BUDGET BULLETIN
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INFORMED BUDGETEER:

INCREASE IN OIL SPILL TAX NOT USED FOR OIL SPILLS

- The House-passed "American Jobs and Closing Tax Loopholes Act" (H.R. 4213, referred to as "extenders package") includes a 26-cent increase in the tax that funds the Oil Spill Liability Trust Fund (from 8 cents to 34 cents per barrel of oil), raising $11.8 billion over 2010-2020.

- This week, the Senate is considering the majority's substitute amendment to that bill, which adds, among other items, a net $24 billion in additional Medicaid funds for states. Democratic staff on the Senate Finance Committee had indicated the substitute would increase the oil spill tax to "wherever it needs to go" to offset the Medicaid funding in the substitute. Now that the substitute is on the floor, we know that it would increase the tax to 41 cents per barrel of oil, raising $15 billion over 2010-2020.

- Is this tax increase really an offset?

Background on the Oil Spill Liability Trust Fund (OSLTF)

- In 1990, the Oil Pollution Act (OPA, Public Law 101-380) made operational the use of the Oil Spill Liability Trust Fund. While Congress had created the OSLTF in 1986, it existed in name only because Congress failed to create a revenue source for the fund and to authorize the use of any revenues to respond to oil spills.

- After the Exxon Valdez incident in 1989, Congress instituted the per-barrel tax and authorized spending of that revenue. Under current law, the principal revenue stream of the OSLTF is a tax of 8 cents per barrel of oil that is collected on petroleum produced in or imported to the United States. As part of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), **Congress increased the tax rate to 8 cents per barrel** (up from 5 cents per barrel level set in the 2005 Energy Bill) **through 2016, and increased the tax to 9-cents-per-barrel starting in 2017**.

Congress authorized that revenue into the OSLTF could be used for the following purposes**:**

- Removal/clean-up costs incurred by the Coast Guard, the U.S. Environmental Protection Agency, and State governments;
- Payments to natural resource trustees under federal, state, and Indian tribe direction to conduct natural resource damage assessments;
- Payment of claims for uncompensated removal costs and damages;
- Research and development; and
- Other specific appropriations.

- If responsible parties for a spill are identified, they are responsible for all removal costs and up to $75 million in economic damages (for discharge from an offshore oil well; limits vary for spills from other sources, such as tankers). But if a spill was caused by willful misconduct, gross negligence or a violation of a federal safety, construction or operating requirements, then responsible parties are liable for all economic damages, even those exceeding the liability cap.

But sometimes those responsible –

- cannot be located (e.g., discharge from fishing vessels, cargo ships, and tankers);
- do not have the ability to pay (e.g., bankrupt);
- or have reached the limit on liability.

- In any of these situations, the OSLTF is the insurer of last resort for oil spill removal costs and damages (such as lost profits, destroyed property and lost tax revenue).

- At present, there is a balance of approximately $1.5 billion available to be spent from the OSLTF, which has two major components:

1. The **Emergency Fund** is available for federal On-Scene Coordinators to respond to discharges and for federal natural resource trustees to initiate natural resource damage assessments. The Emergency Fund is an automatic annual mandatory appropriation of $50 million that is available to the President until expended. If that $50 million is inadequate, the Maritime Transportation Security Act of 2002 (Public Law 107-295) provides authority to advance up to $100 million from the Principal Fund to pay for removal activities.

2. The remaining **Principal Fund** balance has a mandatory component that is used to pay claims and a discretionary component that funds appropriations by Congress to federal agencies to administer the provisions of the OPA and to support research and development.

- Under current law, **expenditures from the OSLTF for any one oil pollution incident are limited to $1 billion or the balance of the Fund, whichever is less**. In the current catastrophic case of the Deepwater Horizon blowout in the Gulf of Mexico, BP is responsible for all response, clean-up, and removal costs. In addition, BP has made public statements about its intention to pay all legitimate economic damages, even if they exceed the $75 million limit.

Interaction of Extenders Bills and Current Gulf Spill

- Under current law, annual OSLTF revenues are projected to range from $400-$500 million, while annual baseline spending from the fund ranges from $150-$200 million.

- On the spending side, the Deepwater Horizon oil spill has put the OSLTF in uncharted territory. The magnitude of the spill and potential for billions of dollars in damages could quickly deplete the fund's current balance if BP were to renege on its promise to pay all legitimate claims, even if they far exceed the $75 million legal limit on liability.

- Both the House and Senate versions of the extenders package would raise the limit on spending from the OSLTF for any single incident from the current $1 billion to $5 billion. As a result, CBO estimates the Deepwater Horizon spill could result in additional OSLTF outlays totaling $1 billion.

- The oil spill tax increase in the House-passed extenders package would add about $1.2 billion in revenues to the fund each year. The Senate substitute amendment would increase annual revenues into the OSLTF by $1.5 billion, compared to current law.

- Assuming that either version of the tax increase is enacted and that BP nonetheless pays for all damages as promised, the OSLTF will likely have a significant balance for the foreseeable future. However, the fluidity of the crisis in the Gulf and the uncertainty of pending financial/legal determinations by the responsible parties could potentially lead to a significant increase in outlays from the OSLTF that are not reflected in the CBO estimate of this legislation.

- Meanwhile, the extender package uses projected income from the increase oil spill tax now as an "offset" for unrelated additions to spending that increase the deficit. In doing so, **Democrats are raiding the oil spill revenue** since it is being used to both "pay for" part of the extenders package and to ensure that OSLTF has sufficient funds to pay for the costs for which the fund was created in the first place.

- If Congress is going to increase the oil tax on a barrel of oil by 400 percent, the funds should be dedicated strictly to the OSLTF for current and future oil recovery and response efforts, and not be used as an offset for unrelated spending.

- It is disingenuous for the Democrats and the administration to claim BP will be responsible for all clean-up and damage costs, while simultaneously trying to enact a hidden tax increase to cover all those costs. That oil tax increase will be borne by all Americans.