 meaning given to such term by sub-  
8 section (a) of section 1563 of such  
9 Code; except that for such purposes  
10 the phrase “more than 50 percent”  
11 shall be substituted for the phrase “at  
12 least 80 percent” each place it ap-  
13 pears in such subsection.

14 (ii) NONINCORPORATED PERSONS  
15 UNDER COMMON CONTROL.—Under regula-  
16 tions prescribed by the Secretary, prin-  
17 ciples similar to the principles of clause (i)  
18 shall apply to a group of persons under  
19 common control where 1 or more of such  
20 persons is not a corporation.

21 (7) OTHER LAW APPLICABLE.—All provisions of  
22 law, including penalties, applicable with respect to  
23 the taxes imposed by section 4081 of such Code  
24 shall, insofar as applicable and not inconsistent with  
25 the provisions of this paragraph, apply with respect

1 to the floor stock taxes imposed by paragraph (1) to  
2 the same extent as if such taxes were imposed by  
3 such section 4081.

4 (d) SECRETARY.—For purposes of this section, the  
5 term “Secretary” means the Secretary of the Treasury or  
6 the Secretary’s delegate.

7 (e) BENEFITS OF TAX REDUCTION SHOULD BE  
8 PASSED ON TO CONSUMERS.—It is the policy of Congress  
9 that—

10 (1) consumers immediately receive the benefit  
11 of the reduction in taxes resulting from the amend-  
12 ment made by subsection (a), and

13 (2) transportation motor fuels producers and  
14 other dealers take such actions as necessary to re-  
15 duce transportation motor fuels prices to reflect  
16 such reduction, including immediate credits to cus-  
17 tomer accounts representing tax refunds allowed as  
18 credits against excise tax deposit payments under  
19 the floor stocks refund provisions of subsection (b).

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