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INFORMED BUDGETEER: REALITY CHECK

FOR LACK OF MONEY...

- Last week, conferees on the six-year transportation reauthorization bill met to see if and how the House would respond to the Senate-passed level of \$319 billion. But the House conferees demurred, prompting the conference chairman to set another meeting for this week. In the meantime, the *Bulletin* sorts out some of the confusion over the effects of the various plans on federal deficits and other legislation.
- Lately, the *Bulletin* has been gratified to see that various press releases have relied on the deficit figures that result from the various highway proposals to tout the virtues of one proposal over another. Such releases appear to trust in the common-sense understanding of what it means to “pay for” something – if actual revenues to be collected are not going to be sufficient to cover the checks that we write, then there will be a deficit and the plan will not be fully paid for. The table below summarizes the deficits associated with the Senate-passed bill and the President’s request.

SURFACE TRANSPORTATION REAUTHORIZATION TOTALS FOR 2004 – 2009 (\$ billion)			
	Sen.- Passed SAFETEA	President's '05 Budget (CBO Reest.)	Difference
Highway Trust Fund Outlays	268	241	27
HTF Baseline (CBO) Revenues	228	228	--
Net New Revenues in Bill	17	1	16
Total Revenues	245	229	16
Increased Spending Not Paid For-Increase in Federal Deficit	22	12	10

Source: CBO/JCT

Totals may not add due to rounding

- But some then depart from this conventional understanding of deficits and confound it with an alternative definition of what “paid for” means. For example, some argue that instead of being \$22 billion short, the Senate bill is only \$8 billion short of being paid for. (Even this is an encouraging, if grudging, shift from the statements made repeatedly during and after consideration of the Senate bill that the bill “will not add to the deficit,” “is paid for,” and its receipts and outlays “match up”; see *Congressional Record*, pp. S1207, S1212, S1214, S1256.) Then, the thinking goes, all we have to do is offset that \$8 billion, and instead of the Senate bill being \$10 billion more in deficit than the President’s bill, the two bills would only be \$2 billion apart.
- First, it cannot make sense to argue that the bill is \$8 billion short of being paid for, then pay for the \$8 billion, still leaving a \$14 billion deficit, and insist that a \$14 billion deficit means the bill is fully paid for.
- Second, the “only-\$2-billion-apart” analysis confuses gross and net, and conveniently ignores the principles laid out by the Administration on how a highway bill can avoid drawing a veto. On the spending side, the Senate bill is \$27 billion higher in outlays than the President’s proposal. On the revenue side, the Senate bill would increase taxes by \$17 billion (even though some press releases have argued that the bill does not include tax increases) compared to the President’s \$1 billion, for a \$16 billion difference in revenues, and a total \$43 billion gulf when combined with the outlay difference.
- If the Senate bill had included the additional \$8 billion in further tax increases that were contemplated for offsets, then new revenues would have amounted to \$25 billion, creating a \$24

billion revenue difference from the President’s bill. Instead of the difference alleged between the Senate and the President’s position narrowing to \$2 billion, there really would be a \$51 billion difference that cannot be glossed over.

- On the spending side, the Administration has said both the House and Senate levels are too high to for the President to sign into law. As for most of the revenue increases in the Senate bill (the House bill has net revenue reductions of \$6 billion), they violate two of the Administration’s three principles: “highway spending should be financed from the Highway Trust Fund, not the General Fund of the Treasury” and “should not rely on an increase in the gas tax or other Federal revenues.”
- Even adjusting for the \$4 billion that the Senate bill would raise in additional gas tax revenue by reducing fraud (which the Administration presumably would not object to because it would not increase the gas tax itself, just increase compliance with current taxes), there still would be \$43 billion in differences between the two bills.
- In the unlikely event that the Administration would ignore the revenue side of the equation (as the \$2-billion analysis suggests), highway conferees should not, because if the highway conference ever really gets going, the revenue offsets the Senate bill is counting on might not be there anymore.

...AMAZING RACE TO THE PRESIDENT’S DESK...

- In the Senate-passed highway bill, the Finance Committee made a number of accounting changes to the highway trust fund (HTF) that would increase trust fund revenues by \$24 billion, with a corresponding decrease in general fund revenues. These accounting changes include a transfer to the highway trust fund of the 2.5 cents per gallon tax on ethanol that is now deposited in the general fund, a transfer of the burden of the 5.2 cents per gallon of ethanol tax subsidy from the highway trust fund to the general revenue, and a transfer of the burden of entities exempt from the gas tax from the HTF to general revenues.
- To partially fill in the hole left in general revenues by these changes, the Finance Committee reported a package of revenue offsets. These offsets include provisions to provide increased reporting of tax shelter activity and increased penalties for failure to report tax shelters, provisions intended to close down Enron-related tax abuses, an extension of IRS user fees, and more.
- But are these offsets really available to pay for the highway bill? That is the \$42.6 billion question. Those who follow tax legislation may have had a *deja vu* experience when reading the highway bill, since \$42.6 billion (over 10 years) of the highway bill offsets are also contained in the Senate-passed version of the Jumpstart Our Business Strength (JOBS) Act (also known as the FSC/ETI bill, S. 1637). Another \$15.2 billion of the highway bill offsets are used in the Senate-passed version of the CARE Act (S. 476). Finally, \$2.4 billion of the highway bill offsets are contained in the Senate-passed version of the Tax Administration Good Government Act (H.R. 1528). Some of these revenue offsets (\$1.5 billion) are included in all four of these bills.
- The JOBS Act is viewed by most as the only “must pass” bill of these. The JOBS Act has passed both the House and Senate, and awaits the appointment of House and Senate conferees. The Senate version contains a total of \$170 billion in revenue offsets to pay for \$167 billion in tax cuts. So which bill will be signed

into law first and win the race for the revenue? What will the “loser” bills do then? Following is a scorecard of which provisions appear in which bill.

SAME REVENUE OFFSETS USED IN BILLS PASSED BY THE SENATE

(Totals for 2004-2013, in \$ billion)

Revenue Provision	SAFETEA	JOBS Act	HR 1528	CARE Act
Fuel Fraud	7.7	7.7		
Highway Tax Exemption Changes	0.9	0.9		
Ethanol Tax Reform	4.4	4.4		
SUV Loophole	*	*		
Codification of Econ Substance	13.7	13.7		13.7
Tax Shelter Reporting (10 provisions)	1.5	1.5	1.5	1.5
Enron-related Tax Shelter (6 prov)	3.2	3.2		
Other Corp. Governance (4 prov)	0.6	0.6	0.6	
Prov to Discourage Expatriation (4)	3.3	3.3		
Extension of IRS User Fees	0.3	0.3	0.3	
Clarification of Estimated Taxes on Deemed Asset Sales	0.1	0.1		
IRS Authority for Installment Agreements	0.1	0.1	0.1	
Provisions Affecting Financial Instruments (5 provisions)	0.8	0.8		
Provisions Affecting Corps and Partnerships (6 provisions) (Definition of Controlled Group) ^{a/}	4.9	4.9		a/
Vaccine Tax on Hep A Vaccine	0.1	0.1		
Vaccine Tax on Flu Vaccine	0.5	0.5		
Extend Intangibles Amortization to Sports Franchises	0.4	0.4		
10-year Subtotal	42.6	42.6	2.5	15.2
Total offsets in bill (10-years)	42.6	170.0	2.5	15.2
Memo: 6-year Subtotal for SAFETEA	17.5			

Source: These revenue estimates can be found in JCX-39-04. * Less than \$50 million
a. Only the “Definition of Controlled Group” provision, which is worth \$28 million, is in HR 1528, but it is included in the \$4.9 billion figure for “Provisions Affecting Corps. And Partnerships”.

...SURVIVOR: CUSTOMS USER FEES

- Almost one year ago, the *Bulletin* took an extensive look at “a customary offset” -- the number of times customs user fees were proposed to be extended and used to offset proposed increases in spending (see July 28, 2003 *Budget Bulletin*).
- At that time, customs fees were set to expire on September 20, 2003. Legislation enacted since then has extended the fees twice, first to March 31, 2004, and then to March 1, 2005 (see table below).

CUSTOMS USER FEE EXTENSIONS

Public Law	Bill Title	Extended fees through...
99-272	Consolidated Omnibus Budget Reconciliation Act of 1985	First enacted on April 7, 1986
100-203	Budget Reconciliation Act of 1987	Sept. 30, 1990
101-382	Customs and Trade Act of 1990	Sept. 30, 1991
101-508	Omnibus Budget Reconciliation Act of 1990	Sept. 30, 1995
103-66	Omnibus Budget Reconciliation Act of 1993	Sept. 30, 1998
103-182	North American Free Trade Agreement	Sept. 30, 2003
108-89	TANF block grants extension	March 31, 2004
108-121	Military Family Tax Relief Act	March 1, 2005

Source: U.S. Code Annotated
Items in italics added since July 2003.

- And, like this time last year, there are currently several high-profile pieces of legislation outstanding that contain proposed extensions of customs user fees. For example, both the Senate and House-passed FSC/ETI bills (H.R. 1520) extend customs user fees. The Senate also agreed to an amendment to the 2005 Department of Defense Authorization bill (now headed to conference) that increased customs fees temporarily.

- The Rangel FSC/ETI bill and the Job Protection Act of 2004 contain customs user fees extensions, as do the Rebuild America Act of 2003 and the Bipartisan Patient Protection Act of 2004 (which have been introduced in the Senate).

- Several amendments to the highway bills relied on customs fees as an offset; none were agreed to as part of the passed bills, but some highway conferees continue to talk about using up to \$8 billion in customs fees to pay for increased highway spending.

- As an offset, an extension of customs user fees is substantial. For example, extending the fees for only seven months (through September 2005) is worth \$780 million. Extending the fees for five years (through September 2009) is worth \$7.6 billion; extending the fees for 10 years (through September 2014) is worth \$18.6 billion.

- Remember that an extension of customs user fees can be scored on a measure-by-measure basis as a legitimate offset until it passes both Houses and is cleared for the President’s signature.

- Customs user fees most likely will be extended at some point before the end of the 108th Congress – the question remains the same as last year’s *Bulletin* posed: who will get the gift that keeps on giving, and who will be voted off? While we’re waiting to find out, it would be interesting to see the total of new spending or tax cuts in all this legislation that has been introduced or passed by Congress on the strength of this \$18 billion offset.

LEGISLATION CONTAINING EXTENSION OF CUSTOMS USER FEES IN THE 108TH CONGRESS

Bill Number	Bill Title	Status
H.R. 4520/ S. 1637	Jumpstart Our Business Strength Act	Passed in the Senate and House (in conference)
H.R. 1308	Relief for Working Families Tax Act of 2003	Passed the Senate & House (in conference)
1 amendment	S. 2400 DoD Authorization 2005	Passed the Senate
H.R. 4520	American Jobs Creation Act of 2004	Passed the House
H.R. 2896	American Jobs Creation Act of 2003	Passed the House
H.R. 2392	Relief for Working Families Tax Act of 2003	Introduced in House
H.R. 2615	Rebuild America Act of 2003	Introduced in House
H.R. 3827	Job Protection Act of 2004	Introduced in the House
2 amendments	H.R. 4 Welfare Reform Bill	Offered in the Senate
1 amendment	H.R. 3550 TEA-LU	Offered in the House
S. 10	Health Care Coverage Expansion and Quality Improvement Act of 2003	Introduced in the Senate
S. 1409	Rebuild America Act of 2003	Introduced in the Senate
S. 2083	Bipartisan Patient Protection Act of 2004	Introduced in the Senate
6 amendments	S. 1072 SAFETEA	Offered in the Senate
6 amendments	S. 1637 JOBS Act	Offered in the Senate
1 amendment	S. 1689 Iraq/Afghanistan 2004 Emergency Support	Offered in the Senate

Source: CBO, Congressional Record Items in italics added since July 2003
NOTE: The following measures were enacted during the 108th Congress without a provision extending customs user fees, although each piece of the legislation had included them at some point in the process: H.R. 1, H.R. 2, H.R. 2660, H.R. 2961

EDITOR’S NOTE: *Send-off to a Star*

The SBC would like to extend our congratulations to **Katy Barr** who has recently left the committee to hone her skills as the health LA for Senator Lisa Murkowski. Hats off to Katy for all of her good and helpful work at the SBC; our “cool kid” baseline will sadly be scored lower without her.