

AIRPORT AND AIRWAY REVENUE ACT OF 1970

 FEBRUARY 17, 1970.—Ordered to be printed

Mr. LONG, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 14465]

The Committee on Finance, to which was referred the bill (H.R. 14465) to provide for the expansion and improvement of the Nation's airport and airway system, for the imposition of airport and airway user charges, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

**I. PROCEDURE FOR CONSIDERATION OF AIRPORT
AND AIRWAY LEGISLATION**

H.R. 14465, as passed by the House, contained two titles. The first title provided for certain expansions and improvements of the Nation's airport and airway system. This title was known as the "Aviation Facilities Expansion Act of 1969." The second title provided for the imposition of aviation user charges, for charges of this type to go into an Airway and Airport Trust Fund, etc. This title was described as the "Airport and Airway Revenue Act of 1969."

As requested by the chairman of the Commerce Committee, the Finance Committee action with respect to this bill includes an amendment deleting title I. This was done under the understanding that the chairman of the Commerce Committee intends to follow the procedure of perfecting a program of the type included in title I by considering the provisions of S. 3108, and that when such a program has been perfected the text of that bill is to be substituted for what was previously title I of this bill.

The substantive changes made by the Committee on Finance, therefore, relate entirely to the revenue provisions of the House bill.

II. SUMMARY OF REVENUE PROVISIONS

As part of the program designed to finance the needed expansion and improvement of the Nation's airport and airway system, the House increased existing and imposed new aviation user taxes. This action was designed to provide additional revenues to finance the expected increased demand for use of the civil aviation system and also because it was believed that civil aviation should pay a somewhat larger portion of the total Federal Government outlays for the air transportation system. It was also believed that it was desirable that the revenues from the aviation user taxes be set aside in a trust fund for the expansion and development of Federal airport aid and the airway system. The Committee on Finance is in accord with this general objective. As a result, the revenue provisions reported by the Committee on Finance contain the same general features as those in the House bill.

General aviation under both versions of the bill will be subject to fuel taxes and an aircraft use tax, and commercial aviation will be subject to passenger and cargo taxes and the aircraft use tax. The principal revenue provisions of the bill as amended by the Committee on Finance are as follows:

(1) Both versions of the bill provide for a 7-cent-a-gallon tax on fuel used by general aviation (i.e., noncommercial). In the case of gasoline and special fuels, this is an increase from the present effective rate of 2 cents a gallon to 7 cents a gallon. In the case of other aviation fuel used in general aviation, this is a new tax of 7 cents a gallon. Commercial aviation is no longer to pay the present effective rate of 2 cents a gallon tax on gasoline or special fuels.

(2) The Finance Committee amendments provide a tax on commercial air carriers of 7.5 percent of the gross amount of domestic passenger fares, which is to be fully included in the domestic tariffs (by direction to the Civil Aeronautics Board and the air carriers). The present 5-percent passenger ticket tax imposed on the passenger as a separately stated tax is eliminated. The Committee amendment will thus result in a fare increase of about 8 percent, about the same as the 8-percent ticket tax which would be imposed by the House bill. Both versions of the bill also include a new tax on the use of international travel facilities of \$3 per person in the case of international flights from the United States (as well as flights between the continental United States and Alaska and Hawaii, since under the bill these flights are not subject to the 7.5 percent tax on the charge for the portion of the flight outside the United States).

(3) Both versions of the bill impose a new tax of 5 percent on air freight waybills. The Finance Committee amendments, however, provide exemptions for excess baggage of passengers and for freight shipments to or from Alaska and Hawaii with respect to that portion of the flight not over U.S. territory.

(4) Both versions of the bill provide a new annual aircraft use tax of \$25 plus 2 cents a pound for piston-powered aircraft and \$25 plus 3.5 cents a pound for turbine-powered aircraft. However, the Finance Committee amendments provide an exemption from

the "poundage" portion of the tax for aircraft with a seating capacity of four adults or less.

Other modifications are also made in the present tax on the transportation of persons by air. The Finance Committee amendments (since the tax is imposed on the carrier) remove all exemptions from the tax on passenger travel. (The House bill would have retained the exemptions for transportation furnished to an international organization or the Red Cross.) Both versions of the bill also provide special rules for small aircraft not on established lines and for aircraft used by affiliated corporations. The Finance Committee amendments also make certain changes in existing law with the result that excess payments of fuel taxes will more generally be allowed as credits against income taxes. Also, the period for claiming these credits is made to correspond with the period for filing a claim for credit or refund of an overpayment of income taxes.

Under both versions of the bill, revenues from the aviation user taxes described above are to be placed in a new Airport and Airway Trust Fund, similar in nature to the existing Highway Trust Fund. Also, receipts from taxes on tires and tubes used on aircraft are to be transferred from the Highway Trust Fund to this fund. In addition, general fund appropriations necessary to supplement the aviation user taxes are to be paid into the fund rather than being made directly. As a result, all Federal funds used for the purposes of the fund will flow through the trust fund.

To obtain and analyze data on the costs and use of the Federal aviation system, both versions of the bill direct the Department of Transportation to make a study of aviation user taxes to be used to insure an equitable distribution of the costs by the various users of the air transportation system.

Finally, both versions of the bill remove some of the exemptions from State tax jurisdiction presently provided for Washington National Airport. However, the exemptions are to remain for taxes relating to aviation fuels and the servicing of aircraft.

The Finance Committee amendments provide that the new provisions are to be effective on April 1, 1970, in the case of the fuel taxes, the establishment of the Airport and Airway Trust Fund, and the aircraft use taxes (however, the \$25 basic use tax for aircraft with a seating capacity of four or less, which are exempt for the poundage part of the aircraft use tax, is to be effective on July 1, 1970). The amendments provide that the new provisions are to be effective on May 1, 1970, for the taxes on passenger travel (domestic and international) and freight waybills. Under the House bill, all of these changes would have been effective on January 1, 1970. The provisions of the Finance Committee amendments with respect to the credits of taxes against income tax apply to taxable years ending after March 31, 1970.

The Finance Committee amendments also provide a termination date of June 30, 1980, for the increases in aviation user taxes provided by this bill and also provide the same termination date in the case of the Airport and Airway Trust Fund. This will provide an opportunity for a congressional review of the entire program.

III. REASONS FOR REVENUE PROVISIONS

Growth in the use of the airport and airway system

As indicated by table 1 below, revenue passenger miles on U.S. domestic scheduled air carriers more than tripled from 1960 to 1970, and are projected to almost triple again from 1970 to 1980. From 1970 to 1980, total aircraft operations at airports with FAA traffic control services are expected to rise by 179 percent and total IFR aircraft (aircraft using instrument flight rules) handled at FAA air route traffic control centers are projected to increase by 86 percent. Of these total aircraft operations, general aviation is expected to have the greatest percentage growth. These growth indicators depict an urgent need to provide facilities to meet the demand for the use of the system. As evidenced by the increasing congestion at major airports, air facilities and controls have not kept pace with the growth in the use of system in the past.

TABLE 1.—SELECTED INDICATORS OF GROWTH IN USE OF THE DOMESTIC AIRPORT AND AIRWAY SYSTEM, SELECTED FISCAL YEARS, 1960 TO 1980

Indicator	Actual			Projected			Percent increase	
	1960	1964	1970 ¹	1971	1974	1980	1960 to 1970	1970 to 1980
	Air carrier operation:							
Revenue passenger-miles, scheduled air carriers (billions).....	30.4	41.3	98.8	105.9	148.5	295.0	225	199
Number of passengers (millions).....	56.6	83.0	157.1	187.2	252.0	471.5	178	200
Number of air carriers aircraft (Jan. 1).....	1,850	2,079	2,709	2,800	3,070	3,800	46	40
General aviation operation:								
Number in fleet (Jan. 1).....	68,727	85,088	133,000	142,000	169,000	225,000	94	69
Hours flown (millions).....	13.0	15.4	25.3	26.8	32.1	43.6	95	72
Total aircraft operations at airports with FAA traffic control service (millions).....								
	26.4	32.9	55.7	58.7	80.9	155.6	111	179
Air carriers.....								
General aviation.....	7.3	7.4	11.1	11.6	13.1	17.0	52	53
Military.....	15.0	21.6	41.4	43.9	62.1	135.9	176	228
Total IFR² aircraft handled at FAA air route traffic control centers (millions).....								
	9.8	11.1	22.6	24.2	28.1	42.0	131	86
Air carriers.....								
General aviation.....	5.5	5.7	14.0	15.1	17.3	22.5	155	61
Military.....	.6	1.0	3.7	4.2	5.9	14.7	517	297
Total.....								
	3.7	4.4	4.9	4.9	4.9	4.8	32	-2

¹ Preliminary.

² U.S. registered aircraft in operation (domestic and international).

³ Aircraft using instrument flight rules.

Source. Department of Transportation, Federal Aviation Administration, Office of Aviation Economics.

Projected Federal airport and airway expenditures

To meet the growth in demand for air travel and air freight as the U.S. economy requires more air transportation, the Federal Government has projected an expenditure program for the 1971-80 decade for the expansion and development of an advanced air transportation system (with high safety standards) that is expected to rise to \$1,775 million in fiscal 1980, or more than double the actual \$865 million expended in fiscal 1969. The 10-year 1971-80 expenditure projection is estimated to total \$15.6 billion (\$12.9 billion for airway

facilities and \$2.6 billion for airport grants), of which the civil aviation share is projected to be \$13 billion (see table 2).¹

TABLE 2.—PROJECTION OF ESTIMATED EXPENDITURES FOR THE AIRPORT AND AIRWAY SYSTEM, FISCAL YEARS, 1971 TO 1980¹

[In millions of dollars]

Fiscal year	Airport grants	Airway facilities			Total airport and airway	Total civil airport and airway
		Civil	Military	Total airway ²		
1971.....	\$191	\$840	\$210	\$1,050	\$1,241	\$1,031
1972.....	242	970	242	1,212	1,454	1,212
1973.....	258	972	243	1,215	1,473	1,230
1974.....	274	965	241	1,206	1,480	1,239
1975.....	274	984	246	1,230	1,504	1,258
Subtotal.....	1,239	4,731	1,182	5,913	7,152	5,970
1976.....	275	1,042	260	1,302	1,577	1,317
1977.....	275	1,090	273	1,363	1,638	1,365
1978.....	275	1,130	283	1,413	1,688	1,405
1979.....	275	1,165	291	1,457	1,732	1,441
1980.....	275	1,200	300	1,500	1,775	1,475
Subtotal.....	1,375	5,628	1,407	7,035	8,410	7,003
Total.....	2,614	10,359	2,589	12,948	15,562	12,973

¹ Projections are in constant dollars; whereas, the revenue estimates by FAA are in current dollars. Thus, the totals are not comparable in determining a gap between estimated revenues from the aviation user taxes and projected expenditures.

² Does not include nonairway FAA expenditures or pay raise.

Source: Department of Transportation, Federal Aviation Administration, Office of Aviation Economics.

Imposing the taxes on the users of the airport and airway system

To provide additional revenue for the financing of the increased Federal Government outlays for the expansion and development of the airport and airway system, new and increased aviation user taxes are necessary to pay for an increasing portion of the total Federal Government expenditures for the air transportation system. Without these user taxes, the general taxpayer would be required to finance most of the cost of the system through general fund appropriations, if the need is to be met. If the present 5-percent passenger tax, the 2-cents-a-gallon gasoline tax, and the taxes on tires and tubes used on aircraft continued to be the only aviation user taxes, the users of the aviation system would be paying only \$0.9 billion a year by fiscal 1980, only half of the projected \$1.8 billion revenues under this bill.

Taxes on passenger and freight air transportation

Both the House bill and the committee amendments, insofar as commercial carriers are concerned, obtain most of the additional tax revenue from passenger and freight transportation by increasing the present 5-percent passenger ticket tax on domestic flights, and by imposing a new \$3 per person tax on passenger tickets for international flights from the United States and a new 5-percent "waybill" tax on air freight.

The Finance Committee amendments modify the House-passed tax on passenger travel by placing the tax on the air carriers as a

¹ The expenditure projections in table 2, however, are in "constant" dollars; whereas, the revenue estimates are in "current" dollars (i.e., include an assumed, inflation factor). Thus, the totals are not comparable in determining a "gap" between estimated revenues from the aviation user taxes and projected expenditures for the civil aviation portion.

tax of 7.5 percent of the domestic passenger air fares for taxable transportation (to be included in the price of the ticket), rather than as a separately stated tax on the passenger. Since the Civil Aeronautics Board is to approve fare increases to offset the effect of the tax, fares under the committee amendments will rise by about 8 percent, and the cost of air travel to the passenger will be about the same as under the House bill.

The 5-percent tax on air freight waybills is the same as the House bill provision, except that the charge for excess baggage and the portion of a flight to or from Alaska and Hawaii (and also the portion outside the United States in the case of any similar flights more than 225 miles outside the United States) not over U.S. territory are exempted. The international portion of these flights was exempted so that the tax would not be unduly heavy in the case of these flights involving substantial transportation outside the United States.

The decision of the Finance Committee to include the tax on passenger air travel in the ticket price and impose the tax on the airline, rather than as a separately stated tax on the passenger, will eliminate delays in ticket preparation where ticket agents presently have to make the separate computation of the ticket tax and add it on the ticket as a separate item to determine the total fare the passenger is to pay. Moreover, by imposing the tax on passenger travel on the airline, there is no need for any exemptions (with the attendant delays in determining the traveler's proper exemption) for specific transportation; thus, since all domestic travel makes use of the airports and airways, all domestic travel will pay the same ticket price for a particular flight.

The decision of both the House and the Finance Committee to derive the bulk of the additional commercial aviation revenue from taxes on passenger travel and freight was based upon three primary factors. First, extensive administrative experience is available from the present method of collecting the tax on domestic passenger travel whereby the airline making the ticket sale (whether or not it actually furnishes the transportation) remits the total tax due to the Internal Revenue Service. While the form of the tax of 7.5 percent of the domestic passenger ticket sales varies from the form of the present 5-percent tax on tickets, the procedure for payment of the tax by the air carriers will be essentially the same as under existing law so that the administrative experience will still be applicable. The Internal Revenue Service is also experienced in the administration of a freight tax. Before 1958, a 3-percent tax was imposed on domestic freight shipped by air and other means.

Second, a tax based upon the amount of the passenger or freight tariff will grow not only as air traffic increases in volume but also as prices rise. Third, a tax based upon the amount of the tariff is geared to charge an equitable tax related to the actual use of airport and airway facilities, since tariffs for short flights are more per mile than long-line flights and the tax is proportionate to the charge for the passenger travel or freight shipment.

The 7.5 percent tax on passenger transportation does not apply with respect to international flights (nor does it apply to that portion of flights to or from Alaska and Hawaii that occurs outside the United States). To insure that passengers on international flights (and partially tax-exempt flights) contribute to the Federal Government

financing of airport and airway operations associated with their air travel, both versions of the bill also impose a \$3 per person tax on the use of international travel facilities on such passenger departures. The prospective future revenue from this tax also is geared to the estimated international airport and airway facilities costs to the United States.

The growth potential of the aviation user taxes on passenger travel and freight shipments is portrayed in table 3. This shows that revenues from the tax on passenger travel are estimated to almost triple from \$533.3 million in fiscal 1971 (the first full fiscal year of collection) to \$1,463.7 million in fiscal 1980, and that revenues from the tax on air freight are projected to increase more than threefold from \$40.2 million in fiscal year 1971 to \$148.5 million in fiscal 1980. In addition, the international travel facilities use tax receipts are expected to rise by 162 percent during the same period.²

TABLE 3.—REVENUES FROM AVIATION USER TAXES, SELECTED FISCAL YEARS, 1965-80

[In millions of dollars]

User tax	Actual			Estimated ¹				
	1965	1967	1969	1970 ²	1971	1974	1979	1980
Tax on passenger airfares ³	147.5	194.5	259.5	355.6	533.3	741.6	1,310.6	1,463.7
Waybill tax, 5 percent ⁴				5.9	40.2	59.5	126.5	148.5
Fuels tax ⁵	16.7	14.4	11.0	19.4	47.2	59.2	81.0	85.4
International travel facilities use tax, \$3.....				4.3	28.4	39.6	68.4	74.5
Aircraft use tax ⁶				4.6	22.8	28.7	38.5	40.6
Taxes on tires and tubes used on aircraft.....	2.0	2.4	2.6	2.8	3.0	3.5	5.0	5.3
Total.....	166.2	211.3	273.1	392.6	674.9	932.1	1,630.0	1,818.0

¹ Revised estimates of revenues, in current dollars

² Assumes the tax changes on passenger and waybill transportation are in effect on May 1, 1970, the increased fuel taxes on Apr. 1, 1970, and the new aircraft use tax on Apr. 1, 1970.

³ 5 percent of the ticket price through Apr. 30, 1970, and 7.5 percent of the air tariff after Apr. 30, 1970.

⁴ Excludes the portion of transportation to or from Alaska and Hawaii not over U.S. territory; includes revenue from U.S. Post Office mail freight and other Government freight on civil air carriers.

⁵ 4 cents a gallon on gasoline fuel only (with a 2 cents a gallon refund or credit for aviation use) on both general aviation and air carriers through Mar. 31, 1970; a full payment or credit of 4 cents a gallon on gasoline fuel for air carriers on or after Apr. 1, 1970, and 7 cents a gallon on gasoline and other aviation fuel for general aviation use only on or after Apr. 1, 1970.

⁶ Annual: A basic \$25 use tax on all civil aircraft, plus 2 cents a pound on piston-engined aircraft and 3.5 cents a pound on turbine-engined aircraft, effective Apr. 1, 1970, except that aircraft with a seating capacity of 4 adults or less are exempt from the weight part of the use tax and become liable for the \$25 basic use tax on July 1, 1970.

Source: Department of Transportation, Federal Aviation Administration, Office of Aviation Economics.

Fuel taxes

While the bulk of the user revenues from commercial aviation is to be derived from taxes on passenger travel and freight, the Committee on Finance agrees with the House that most of the user revenues from general aviation (i.e., noncommercial aviation, or any use of an aircraft other than "in a business of transporting persons or property for compensation or hire by air") should be obtained from a 7-cent tax on fuels used in aviation. This means: (1) an increase in the tax on gasoline and special fuels from the present effective rate of 2 cents a gallon to 7 cents a gallon, and (2) a new tax of 7 cents a gallon on other aviation fuels. The fuel tax, insofar as general aviation is concerned, is the best available measure of use of the Federal airway system. General aviation could not be subjected to the user taxes on

² The revenue estimates in table 3 are as based upon revised use estimates by the FAA in January 1970, which take into account a higher inflation factor and a greater percentage of GNP represented by air transportation in the future as compared to the revenue estimates in House Report 91-601.

passenger travel and air freight since it does not generally make charges for this transportation. The committee concluded that general aviation should be required to pay a larger share of aviation user taxes than at present based on its present and anticipated future use of airports and airways. This accounts for the increase under both versions of the bill in the fuel tax applicable to noncommercial aircraft use. The projected domestic use of gasoline and jet fuel by air carriers and general aviation is set forth in table 4.

TABLE 4.—ESTIMATED FUEL CONSUMPTION BY U.S. DOMESTIC CIVIL AVIATION, FISCAL YEARS 1970-76 AND 1980
[Millions of gallons]

Fiscal year	Jet fuel			Aviation gasoline			Total jet fuel and aviation gasoline		
	Air carrier	General aviation	Total	Air carrier ¹	General aviation	Total	Air carrier ¹	General aviation	Total
1970.....	7,850	155	8,005	115	460	575	7,965	615	8,580
1971.....	8,300	185	8,485	105	490	595	8,405	675	9,080
1972.....	8,950	210	9,160	100	520	620	9,055	725	9,780
1973.....	9,900	235	10,135	100	555	655	10,005	785	10,790
1974.....	10,550	260	10,810	105	585	690	10,655	845	11,500
1975.....	11,250	290	11,540	105	625	730	11,360	910	12,270
1976.....	11,900	315	12,215	115	660	775	12,015	975	12,990
1980.....	16,000	430	16,430	145	790	935	16,145	1,220	17,365

¹ Air carrier totals include estimated jet fuel and aviation gasoline consumption by "air taxis," as air taxis are assumed to pay the passenger and freight taxes rather than the fuel taxes.

Note: Domestic civil aviation is defined for purposes of this table to include all civil aircraft flights which originate and terminate within the 48 conterminous States, within Hawaii, and within Alaska. Fuels consumed by airframe and aircraft engine manufacturers whether for flight testing or ground testing are not shown here because they are not available for the domestic industry as a whole and cannot be estimated with any assurance of accuracy.

Source: Department of Transportation, Federal Aviation Administration, Office of Aviation Economics, revised 1970 estimates.

Aircraft use tax

Both versions of the bill establish an annual use tax for both commercial and general aviation aircraft (similar to the Federal use tax on heavy trucks). This tax is designed to supplement both the revenues from aviation user taxes applicable to commercial passenger and freight transportation and the revenues from the fuel tax applicable to general aviation. The annual aircraft use tax is based on the premise that all aircraft should pay at least a basic tax as an entry fee to the use of the Federal airway system. Thus, both versions of the bill impose an annual \$25 basic use tax on all aircraft plus an additional tax based upon the aircraft weight and type of propulsion.

Under both versions of the bill, the additional use tax is 2 cents a pound for piston-engine-powered aircraft and 3.5 cents a pound for turbine-engine-powered aircraft. Thus, the turbine-engined aircraft, which have the more sophisticated equipment and require a greater degree of air traffic control supervision because of their speed, will be charged a higher use tax per pound.

However, the committee amendments make one modification with respect to the House provision. The committee amendments do not impose the poundage part of the use tax on aircraft with a seating capacity of four adults or less. It is expected that this modification will relieve about 75 percent of the aircraft used in general aviation from

the poundage portion of the use tax. These smaller aircraft are generally those which make relatively less use of the Federal airway facilities.

To avoid placing a competitive disadvantage upon U.S. air carriers, as compared to foreign air carriers, both versions of the bill provide for a refund of part of the poundage portion of the use tax based upon the aircraft's proportionate mileage in foreign air commerce to its total mileage. The committee amendments, however, provide a procedure whereby the tax to be paid will initially be reduced by the anticipated refund, based upon the air carrier's experience in the preceding year, in those cases where the preceding year's travel in foreign air commerce was significant (10 percent or more). This means the airlines will not be out of pocket during the year the amount of the refund to which they are expected to be entitled. The details of the estimated revenues from the use tax are shown in table 5.

TABLE 5.—ESTIMATED REVENUES FROM AIRCRAFT USE TAX ON U.S. CIVIL AIRCRAFT, FISCAL YEARS 1971-80¹
(In millions of dollars)

Category	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Aircraft use tax.....	\$22.8	\$24.7	\$26.7	\$28.7	\$30.7	\$32.6	\$34.6	\$36.6	\$38.5	\$40.6
General aviation ²	9.7	10.0	10.6	11.3	11.9	12.5	13.2	13.6	14.2	15.0
\$25 tax.....	3.6	3.8	4.0	4.2	4.5	4.7	4.9	5.2	5.4	5.6
Poundage tax.....	6.1	6.2	6.6	7.1	7.4	7.8	8.3	8.4	8.8	9.4
Piston-2 cents lb.....	3.7	3.6	3.8	4.1	4.3	4.5	4.9	4.8	5.1	5.5
Turbine-3.5 cents lb.....	2.4	2.6	2.8	3.0	3.1	3.3	3.4	3.6	3.7	3.9
Air carrier.....	13.3	14.7	16.1	17.4	18.9	20.2	21.5	23.0	24.2	25.7
\$25 tax.....	.1	.1	.1	.1	.1	.1	.1	.1	.1	.1
Poundage tax.....	13.2	14.6	16.0	17.3	18.8	20.1	21.4	22.9	24.1	25.6
Piston-2 cents lb.....	.2	.2	.2	.2	.2	.1	.1	.1	.1	.1
Turbine-3.5 cents lb.....	13.0	14.4	15.8	17.1	18.6	20.0	21.3	22.8	24.0	25.6

¹ Revised 1970 revenue estimates.

² Aircraft with seating capacity of 4 adults or less are exempt from the poundage portion of the use tax.

Note: Details may not add to totals due to rounding.

Source: Department of Transportation, Federal Aviation Administration, Office of Aviation Economics.

Distribution of air user taxes between general aviation and air carriers

As indicated in table 6, general aviation is expected to pay \$57.9 million of the total \$674.9 million in aviation user taxes in fiscal 1971 (or 8.6 percent), and air carriers are expected to pay \$617.2 million (or 91.4 percent). By fiscal 1980, general aviation's portion of the aviation user taxes will decline to 5.6 percent, due to the much greater growth potential of the taxes on passenger and air freight transportation as compared to the taxes on general aviation fuel.

TABLE 6.—COMPARISON OF ESTIMATED AVIATION USER TAXES ON GENERAL AVIATION AND AIR CARRIERS, FISCAL YEARS 1971 AND 1980¹

[Dollars in millions]

User tax	Fiscal year 1971			Fiscal year 1980		
	General aviation	Air carrier	Total	General aviation	Air carrier	Total
Tax on passenger air fares, 7½ percent		\$533.3	\$533.3		\$1,463.7	\$1,463.7
Waybill tax, 5 percent		40.2	40.2		148.5	148.5
Fuel tax, 7 cents a gallon	\$47.2		47.2	\$85.4		85.4
International travel facilities use tax, \$3		28.4	28.4		74.5	74.5
Aircraft use tax, total	9.7	13.3	22.8	15.0		40.6
\$25 basic amount	3.6	.1	3.7	5.6	.1	5.7
Weight addition ²	6.1	13.2	19.3	9.4	25.6	35.0
Taxes on tires and tubes used on aircraft	1.0	2.0	3.0	1.8	3.5	5.3
Total	57.9	617.2	674.9	102.2	1,715.9	1,818.0
Percent of total	8.6	91.4	100.0	5.6	94.4	100.0

¹ Revised revenue estimates, in current dollars.² 2 cents a pound for piston-engined aircraft and 3.5 cents a pound for turbine-engined aircraft, except that aircraft with a seating capacity of 4 adults or less are exempt.

Note: Details may not add to totals due to rounding

Source: Based on data from Department of Transportation, Federal Aviation Administration, Office of Aviation Economics.

Credits of certain taxes against income tax

The Finance Committee amendments provide for a payment or tax credit procedure in the case of the retailers' excise taxes on gasoline (as added by this bill) and special fuels sold or used for nontaxable purposes, that is similar to the existing law payment or tax credit procedure for the manufacturers' excise taxes on gasoline and lubricating oil. The committee amendments then permit such payments or credits to be claimed within the time available generally for filing a claim for credit or refund of an overpayment of income taxes; that is, within 3 years after the due date for filing the income tax return on which the credit may be claimed (i.e., 39½ months after the close of the taxable year for individuals and 38½ months for corporations).

Airport and airway trust fund

Both the House and the Finance Committee decided to establish an "Airport and Airway Trust Fund," similar in nature to the existing Highway Trust Fund. However, the Airport and Airway Trust Fund is not expected to be self-sustaining in the immediate future. The taxes to be paid over to the trust fund are the aviation user taxes discussed previously—the taxes on passenger and air freight transportation, the international travel facilities use tax, the tax on gasoline used by general aviation (presently paid into the Highway Trust Fund), the general aviation fuel tax, the taxes on tires and tubes used on aircraft (presently paid into the Highway Trust Fund), and the aircraft use tax.

The trust fund is created in order to insure that the aviation user taxes are expended only for the expansion, improvement, and maintenance of the air transportation system. To maintain effective control over the funding of the system, it is provided that any general fund appropriations necessary to supplement the user taxes are also to be paid into the trust fund. Expenditures from the trust fund are to be made only after Congress appropriates the funds. Limitations

are placed on the airport and airway purposes for which the trust fund moneys (user taxes and general fund revenues) may be expended so that these funds will be used exclusively for airports and airways.

Airport and airway user tax study

Both versions of the bill direct the Department of Transportation to conduct a study and investigation to make available to the Congress information on the adequacy of the aviation user taxes provided by this bill in order to insure an equitable distribution of future tax burdens, among the various categories of airport and airway users as well as other persons deriving benefits from the aviation system. The Department is to make an interim report to the Congress by March 1, 1971, and a final report by March 1, 1972. Funds to finance the study are to be appropriated out of the Airport and Airway Trust Fund.

Application of certain other tax provisions

It was brought to the attention of the House and the Committee on Finance that Washington National Airport is the only Federal airport where Congress (in the Buck Act, 1940) has not enabled the States in which the airports are located to impose nondiscriminatory sales, use, and income taxes upon private individuals and business operations on Federal reservations. It appears inconsistent to continue complete exemption from State sales and income tax jurisdiction when other competitive businesses located in the vicinity are subject to these State taxes. It was concluded that the general rules as to tax jurisdiction on Federal reservations are also to apply, with certain exceptions, to Washington National Airport. Exceptions are provided with respect to taxes on aviation fuels, servicing of aircraft, landing or takeoff fees, and other charges dealing with aircraft, passengers, and freight. Facilities which serve persons not as passengers, however, are subject to the general State tax jurisdiction. This provision does not apply in the case of leases existing as of September 28, 1969, but will apply when such leases expire.

Inclusion of tax on passenger travel in air fares

The Finance Committee amendments, as indicated above with regard to the tax on passenger travel, provide that the Civil Aeronautics Board is to direct the air carriers under their jurisdiction to file new tariff fares for passenger travel to reflect the imposition of the 7.5 percent tax on the carrier's domestic taxable air fares, effective for the transportation of persons beginning after April 30, 1970. The Board also is to take similar action with respect to any future changes in the tax rate or base, including the scheduled reduction (under the Finance Committee amendments) of the tax from 7.5 percent to 4.8 percent for transportation of persons beginning after June 30, 1980 (the termination date for the new and increased aviation user taxes).

IV. GENERAL EXPLANATION OF THE REVENUE PROVISIONS

A. TAX ON AVIATION FUEL (SEC. 402 OF THE BILL AND SEC. 4041 OF THE INTERNAL REVENUE CODE)

Present law.—Under present law, a tax of 4 cents a gallon is imposed upon gasoline at the manufacturer's level but a credit or refund of

2 cents a gallon is allowed in the case of nonhighway use, including aviation use. Special fuels sold and used for nonhighway purposes, including aircraft purposes, are taxed at 2 cents a gallon at the retailer level. No tax is imposed at present upon the manufacture, sale, or use of jet fuel (kerosene).

In the case of nonhighway use of gasoline, 2 cents a gallon is paid over to the Highway Trust Fund. The special fuels taxes of 2 cents a gallon for nonhighway use are also paid over to the Highway Trust Fund, except that the taxes on fuels and gasoline used in motorboats are transferred from the Highway Trust Fund to the Land and Water Conservation Fund.

Explanation of provision.—Both the House and the Committee on Finance determined that an appropriate measure of the allocation of costs of the airport and airway system would involve a tax of 7 cents a gallon upon aircraft fuels used or sold for use in noncommercial aviation. To achieve this end, the retailers' tax on special fuels is expanded to apply to all fuels used in noncommercial aviation, including jet fuel, and is imposed at the rate of 7 cents a gallon. In the case of gasoline, in order not to disturb the manufacturers' tax mechanism applicable to gasoline sold for highway use (most gasoline is so sold and used), the 7-cents-a-gallon total on noncommercial aviation use of gasoline is reached by adding a 3-cents-a-gallon retailers' tax to the existing 4-cents-a-gallon manufacturers' tax.

Since both the House and the Committee on Finance determined that commercial aviation should be subject to taxes on passenger and air freight transportation in lieu of the fuel taxes, amendments are made to the existing 2-cents-a-gallon refund or credit procedure¹ for nonhighway use of gasoline. Commercial aircraft use of gasoline is to result in a full refund or credit of 4 cents a gallon, and no tax is to be imposed on the commercial use of "special fuels" (2 cents a gallon at present, if used for nonhighway purposes). On the other hand, the present 2-cents-a-gallon refund available for noncommercial aircraft use of gasoline and the present reduction in the retailers' tax on special fuels to 2 cents a gallon from 4 cents a gallon for aviation use is to be eliminated.

In general, the dividing line between noncommercial aviation (subject to the fuel taxes) and commercial aviation (subject to the taxes on passenger and air freight transportation) is use in a business of transporting persons or property for compensation or hire. If for a flight an aircraft is subject to the passenger or cargo tax, then it is, for that flight, used "in a business of transporting persons or property for compensation or hire by air" and is therefore for that flight not subject to the fuels taxes.

Exceptions from the rules applicable to commercial aircraft are provided under both versions of the bill in the case of certain small aircraft not on established lines and aircraft used by affiliated corporations under certain circumstances. In order to avoid the need for detailed recordkeeping, the use of such aircraft is not to be subject to the taxes on passenger and air freight transportation but is to be

¹Technically, governmental bodies and tax-exempt organizations (other than those required to file returns for unrelated business income tax) receive repayments under secs. 6420, 6421, 6424, and new 6427 which are neither credits nor refunds. Unless otherwise indicated, references to refunds in the case of fuels and lubricating oil taxes will generally include repayments under the sections listed in the preceding sentence.

subject to the fuels taxes. These exceptions are designed to assure that the taxpayer is not subjected to both sets of taxes for the same flight but on the other hand also to assure that the taxpayer is subjected to one set of taxes. These exceptions are described in greater detail below in (B)(3).

Registration procedures are authorized in this title, so that airlines and others in commercial aviation will be able to purchase aviation fuel free of the retailers' taxes. It is anticipated that the registration regulations will not permit the commercial aircraft owner to purchase all of his fuel tax free, but will permit tax-free sales of only that portion of his fuel used for flights to which the passenger and cargo taxes apply. For example, where an owner of an aircraft having a maximum certificated takeoff weight of more than 6,000 pounds is engaged part time in a passenger air charter business which is subject to the passenger tax and at all other times is engaged in noncommercial aviation, it is anticipated that the regulations will permit him to purchase tax free only that portion of the fuel used while engaged in the air charter business.

As indicated above, the 4-cent-a-gallon manufacturers' tax on gasoline will be recovered by refund or credit. Refund procedures are also provided for the retailers' taxes in those situations where the fuel is purchased tax-paid because, for example, the taxpayer neglected to register or to present the appropriate information to the retailer.

Existing law imposes a 2-cent-a-gallon tax on special motor fuels used for propulsion of an "airplane". This bill uses the term "aircraft," instead, in order to keep up with current technology and terminology. Accordingly, fuels used in noncommercial aviation will be subjected to the 7-cent-a-gallon taxes whether they are used in firm wing planes, helicopters, fueled gliders, or any other aircraft. This is not intended, however, to represent any substantive change in present law.

The bill also provides for an additional tax if a fuel is subject to tax at a higher rate on its actual use than the rate imposed on its sale. For example, the additional tax is imposed when a person purchases a fuel taxable at 4 cents a gallon for use as a fuel in a highway motor vehicle and then uses it as a fuel in his aircraft in noncommercial aviation. The additional tax imposed in this example would be 3 cents (the difference between the 4-cent rate for highway use and the 7-cent rate for aircraft use).

B. TAX ON TRANSPORTATION OF PERSONS AND PROPERTY BY AIR

1. *Tax on Transportation of Persons by Air (sec. 403 of the bill and secs. 4261 and 4262 of the Internal Revenue Code)*

Present law.—Under present law, a 5-percent tax is imposed on amounts paid within the United States for the taxable transportation of any person by air. The tax also applies to amounts paid outside the United States for air transportation which begins and ends in the United States.²

² However, the tax does not apply to amounts paid outside the United States for air transportation which begins or ends outside the United States even though there are intermediate stopovers within the United States (this rule applies regardless of the "225-mile zone" rule under section 4262(a)(1) and (c)(2) and the "6-hour" rule for an "uninterrupted international flight" under section 4262(c)(3), which apply only to amounts paid within the United States).

Taxable transportation, where the ticket is purchased in the United States, generally means air transportation which begins and ends in the United States or in "the 225-mile zone" (that portion of Canada and Mexico which is not more than 225 miles from the continental United States). However, there is a partial exclusion from the tax for trips to or from Alaska and Hawaii; namely, the portion of a flight to or from Alaska and Hawaii not over U.S. territory or the portion from the last port or station in the "225-mile zone."

No tax is imposed on an international flight (that is, a flight beginning or ending outside the United States or the 225-mile zone). Further, no tax is imposed on the transportation from one point in the United States to another point in the United States where it is part of an uninterrupted international flight (that is, the scheduled stop-over at the intermediate U.S. point is 6 hours or less).

Explanation of provision.—The House determined that an appropriate aviation user allocation involves increasing the existing tax upon passenger tickets from 5 percent to 8 percent of the amount paid for transportation, and imposing a new tax of \$3 per person upon international flights beginning in the United States. In the usual case under the House bill, a tax would be paid either at the 8-percent level or at the \$3 level, but not both. However, as indicated above, at the present time there are special rules with regard to domestic flights to and from Alaska and Hawaii. As a result of these rules, although those flights are domestic in the sense that they begin and end in the United States, only a small portion of any such flight may be subject to the 8-percent tax. Accordingly, under the House bill, the \$3 international departure tax would apply on flights to or from Alaska and Hawaii, where a portion of the flight is exempt from the 8-percent regular domestic ticket tax (i.e., the same exemption as under the present law 5-percent ticket tax).

The Finance Committee amendments change the application of the tax on domestic passenger air travel so that the tax is directly imposed on the airlines. This is accomplished by requiring the tax on domestic passenger travel to be included (and not separately stated) in the domestic fares. The tax is set at 7.5 percent of the air carrier's gross domestic fares (including tax) for taxable transportation. This is the equivalent (assuming the fares are raised by an amount which leaves the same after-tax price to the airline as in effect at present) of a tax of 8.11 percent of the existing tariff. (The Civil Aeronautics Board, as indicated below, is to direct each air carrier to file with the Board new passenger air fares increased (in the case of domestic travel) by the amount necessary to leave the air carriers with the same net fare after the imposition of the new tax of 7.5 percent as they have at present under the existing fares before the present 5-percent ticket tax. Moreover, the CAB is not to approve the new tariffs unless they are increased in accordance with this provision.)

The committee amendments, however, follow the same rules as the House bill (and present law) with regard to the definition of taxable and nontaxable air transportation (including the rules applying to transportation to or from Alaska and Hawaii). In addition, the same rules as are in the House bill are to apply with respect to the application of the new \$3 tax on international flights beginning in the United States (which will be added as a separate charge on the passenger's ticket, as under the House bill). However, the \$3 tax is to be referred

to as a tax on the use of international travel facilities since it will pay part of the cost of the facilities required by airports serving international flights. Thus, the \$3 tax is to apply in all cases where the 7.5-percent tax does not apply on the entire trip which begins in the United States. For example, where a flight is from San Francisco to London, and includes a scheduled stopover in New York for not more than 6 hours, only the \$3 international travel facilities use tax is to be imposed. If, however, the stopover in New York is scheduled for more than 6 hours, then the fare from San Francisco to New York would include the 7.5-percent tax on domestic passenger travel and the \$3 tax would be imposed on the passenger's ticket for the flight from New York to London. On a flight from Montreal to New York to London, where the ticket is purchased outside the United States, there would be no tax in the price of the passenger travel from Montreal to New York nor any \$3 tax on the flight to London, since the entire flight is considered to be an international flight not beginning in the United States. If the ticket were purchased within the United States, however, the scheduled stopover in New York would have to be for not more than 6 hours in order to qualify as a nontaxable uninterrupted international flight not beginning in the United States.³

Where a passenger purchases a round-trip ticket in London for air transportation to New York and back, the \$3 tax is to be imposed on the return flight from New York to London since the return flight begins in the United States (even though the ticket is paid for outside the United States).

The Finance Committee amendments do not change the present law procedure for requiring the person liable for tax, or required to collect the tax, to file appropriate returns and remit the tax to the Internal Revenue Service (secs. 4291 and 6001). In other words, the initial air carrier—not the travel agent who may actually initially receive the ticket fare (including a fare increase taking the tax into account) and who pays the ticket fare (less his commission) over to the air carrier—on whose ticket the flight is paid or billed is to continue to be liable for the payment or for the collection of the tax on passenger travel to the Government, even though this air carrier does not furnish all the transportation for which the ticket is written. For example, if the passenger's ticket is on air carrier A, but also includes transportation to be furnished by air carrier B, air carrier A would (as under present law) be liable for the payment or for the collection of the tax on the total air fare for the entire transportation included on the ticket. The 7.5-percent tax on domestic passenger travel is to be applied against the stated tariff, even though it may include commissions the travel agent charges the airline.

Both versions of the bill provide that the term "transportation" includes layover or waiting time and movement of the aircraft in deadhead service.

³ In other words, if the ticket were purchased in the United States and the scheduled stopover in New York were for more than 6 hours, the Montreal to New York portion would become taxable transportation under the "225-mile zone" rule (sec. 4262(a)(1)) and the fare for this portion would therefore include the 7.5-percent tax, further, the passenger would pay the \$3 tax on the New York to London flight as a separate flight "beginning" in the United States.

2. *Tax on Transportation of Property by Air (sec. 404 of the bill and new secs. 4271 and 4272 of the Internal Revenue Code)*

Present law.—Under present law, there is no excise tax imposed on the transportation of property by air. Prior to 1958, however, a tax of 3 percent had been imposed upon the transportation of property by rail, motor vehicle, water, or air from one point in the United States to another.

Explanation of provision.—The Committee on Finance agrees with the House that the user tax concept regarding the financing of airport and airway facilities should include a charge on the transportation of property by air. Therefore, both versions of the bill impose a new tax of 5 percent on the amount paid for domestic transportation of property by air. The committee amendments, however, make two modifications in the application of the tax on air freight: (1) air freight to or from Alaska and Hawaii is to be exempt from the tax for that portion of the flight not over U.S. territory or the portion of the flight from the last port or station in the "225-mile zone" (as under present law for the tax on passenger transportation (sec. 4262(b));⁴ and (2) the term "property" does not include excess baggage accompanying a passenger traveling on aircraft operated on an established line. This second provision applies only to baggage the passenger checks in at the commencement of his flight, and does not include any property transported as air freight. (The charge for excess baggage is not to be included in the base for the tax on passenger transportation.)

Amounts paid for accessorial services provided by the air carrier (either directly or through an independent contractor) with respect to the property transported by air are taxable under this provision if such service can only be provided by the airline and if the charge for the service is applicable to all those using it. On the other hand, if the service could also be provided by, say, a freight forwarder, the amounts paid for the service performed by the air carrier are not considered to be amounts paid for the transportation of property by air, and are therefore not subject to the tax, if the charges for such services are separately stated.

Under both versions of the bill, the tax applies to amounts paid, whether within or without the United States, to a person engaged in the business of transporting property by air for hire. In the case of freight forwarders, express companies, and similar persons (since the forwarder, etc., is not the person engaged in the business of transporting the property by air for hire), the tax is to be imposed upon, and measured by, the amount paid by the forwarder, etc., to the air carrier. In such a situation, the tax is not imposed upon the shipper, although it may be presumed that the amount charged by the forwarder, etc., to the shipper will take the tax into account.

The Finance Committee amendments clarify the determination of what constitutes "amounts paid" (i.e., the base for the tax) in the case of a joint provision of services by a person engaged in the business of transporting property by air for hire (i.e., an air carrier) and another person not so engaged (for example, Air Express). The "amount paid" for the taxable transportation furnished by the air carrier is to be treated as the sum of: (1) the receipts the air carrier receives from the joint provision of services (which include

⁴ This would also be true of portions of any other flights from one point in the United States to another point in the United States where the flight was at times more than 225 miles outside the United States.

the taxable services) and (2) any expenses incurred by the person not engaged in the business of transporting property by air for hire which are properly attributable to the taxable transportation performed and which are taken into account in determining the division of receipts to the persons engaged in the business (e.g., this would include a portion of the expenses for cooperative advertising which are deducted before the division of receipts is made between the parties).

The application of this tax may be illustrated by the following examples:

Example (1). A pays F, a freight forwarder, \$140 to containerize his merchandise and arrange for its shipment by air on Z airline from New York to Los Angeles. F must pay Z airline \$90 to have the merchandise transported by air. The \$90 F pays to Z is subject to the 5-percent tax.

Example (2). A contracts directly with Z airline to pay \$140 to have his merchandise picked up in New York, shipped by air, and delivered by consignee in Los Angeles. Of the \$140 Z airline receives, \$50 is attributable to pickup and delivery services to be provided by Z airline. A will not have to pay the 5-percent tax upon the \$50 attributable to such services.

Example (3). Z airline includes as part of its fee for transporting certain perishable goods in refrigerated compartments on board its aircraft a \$1-per-cubic-foot charge. This charge is subject to the 5-percent tax.

In the case of transportation of property into the United States from a point outside the United States, both versions of the bill impose the tax on that portion of the total charge, whether paid within or without the United States, for that part of the transportation by air which takes place within the United States. In addition, an exemption is provided for amounts paid for transportation of property in the course of exportation to a foreign destination, or shipment to a possession of the United States (including the Commonwealth of Puerto Rico).

Both versions of the bill provide that the term "transportation" includes layover or waiting time and movement of the aircraft in deadhead service.

3. Special Rules (sec. 405 of the bill and secs. 4292, 4293, and 4294 and new secs. 4281 and 4282 of the Internal Revenue Code)

Present law.—Present law provides a series of exemptions from the tax on transportation of persons by air. These include exemptions for: (1) commutation travel; (2) members of the Armed Forces where the fares are not more than 2.5 cents per mile; (3) transportation or facilities furnished to an international organization or to the Red Cross; (4) transportation by small aircraft not on established lines; (5) transportation furnished to the United States (at the discretion of the Secretary of the Treasury) and to State and local governments; and (6) transportation furnished to nonprofit schools and colleges.

Explanation of provision.—The House bill deletes most of these exemptions either as obsolete provisions or as unnecessary complications of existing law. The only exemptions referred to above which are retained in the House bill (which also include exemptions from the new \$3 tax on international departure flights and the new 5-

percent tax on air freight transportation) are those relating to international organizations and the Red Cross. The Finance Committee amendments, however, also remove the exemptions for international organizations and the Red Cross. Both versions of the bill also provide a special rule for small aircraft not on established lines and for aircraft for affiliated groups.

The existing exemptions for commutation travel and for members of the Armed Forces also are eliminated. They have little, if any, present application. The commutation-travel exemption was initially designed to exempt certain commuter bus or rail travel when such transportation was generally subject to tax. The exemption for members of the Armed Forces applied only where the fare was not over 25 cents per mile, which with air travel alone being taxed has little, if any, application.

The exemptions for transportation furnished to State and local governments, the United States, nonprofit educational organizations, international organizations, and the Red Cross are terminated by the Finance Committee amendments. It did not seem appropriate to continue special exemptions for these governmental, educational organizations and other organizations for two reasons. First, the tax on domestic passenger travel is imposed on the carrier, not the passenger, and second, the taxes on the transportation of persons and property by air are now generally viewed as user charges properly applicable in the case of all users.⁵

A situation that has come to the attention of the House and Committee on Finance involves the use of an aircraft by several members of an affiliated group of corporations. In such cases, the aircraft frequently is legally owned or leased in the name of one member of the group. The cost of the use of the plane is frequently apportioned among the members of the group either by actual payments or by appropriate book entries. In such cases, it was determined that only one set of aviation user taxes should apply and that it was most appropriate that the fuel taxes apply in such cases. Accordingly, under both versions of the bill, such cases involving affiliated groups are exempted from the taxes on the transportation of persons and property if the aircraft is not available for hire by persons not a member of the affiliated group, but are subjected to the fuel taxes. This decision is not intended to affect, one way or the other, the disposition of disputes that have arisen on this point. Such disputes are to be decided in accordance with existing law.

The existing exemption for small aircraft not on established lines is treated under both versions of the bill in essentially the same manner as the aircraft of affiliated corporations. That is, small aircraft not on established lines will continue to be exempt from the taxes on transportation of persons and property, but they will be subject to the fuel taxes. The definition of "small aircraft" for these purposes is changed from existing law in two respects: (1) the maximum certificated takeoff weight is reduced from 12,500 pounds to 6,000 pounds and (2) the maximum seating capacity limit of existing law ("less than 10 adult passengers, including the pilot") is eliminated.

The special treatment for affiliated groups and small aircraft not on established lines is provided to more efficiently carry out the over-

⁵ Removing the exemption for transportation furnished to the United States subjects the Post Office to the new 5-percent tax on amounts it pays for the transportation of mail by air.

all approach of the bill, i.e., to have the use of aircraft be subject either to the taxes on the transportation of persons and freight or else to the fuel taxes, but not to both as to any one trip. These two categories of aircraft are exempted from the taxes on the transportation of persons and freight but are made subject to the fuel taxes for all their flights. It is expected that this will substantially simplify recordkeeping for those taxpayers and also facilitate administration of the taxes. In the case of other aircraft not specifically exempted from the taxes on the transportation of persons and freight (e.g., air taxis sometimes on established lines, company planes used for groups that are not affiliated, and aircraft used sometimes for hire and sometimes for non-business purposes), the passenger and cargo taxes will apply at some times and the fuels taxes at other times. For example, a company plane used by a group of corporations not considered to be "affiliated" will pay the fuels taxes on all flights not determined to be "for hire" (for secs. 4261 and 4271 taxes), but will receive a refund or credit with respect to the fuel taxes for those flights where persons or property are transported by air for hire and the taxes on the transportation of persons or property apply.

When a gasoline-engine-powered aircraft is used for transporting persons or property for hire, the basic 4-cents-per-gallon gasoline tax is reflected in the price paid by the user (since it is a manufacturer's tax that has already been paid before it reaches the user) and a full refund is available as described above. In the case of the retailers' fuel taxes, the fuels may be sold tax-free under a certification method or such other appropriate methods as may be provided by regulations. The objective, as indicated above, is to have one set of taxes and not two sets apply to any one use of an aircraft.

The application of these special rules may be illustrated by the following examples:

(1) A, the owner of an aircraft having a maximum certificated take-off weight of 6,000 pounds or less, flies a round-trip established line route between two points within the United States each weekday morning. In the afternoon and evenings, he conducts an air charter business, flight school, and any other air transportation services that he can perform. That portion of the fuel used in the aircraft during his round-trip established line route is not taxable and the taxes imposed under 4261 and 4271 are applicable. However, all the remaining fuel used in the aircraft is taxable under 4041(c) because all uses of an aircraft of this size, except use on an established line, are uses of such aircraft in noncommercial aviation.

(2) Assume the same facts as in example (1) except that the aircraft has a maximum certificated takeoff weight of more than 6,000 pounds. Again, there would be no fuel tax on that portion of the fuel used on the round trip established line flights. However, on the afternoon flights it is necessary to determine on a flight-by-flight basis whether the aircraft is being used in a business of transporting persons or property for compensation or hire. If the aircraft is being used in such a business (an example of which would include a passenger or freight air charter flight), the taxes imposed by sections 4261 and 4271 would be applicable and there would be no fuel tax imposed by section 4041(c). If the aircraft was not being used in such a business (examples of which would include flight school training, forest fire spotting but not carry-

ing persons for hire to fight the fire, monitoring pipelines, a geophysical survey but not carrying persons for hire to perform the survey, and crop dusting), the fuel tax would be imposed under section 4041 (c) and the taxes imposed by sections 4261 and 4271 would not be applicable.

(3) An aircraft owned by an air carrier is used not only on its scheduled flights, but also to train pilots and carry executives of the air carrier on business flights. All of these flights are considered use of an aircraft in a business of transporting persons or property for compensation or hire by air, since the air carrier's aircraft is considered to be in commercial aviation, and therefore not subject to the fuel taxes.

(4) Any personal use of an aircraft by the owner, lessee, or other operator of an aircraft is use of the aircraft in noncommercial aviation. This includes such flights as family trips and pleasure flying.

C. TAX ON USE OF CIVIL AIRCRAFT (SEC. 406 OF THE BILL AND NEW SECS. 4491 THROUGH 4494 AND 6426 OF THE INTERNAL REVENUE CODE)

Present law.—The Internal Revenue Code does not at present impose a tax on the use of civil aircraft. A tax is imposed upon the use of heavy trucks on the highways and the revenues are paid into the Highway Trust Fund.

Explanation of provision.—The user charge program presented in both versions of the bill imposes, upon the use of any taxable civil aircraft, an annual use tax of \$25 plus an amount dependent upon the weight and type of propulsion of the aircraft. In the case of a turbine-engine-powered aircraft, the rate is 3½ cents a pound. In the case of other engine-driven aircraft, the rate is 2 cents a pound.

The Finance Committee amendments, however, provide an exemption from the poundage part of the annual use tax for aircraft capable of providing a seating capacity of four adults or less (including the crew). Thus, these smaller aircraft, which represent about 75 percent of the number of general aviation aircraft and which make relatively less use of the Federal aviation facilities, are to pay only the basic annual use tax of \$25.

The term "taxable civil aircraft" means any engine-driven aircraft which is either (1) registered, or required to be registered, under the Federal Aviation Act of 1958 (sec. 1401(a), title 49, United States Code) or (2) is owned by or for a U.S. person. (Thus, aircraft of the U.S. military, including the Air National Guard, are not subject to the use tax.) For purposes of this provision, incidental use by a manufacturer of aircraft (for example, testing before delivery) is not considered to be taxable use of a civil aircraft.

Under the bill, the weight upon which the use tax is based is the "maximum certificated takeoff weight." This is the maximum weight of the aircraft, accessories, fuel, pilot, passengers, and cargo that the aircraft is permitted on takeoff under the best conditions. The maximum certificated takeoff weight is a standardized concept used by the Federal Aviation Administration in the course of carrying out its air safety responsibilities. That weight is recorded on the type and airworthiness certificates for the aircraft (see sec. 1423, title 49, U.S. Code). It is understood and expected that the Federal Aviation Administration will cooperate with the Internal Revenue Service to facilitate administration of this provision.

The use tax is to be imposed upon the use of the aircraft in the navigable air space of the United States. For this purpose, the title has borrowed from the terminology of the Federal Aviation Act of 1958 (paragraph (24), of sec. 1301, title 49, U.S. Code), except that the term does not include the air space above the Commonwealth of Puerto Rico or any possession of the United States.

Under both versions of the bill, the tax is to be paid by the person in whose name the aircraft is, or is required to be, registered under the Federal Aviation Act. If the civil aircraft is not registered or required to be registered but it is owned by or for a United States person, and it uses the navigable airspace of the United States, then the tax is to be paid by the United States person by or for whom the aircraft is owned. However the Finance Committee amendments permit the use tax to be paid by the lessee, if he so elects; but if the lessee does not pay the tax, the lessor continues to be liable for the payment. On the other hand, no election may be made by a lessee for an aircraft leased from a person engaged in the business of transporting persons or property for compensation or hire by air. It is understood and expected that the Federal Aviation Administration will furnish the Internal Revenue Service with information helpful in the administration of this provision.

Foreign air carriers—not required to register their aircraft in the United States and not owned by United States persons—are not liable for the use tax. In order to avoid a competitive advantage favoring foreign air carriers over U.S. air carriers on international flights, the weight part of the use tax (sec. 4491(a)(2)) is to be refunded to U.S. air carriers based upon the extent that the aircraft is used in international flights. (However, the basic \$25 annual use tax per aircraft is not refundable where there is use in foreign air commerce.) Since the competition referred to above is commercial competition, the refund will relate only to those international flights that are commercial (i.e., transporting persons or property for hire). For these purposes, a domestic air carrier will be regarded as engaging in an international flight only if the flight either begins or ends outside the United States. Air carriers will keep records of airport-to-airport mileage of completely foreign commercial flights and of flights that involve departure from or entrance into the United States. (Standard mileages determined by the Civil Aeronautics Board will be used, avoiding the complex record-keeping involved in keeping track of detours to avoid temporary weather conditions.) If a domestic aircraft makes several landings in the United States, then the international portion of the flight will not begin for these purposes until the aircraft leaves its last United States port or station.

The Secretary of the Treasury is given specific authority to prescribe regulations under which these provisions may be effectively and efficiently administered. It is expected that an air carrier will be permitted by the regulations to aggregate its records as to total usage and international commercial usage of all its aircraft of a particular weight, avoiding the necessity for making refund computations on an aircraft-by-aircraft basis.

The Finance Committee amendments modify the refund procedure for aircraft used in foreign air commerce to permit persons whose aircraft were used to a "significant" degree (10 percent or more) in foreign air commerce for the preceding year to pay a "tentative tax"

based upon the refund experience of the preceding year, and settle the net use tax liability at the end of the year.

Under both versions of the bill, rules generally similar to those involving the highway user tax on heavy trucks will also apply here. For example, the aircraft use tax will be permitted to be paid in quarterly installments. Also, a payment of the use tax for any one aircraft during the year will be effective for the entire year. A change in ownership during the year will not result in a refund, but a new tax will not be imposed upon the new owner. (It is probable that this feature, together with the refund for foreign use, will be taken into account by the seller and the purchaser in reaching their agreement to transfer ownership of the plane.) In addition, if the first use of an aircraft occurs later than the first month of the year (for these purposes, the year begins on July 1), then the tax will be pro-rated on a month-by-month basis, as is now the case with the highway user tax.

For the fiscal year ending June 30, 1970, the Finance Committee amendments impose the use tax only upon the first use after March 31, 1970; except that for those aircraft exempted from the weight part of the use tax, the \$25 basic tax is imposed upon the first use after June 30, 1970. The weight part of the tax is apportioned according to the number of months remaining (including the month of the first use) in the year. The basic \$25 part of the use tax is reduced to \$6.25 for the period April-June 1970.

D. CREDITS OF CERTAIN TAXES AGAINST INCOME TAX (SEC. 407 OF THE BILL AND SECS. 39, 6420, 6421, AND 6424, AND NEW SEC. 6427 OF THE INTERNAL REVENUE CODE)

Present law.—Present law (secs. 6420, 6421, and 6424 of the Internal Revenue Code) provides for payments to the ultimate purchaser for the manufacturer's excise tax on gasoline used on a farm, for other nonhighway purposes, and by local transit systems and for the manufacturer's excise tax on lubricating oil used for nonhighway purposes. Most taxpayers obtain these payments by credits on their income tax returns against income tax otherwise due (as provided by sec. 39 of the code). The claim for payment or tax credit must be filed no later than the time prescribed by law for filing the income tax return.⁶

This short time limit for claiming payments or tax credits, basically 2½ months for corporations and 3½ months for individuals (3 months after the end of a quarter in the case of claims of \$1,000 or more), is in contrast to the normal income tax procedure, where a refund may be claimed within 3 years after the return is filed. As a result, a late filed claim for the above-mentioned excise tax payments or tax credits (other than the \$1,000-plus quarterly payments) is barred notwithstanding circumstances that might excuse the late filing of an income tax return on which the credit may be claimed.

Explanation of provision.—The Finance Committee amendments provide a payment or tax credit procedure in the case of the retailer's excise taxes on gasoline (added by this bill) and special fuels, that is

⁶ Claims for at least \$1,000 with respect to any of the first three quarters of the taxable year may be made within 3 months of the end of that quarter, in the case of gasoline and lubricating oil used for nonhighway purposes and gasoline used by local transit systems.

similar to the above-described existing procedures for manufacturer's excise taxes on gasoline and lubricating oil. The amendments then permit the credits (under sec. 39 of the code) in these cases to be claimed within the time available generally for filing a claim for credit or refund of an overpayment of income taxes. In general, where a return has been timely filed, this is within 3 years after the due date for filing the income tax return on which the credit may be claimed (i.e., 39½ months after the close of the taxable year for individuals and 38½ months for corporations).

This change is not to affect the 3-month limit on filing claims for refunds of \$1,000 or more which may be made quarterly during the taxable year in which the fuel or lubricating oil is used. Other claims for fuel or lubricating oil excise tax refunds (under secs. 6420, 6421, 6424, or new sec. 6427) made by governmental bodies and exempt organizations (which ordinarily do not file income tax returns on which these excise credits may be taken) also may be filed within the time for claiming income tax refund claims, instead of 3 months after the end of the year as at present. This will make the filing of full-year claims (but not the quarterly claims) for refunds (under secs. 6420, 6421, 6424, and 6427) similar to the new rule for claims for credits against income tax (under sec. 39).

Under the committee amendments, credits against income tax for gasoline, diesel fuels, special fuels, or lubricating oil tax (sec. 39) are to give rise to interest on overpayments as in the case of other income tax credits. On the other hand, payments under the excise tax provisions (secs. 6420, 6421, 6424, and 6427) for the gasoline, diesel fuels, special fuels, or lubricating oil taxes, as the case generally with regard to excise taxes (and as under present law), are made without interest being paid to the taxpayer.

The amendments also make a technical change in the Highway Revenue Act of 1956. That Act authorizes transfers out of the Highway Trust Fund on account of refunds or credits made with respect to the gasoline tax because of use on a farm, for nonhighway purposes, or by a local transit system (secs. 6420 and 6421) but only if the payments are made before July 1, 1973 (since the program for which the fund was established is scheduled to be completed by September 30, 1972). The Excise Tax Reduction Act of 1965, which placed revenues from the tax on lubricating oil into the Highway Trust Fund to the extent used in highway motor vehicles, treated claims for refunds or credit of this tax (under sec. 6424) in the same manner as the gasoline tax claims (under secs. 6420 and 6421). However, payments out of the Highway Trust Fund with respect to credits claimed on income tax returns (sec. 39) for either the gasoline or lubricating oil taxes under the 1965 Act were not limited as to the time during which transfers out of the Highway Trust Fund could be made.

E. AIRWAY AND AIRPORT TRUST FUND (SEC. 408 OF THE BILL)

Both versions of the bill create an "Airport and Airway Trust Fund," essentially along the lines of the existing Highway Trust Fund. The purpose of this provision is to insure that the user taxes provided for in this bill are expended for the improvement and maintenance of the systems that the taxpayers have used. Accordingly, the bill identifies those taxes (taxes on aviation fuel and gasoline used in general aviation, taxes on transportation of persons and property by

air, taxes on tires and tubes for aircraft, and the annual aircraft use tax) and provides that revenues from these user taxes are to be paid into the Airport and Airway Trust Fund.

In order to maintain effective control over the funding of the airport and airway system, the bill also provides that any general fund appropriations needed to supplement the aviation user taxes are to be paid into the Trust Fund. Both the tax revenues and the general fund appropriation will be paid out of the Fund in accordance with congressional appropriations acts.

The bill also describes those purposes for which trust fund moneys may be expended. In the case of airports, such moneys may be expended for the purposes authorized under the provisions of this bill respecting airports and airport operations and under the Federal Airport Act. In the case of the airway system, the bill specifies the purposes for which trust fund moneys may be expended. Such funds may be used for planning, research and development, construction, or operation and maintenance of the airway system (and for departmental expenses related to such purposes) but not for development of airplanes, such as the proposed development of a supersonic transport. Later amendments would have to be considered together with appropriate changes in the Trust Fund. Appropriations for purposes authorized by the Federal Aviation Act which are not described in the trust fund provisions of this bill will be provided for out of the general fund.

The committee recognizes that, at this point in the fiscal year, there are significant amounts of appropriated funds which have not yet been expended. A transfer of such funds on March 31, 1970, into the Trust Fund created by this bill would require additional appropriations legislation to permit payment out of the Trust Fund. In order to minimize such difficulties without diluting effective control over the funding of the system, the bill provides that unexpended but appropriated funds for the purposes set forth in this bill or for the purposes of the Federal Airport Act are to be transferred to the Trust Fund at the end of the current fiscal year, that is, at the end of June 30, 1970. From that point on, all expenditures for the purposes described in the bill and for the purposes of the Federal Airport Act, as presently in effect, are to be made out of the Trust Fund.

However, it is not intended that the Trust Fund should be collecting revenues for 3 months which may not be used in the interim. Consequently, the bill provides that the Trust Fund will be available after March 31, 1970, as provided by subsequent appropriations acts, for expenditures for the purposes of the fund. It is expected that expenditures may be made from the Trust Fund before July 1, 1970, in accordance with supplemental appropriations acts that may be requested by the Department of Transportation.

The effect of these provisions will be that, beginning July 1, 1970, all moneys for the purposes for which the Trust Fund is set up will be passed through the fund regardless of source and will be distributed out of the Trust Fund in accordance with appropriations acts.

F. DEPARTMENTAL INVESTIGATION AND REPORT TO CONGRESS (SEC. 409 OF THE BILL)

Both versions of the bill provide that the Department of Transportation will make a study and investigation of costs and use of the airport and airway system to develop information on the basis of

which Congress may determine the extent, if any, to which the aviation user taxes imposed by this bill should be revised in order to insure an equitable distribution of the burdens of financing the airport and airway system. The bill provides a period of about two years (until March 1, 1972) to complete the survey and present the information to Congress. The bill also provides for an interim report (as had been provided in the case of the Highway Trust Fund), to be presented by March 1, 1971. The expenses of this study are to be borne by the Trust Fund created by this bill.

G. APPLICATION OF CERTAIN OTHER TAX PROVISIONS (SEC. 410 OF THE BILL)

Present law.—Because of legislation enacted in 1945, the Washington National Airport has been exempt from the provisions of earlier legislation (the Buck Act, enacted in 1940) which authorized States to impose nondiscriminatory sales, use, and income taxes upon Federal reservations. It appears that Washington National Airport is the only civil airport owned by the United States that is so exempted from those provisions of general law.

Explanation of provision.—In connection with its examination into the funding and tax status of the airport and airway system of the United States, both the House and the Committee on Finance concluded that the exemptions presently provided for National Airport should be substantially reduced. While recognizing that this airport has a unique status, it was determined that, in general, National Airport should bear burdens more in line with those imposed upon (or that may be imposed upon) other civil airport facilities. In addition, consistency with those provisions of the bill removing existing exemptions from the tax on passenger travel in the case of governmental use, both by the States and the United States, appears to require minimization of the exemptions from State taxes in the case of Washington National Airport.

Accordingly, both versions of the bill provide that, with certain exceptions, the general rules as to State tax jurisdiction with respect to Federal reservations are to apply in the case of Washington National Airport. Exceptions are provided with regard to sales or use taxes on aircraft fuels or other servicing of aircraft, and landing or takeoff charges; thus, the bill continues to prohibit the imposition of State or local sales or use taxes on aircraft fuel and other servicing of aircraft. This applies to any tax imposed upon sale (or use), whether it is a general sales tax of the sort deductible under section 164(a)(4) of the code, a special tax upon the sale of fuel of the sort deductible under section 164(a)(5) of the code, or any other type of sales tax. However, facilities at the airport that do not deal directly with the passengers as passengers or with the aircraft would come under the provisions of general law. For example, facilities for the preparation of food to be served when the aircraft is airborne will be exempt, while restaurant and cafeteria facilities for the general public, employees, and others on the ground will be subject to the provisions of general law.

The bill provides an exception with respect to existing leases as of September 28, 1969. (The term "lease" includes a contract.) Since such leases were entered into with a view to the existing exemptions from State and local taxation, the bill provides that general law is to

begin to apply in any case only upon the expiration of the current terms of existing leases. It is understood that all existing leases will have expired before the end of 1974. Most existing leases will have expired well before that date.

II. INCLUSION OF TAX IN AIR FARES (SEC. 411 OF THE BILL)

The Finance Committee amendments, as indicated above with regard to the tax on passenger travel, provide that the Civil Aeronautics Board is to direct the air carriers under its jurisdiction (under sec. 403(a) of the Federal Aviation Act of 1958) to file new tariffs for transportation of persons by air to reflect the imposition of the tax on taxable domestic transportation under section 4261 (a) and (b) of the Internal Revenue Code. The new schedule of tariffs is to be effective for transportation of persons beginning after April 30, 1970 (the effective date for the new 7.5-percent tax on the air carrier's taxable domestic passenger air fares).

The new schedule of air fares is to reflect the exact amount (rounded to the nearest multiple of 10 cents) of the increase in the price due to the inclusion of the tax in the air fare. The Civil Aeronautics Board is to approve the new fares if and only if they are so increased. For example, suppose that the existing tariff for certain domestic passenger transportation is \$100.00. Under the committee amendments, a new tariff of \$108.11 would be calculated. The new 7.5-percent tax would be \$8.11, leaving the basic charge after the tax as it is before the tax under existing law. Since the Civil Aeronautics Board and the air carriers would be authorized to round the total tariff in such a case to the nearest multiple of 10 cents, the passenger would pay a total fare of \$108.10, about the same as he would pay for air transportation, including the 8-percent ticket tax, under the House bill.

The Board is further instructed by the committee amendments to take similar action with respect to any future changes in the tax rate or base. Thus, it is the committee's intention that the tax on the transportation of persons by air is not to be absorbed by the carriers.

Further, the Board is to direct the air carriers to submit reduced tariffs to reflect the tax reduction when the tax drops to 4.8 percent of the taxable domestic airfares for transportation after June 30, 1980, as provided by this title.

1. EFFECTIVE DATES

Under the House bill, the aviation user taxes on the transportation of persons and property by air apply to transportation beginning after December 31, 1969. The Finance Committee amendments make these taxes applicable to transportation beginning after April 30, 1970.

The House bill makes the changes with respect to the fuels taxes effective for sales and use of fuel after December 31, 1969. Under the Finance Committee amendments, the provisions regarding the fuels taxes are effective for sales and use of fuel on or after April 1, 1970.

Both versions of the bill impose the aircraft use tax on an annual basis (July 1 to June 30), with the House bill applying to the one-half-year period beginning January 1, 1970, and the Finance Committee amendments applying to the one-quarter-year period beginning

April 1, 1970. (However, those aircraft exempted from the weight part of the use tax under the Finance Committee amendments are not to become liable for the \$25 basic use tax until July 1, 1970.) Under both versions of the bill, if the first use of the taxable aircraft in U.S. airspace is later than 1 month after the beginning of the period, the use tax is prorated for the period remaining in the year. In addition, the right to a refund of a portion of the use tax on account of international commercial flights (but not the payment of the "tentative tax") will apply in the same way during the part of the year ending June 30, 1970, as it will apply thereafter, on a yearly basis. Claims for refund will have to be filed by September 30 of the calendar year within which the use tax is due. Therefore, claims for refund of the use tax for the last part of fiscal 1970 are to be filed by September 30, 1970.

Under the Finance Committee amendments, the provisions relating to the credits of certain taxes against income tax are effective for taxable years ending after March 31, 1970.

The effective dates for the Department of Transportation aviation use tax study, Trust Fund, Washington National Airport, and Civil Aeronautics Board provisions are described in detail in the parts of this report dealing with those provisions.

V. CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954 CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * *

SEC. 39. CERTAIN USES OF GASOLINE AND LUBRICATING OIL

(a) **GENERAL RULE.**—There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amount payable to the taxpayer—

(1) under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes (determined without regard to section 6420(h)),

(2) under section 6421 with respect to gasoline used during the taxable year (A) otherwise than as a fuel in a highway vehicle or (B) in vehicles while engaged in furnishing certain public passenger land transportation service (determined without regard to section 6421(i)), [and]

(3) under section 6424 with respect to lubricating oil used during the taxable year otherwise than in a highway motor vehicle (determined without regard to section 6424(g)) [.] and

(4) *under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(f)).*

(b) **TRANSITIONAL RULES.**—For purposes of paragraphs (1) and (2) of subsection (a), a taxpayer's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year. For purposes of paragraph (3) of subsection (a), a taxpayer's first taxable year beginning after December 31, 1965, shall include the period after December 31, 1965, and before the beginning of such first taxable year.

(c) **EXCEPTION.**—Credit shall not be allowed under subsection (a) for any amount payable under section 6421 [or 6424], 6424 or 6427 if a claim for such amount is timely filed, and under section 6421(i) [or 6424(g)], 6424(g), or 6427(f) is payable under such section.

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CHAPTER 31—RETAILERS EXCISE TAXES

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Subchapter E—Special Fuels

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SEC. 4041. IMPOSITION OF TAX.

(a) **DIESEL FUEL.**—There is hereby imposed a tax of 4 cents a gallon upon any liquid (other than any product taxable under section 4081)—

(1) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle; or

(2) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid under paragraph (1).

In the case of a liquid taxable under this subsection sold for use or used as a fuel in a diesel-powered highway vehicle (A) which (at the time of such sale or use) is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case if a diesel-powered highway vehicle owned by the United States, is not used on the highway, the tax imposed by paragraph (1) or by paragraph (2) shall be 2 cents a gallon. If a liquid on which tax was imposed by paragraph (1) at the rate of 2 cents a gallon by reason of the preceding sentence is used as a fuel in a diesel-powered highway vehicle (A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a diesel-powered highway vehicle owned by the United States, is used on the highway, a tax of 2 cents a gallon shall be imposed under paragraph (2).

(b) **SPECIAL MOTOR FUELS.**—There is hereby imposed a tax of 4 cents a gallon upon benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081 or subsection (a) of this section)—

(1) sold by any person to an owner, lessee, or other operator of a [motor vehicle, motorboat, or airplane] *motor vehicle or motorboat* for use as a fuel [for the propulsion of] *in such [motor vehicle, motorboat, or airplane] motor vehicle or motorboat*; or

(2) used by any person as a fuel **for the propulsion of a motor vehicle, motorboat, or airplane** *in a motor vehicle or motorboat* unless there was a taxable sale of such liquid under paragraph (1). In the case of a liquid taxable under this subsection sold for use or used otherwise than as a fuel **for the propulsion of** *in a highway vehicle (A) which (at the time of such sale or use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway, the tax imposed by paragraph (1) or by paragraph (2) shall be 2 cents a gallon. If a liquid on which tax was imposed by paragraph (1) at the rate of 2 cents a gallon by reason of the preceding sentence is used as a fuel for the propulsion of *in a highway vehicle (A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway, a tax of 2 cents a gallon shall be imposed under paragraph (2).**

(c) RATE REDUCTION.—On and after October 1, 1972—

- [(1) the taxes imposed by this section shall be 1½ cents a gallon; and**
- [(2) the second and third sentences of subsections (a) and (b) shall not apply.**

(d) EXEMPTION FOR FARM USE.—

[(1) EXEMPTION.—Under regulations prescribed by the Secretary or his delegate—

[(A) no tax shall be imposed under subsection (a)(1) or (b)(1) on the sale of any liquid sold for use on a farm for farming purposes, and

[(B) no tax shall be imposed under subsection (a)(2) or (b)(2) on the use of any liquid used on a farm for farming purposes.

[(2) USE ON A FARM FOR FARMING PURPOSES.—For purposes of paragraph (1) of this subsection, use on a farm for farming purposes shall be determined in accordance with paragraphs (1), (2), and (3) of section 6420(c).

(e) EXEMPTION FOR USE AS SUPPLIES FOR VESSELS.—Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under subsection (b) in the case of any fuel sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3)).

(c) NONCOMMERCIAL AVIATION.—

(1) IN GENERAL.—*There is hereby imposed a tax of 7 cents a gallon upon any liquid (other than any product taxable under section 4081)—*

(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation; or

(B) used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such liquid under this section.

(2) GASOLINE.—*There is hereby imposed a tax (at the rate specified in paragraph (3)) upon any product taxable under section 4081—*

(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation; or

(B) used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such product under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed under section 4081.

(3) **RATE OF TAX.**—The rate of tax imposed by paragraph (2) is as follows:

3 cents a gallon for the period ending September 30, 1972; and 5½ cents a gallon for the period after September 30, 1972.

(4) **DEFINITION OF NONCOMMERCIAL AVIATION.**—For purposes of this chapter, the term “noncommercial aviation” means any use of an aircraft, other than use in a business of transporting persons or property for compensation or hire by air. The term also includes any use of an aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282.

(5) **TERMINATION.**—On and after July 1, 1980, the taxes imposed by paragraphs (1) and (2) shall not apply.

(d) **ADDITIONAL TAX.**—If a liquid on which tax was imposed on the sale thereof is taxable at a higher rate under subsection (c)(1) of this section on the use thereof, there is hereby imposed a tax equal to the difference between the tax so imposed and the tax payable at such higher rate.

(e) **RATE REDUCTION.**—On and after October 1, 1972—

(1) the taxes imposed by subsections (a) and (b) shall be 1½ cents a gallon, and

(2) the second and third sentences of subsections (a) and (b) shall not apply.

(f) **EXEMPTION FOR FARM USE.**—

(1) **EXEMPTION.**—Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes.

(2) **USE ON A FARM FOR FARMING PURPOSES.**—For purposes of paragraph (1) of this subsection, use on a farm for farming purposes shall be determined in accordance with paragraphs (1), (2), and (3) of section 6420(c).

(g) **EXEMPTION FOR USE AS SUPPLIES FOR VESSELS.**—Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this section on any liquid sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3)).

(h) **REGISTRATION.**—If any liquid is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this section that a tax imposed by this section applies to the sale of such liquid unless the purchaser is registered in such manner (and furnishes such information in respect of the use of the liquid) as the Secretary or his delegate shall by regulations provide.

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CHAPTER 32—MANUFACTURERS EXCISE TAXES

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SEC. 4082. DEFINITIONS.

(a) **PRODUCER.**—As used in this subpart, the term “producer” includes a refiner, compounder, blender, or wholesale distributor, and a dealer selling gasoline exclusively to producers of gasoline, as well as a producer. Any person to whom gasoline is sold tax-free under this subpart shall be considered the producer of such gasoline.

* * * * *

(c) **CERTAIN USES DEFINED AS SALES.**—If a producer or importer uses (otherwise than in the production of gasoline or of special [motor] fuels referred to in section 4041 [(b)] gasoline sold to him free of tax, or produced or imported by him, such use shall for the purposes of this chapter be considered a sale.

* * * * *

CHAPTER 33—FACILITIES AND SERVICES

SUBCHAPTER A. [Repealed]
 SUBCHAPTER B. Communications.
 SUBCHAPTER C. Transportation [or persons] by air.
 SUBCHAPTER D. [Repealed]
 SUBCHAPTER E. Special provisions applicable to services and facilities taxes.

* * * * *

[Subchapter C—Transportation of Persons by Air

[Sec. 4261. Imposition of tax.
 [Sec. 4262. Definition of taxable transportation.
 [Sec. 4263. Exemptions.
 [Sec. 4264. Special rules.]

* * * * *

Subchapter C—Transportation by Air

*Part I. Persons.
 Part II. Property.
 Part III. Special provisions relating to taxes on transportation by air.*

PART I—PERSONS

*Sec. 4261. Imposition of tax.
 Sec. 4262. Definition of taxable transportation.
 Sec. 4263. Special rules.*

SEC. 4261. IMPOSITION OF TAX.

[(a) **AMOUNTS PAID WITHIN THE UNITED STATES.**—There is hereby imposed upon the amount paid within the United States for taxable transportation (as defined in section 4262) of any person by air a tax

equal to 5 percent of the amount so paid for transportation which begins after November 15, 1962.

[(b) AMOUNTS PAID OUTSIDE THE UNITED STATES.—There is hereby imposed upon the amount paid without the United States for taxable transportation (as defined in section 4262) of any person by air, but only if such transportation begins and ends in the United States, a tax equal to 5 percent of the amount so paid for transportation which begins after November 15, 1962.

[(c) SEATS, BERTHS, ETC.—There is hereby imposed upon the amount paid for seating or sleeping accommodations in connection with transportation with respect to which a tax is imposed by subsection (a) or (b) a tax equivalent to 5 percent of the amount so paid in connection with transportation which begins after November 15, 1962.

[(d) BY WHOM PAID.—Except as provided in section 4264, the taxes imposed by this section shall be paid by the person making the payment subject to the tax.]

(a) *IN GENERAL.*—There is hereby imposed upon the taxable transportation (as defined in section 4262) of any person which begins after April 30, 1970, a tax equal to 7.5 percent of the amount paid by such person for such transportation. In the case of taxable transportation paid for outside the United States, the tax imposed by this subsection shall apply only if such transportation begins and ends in the United States.

(b) *SEATS, BERTHS, ETC.*—There is hereby imposed upon seating or sleeping accommodations furnished to any person in connection with transportation which begins after April 30, 1970, and with respect to which a tax is imposed by subsection (a), a tax equal to 7.5 percent of the amount paid by such person for the use of such accommodations.

(c) *USE OF INTERNATIONAL TRAVEL FACILITIES.*—There is hereby imposed a tax of \$3 upon any amount paid (whether within or without the United States) for any transportation which begins in the United States after April 30, 1970, of any person by air. This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to section 4281 and 4282).

(d) *BY WHOM PAID.*—The taxes imposed by subsections (a) and (b) shall be paid by the person receiving the payment for the transportation or accommodations subject to the tax. Except as provided in section 4263(a), the tax imposed by subsection (c) shall be paid by the person making the payment subject to the tax.

(e) *REDUCTION, ETC. OF RATES.*—Effective with respect to transportation beginning after June 30, 1980—

(1) the rate of the taxes imposed by subsections (a) and (b) shall be 4.8 percent, and

(2) the tax imposed by subsection (c) shall not apply.

SEC. 4262. DEFINITION OF TAXABLE TRANSPORTATION.

(a) *TAXABLE TRANSPORTATION; IN GENERAL.*—For purposes of this [subchapter] part, except as provided in subsection (b), the term "taxable transportation" means—

(1) transportation *by air* which begins in the United States or in the 225-mile zone and ends in the United States or in the 225-mile zone; and

(2) in the case of transportation *by air* other than transportation described in paragraph (1), that portion of such transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States, but

only if such portion is not a part of uninterrupted international air transportation (within the meaning of subsection (c)(3)).

(b) **EXCLUSION OF CERTAIN TRAVEL.**—For purposes of this [subchapter] part, the term “taxable transportation” does not include that portion of any transportation *by air* which meets all 4 of the following requirements:

- (1) such portion is outside the United States;
- (2) neither such portion nor any segment thereof is directly or indirectly—

(A) between (i) a point where the route of the transportation leaves or enters the continental United States, or (ii) a port or station in the 225-mile zone, and

(B) a port or station in the 225-mile zone;

- (3) such portion—

(A) begins at either (i) the point where the route of the transportation leaves the United States, or (ii) a port or station in the 225-mile zone, and

(B) ends at either (i) the point where the route of the transportation enters the United States, or (ii) a port or station in the 225-mile zone; and

(4) a direct line from the point (or the port or station) specified in paragraph (3)(A), to the point (or the port or station) specified paragraph (3)(B), passes through or over at point which is not within 225 miles of the United States.

(c) **DEFINITIONS.**—For purposes of this section—

(1) **CONTINENTAL UNITED STATES.**—The term “continental United States” means the District of Columbia and the States other than Alaska and Hawaii.

(2) **225-MILE ZONE.**—The term “225-mile zone” means that portion of Canada and Mexico which is not more than 225 miles from the nearest point in the continental United States.

(3) **UNINTERRUPTED INTERNATIONAL AIR TRANSPORTATION.**—The term “uninterrupted international air transportation” means any transportation by air which is not transportation described in subsection (a)(1) and in which—

(A) the scheduled interval between (i) the beginning or end of the portion of such transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States and (ii) the end or beginning of the other portion of such transportation is not more than 6 hours, and

(B) the scheduled interval between the beginning or end and the end or beginning of any two segments of the portion of such transportation referred to in subparagraph (A)(i) is not more than 6 hours.

For purposes of this paragraph, in the case of personnel of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard traveling in uniform at their own expense when on official leave, furlough, or pass, the scheduled interval described in subparagraph (A) shall be deemed to be not more than 6 hours if a ticket for the subsequent portion of such transportation is purchased within 6 hours after the end of the earlier portion of such transportation and the purchaser accepts and utilizes the first

accommodations actually available to him for such subsequent portion.

(d) *TRANSPORTATION*.—For purposes of this part, the term "transportation" includes layover or waiting time and movement of the aircraft in deadhead service.

SEC. 4263. EXEMPTIONS.

[(a) *COMMUTATION TRAVEL, ETC.*—The tax imposed by section 4261 shall not apply to amounts paid for transportation which do not exceed 60 cents, to amounts paid for commutation or season tickets for single trips of less than 30 miles, or to amounts paid for commutation tickets for one month or less.

[(b) *CERTAIN ORGANIZATIONS.*—The tax imposed by section 4261 shall not apply to the payment for transportation or facilities furnished to an international organization, or any corporation created by Act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864.

[(c) *MEMBERS OF THE ARMED FORCES.*—The tax imposed by section 4261 shall not apply to the payment for transportation or facilities furnished under special tariffs providing for fares of not more than 2.5 cents per mile applicable to round-trip tickets sold to personnel of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard traveling in uniform of the United States at their own expense when on official leave, furlough, or pass, including authorized cadets and midshipmen, issued on presentation of properly executed certificate.

[(d) *SMALL AIRCRAFT ON NONESTABLISHED LINES.*—The tax imposed by section 4261 shall not apply to transportation by aircraft having—

[(1) a gross takeoff weight (as determined under regulations prescribed by the Secretary or his delegate) of less than 12,500 pounds, and

[(2) a passenger seating capacity of less than ten adult passengers, including the pilot,

except when such aircraft is operated on an established line.]

SEC. [4264] 4263. SPECIAL RULES.

(a) *PAYMENTS MADE OUTSIDE THE UNITED STATES FOR PREPAID ORDERS.*—If the payment upon which tax is imposed by section [4261] 4261(c) is made outside the United States for a prepaid order, exchange order, or similar order, the person furnishing the initial transportation pursuant to such order shall collect the amount of the tax.

(b) *TAX DEDUCTED UPON REFUNDS.*—Every person who refunds any amount with respect to a ticket or order which was purchased without payment of the tax imposed by section [4261] 4261(c) shall deduct from the amount refundable, to the extent available, any tax due under such section as a result of the use of a portion of the transportation purchased in connection with such ticket or order, and shall report to the Secretary or his delegate the amount of any such tax remaining uncollected.

(c) *PAYMENT OF TAX.*—Where any tax imposed by section [4261] 4261(c) is not paid at the time payment for transportation is made, then, under regulations prescribed by the Secretary or his delegate,

to the extent that such tax is not collected under any other provision of this subchapter—

(1) such tax shall be paid by the person paying for the transportation or by the person using the transportation;

(2) such tax shall be paid within such time as the Secretary or his delegate shall prescribe by regulations after whichever of the following first occurs:

(A) the rights to the transportation expire; or

(B) the time when the transportation becomes subject to tax; and

(3) payment of such tax shall be made to the Secretary or his delegate, to the person to whom the payment for transportation was made, or, in the case of transportation other than transportation described in section 4262(a)(1), to any person furnishing any portion of such transportation.

(d) **APPLICATION OF TAX.**—The tax imposed by section **[4261]** 4261(c) shall apply to any amount paid within the United States for transportation of any person by air unless the taxpayer establishes, pursuant to regulations prescribed by the Secretary or his delegate, at the time of payment for the transportation, that the transportation is not transportation in respect of which tax is imposed by section **[4261]** 4261(c).

(e) **ROUND TRIPS.**—In applying this subchapter to a round trip, such round trip shall be considered to consist of transportation from the point of departure to the destination, and of separate transportation thereafter.

(f) **TRANSPORTATION OUTSIDE THE NORTHERN PORTION OF THE WESTERN HEMISPHERE.**—In applying this subchapter to transportation any part of which is outside the northern portion of the Western Hemisphere, if the route of such transportation leaves and reenters the northern portion of the Western Hemisphere, such transportation shall be considered to consist of transportation to a point outside such northern portion, and of separate transportation thereafter. For purposes of this subsection, the term “northern portion of the Western Hemisphere” means the areas lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator but not including any country of South America.

PART II—PROPERTY

Sec. 4271. Imposition of tax.

Sec. 4272. Definition of taxable transportation, etc.

SEC. 4271. IMPOSITION OF TAX.

(a) **IN GENERAL.**—There is hereby imposed upon the amount paid within or without the United States for the taxable transportation (as defined in section 4272) of property which begins after April 30, 1970, a tax equal to 5 percent of the amount so paid for such transportation. The tax imposed by this subsection shall apply only to amounts paid to a person engaged in the business of transporting property by air for hire.

(b) **BY WHOM PAID.**—The tax imposed by this section shall be paid by the person making the payment subject to the tax, except that, to the extent that such tax is imposed upon any amount paid outside the United States and is not paid by the person making the payment subject to such tax, such tax shall be paid by the person to whom the property is consigned at its destination within the United States.

(c) **DETERMINATION OF AMOUNTS PAID IN CERTAIN CASES.**—For purposes of this section, in any case in which a person engaged in the business of transporting property by air for hire and one or more other persons not so engaged jointly provide services which include taxable transportation of property, and the person so engaged receives, for the furnishing of such taxable transportation, a portion of the receipts from the joint providing of such services, the amount paid for the taxable transportation shall be treated as being the sum of (1) the portion of the receipts so received, and (2) any expenses incurred by any of the persons not so engaged which are properly attributable to such taxable transportation and which are taken into account in determining the portion of the portion of the receipts so received.

(d) **TERMINATION.**—Effective with respect to transportation beginning after June 30, 1980, the tax imposed by subsection (a) shall not apply.

SEC. 4272. DEFINITION OF TAXABLE TRANSPORTATION, ETC.

(a) **IN GENERAL.**—For purposes of this part, except as provided in subsection (b), the term "taxable transportation" means—

(1) in the case of transportation by air from one point in the United States to another point in the United States, all of such transportation, and

(2) in the case of transportation by air from a point outside the United States to a point in the United States, that portion of such transportation which takes place within the United States.

(b) **EXCEPTIONS.**—For purposes of this part, the term taxable transportation does not include—

(1) that portion of any transportation which meets the requirements of paragraphs (1), (2), (3), and (4) of section 4262(b), or

(2) under regulations prescribed by the Secretary or his delegate, transportation of property in the course of exportation (including shipment to a possession of the United States) by continuous movement, and in due course so exported.

(c) **EXCESS BAGGAGE OF PASSENGERS.**—For purposes of this part, the term "property" does not include excess baggage accompanying a passenger traveling on an aircraft operated on an established line.

(d) **TRANSPORTATION.**—For purposes of this part, the term "transportation" includes layover or waiting time and movement of the aircraft in deadhead service.

PART III—SPECIAL PROVISIONS APPLICABLE TO TAXES ON TRANSPORTATION BY AIR

Sec. 4281. Small aircraft on nonestablished lines.

Sec. 4282. Transportation by air for other members of affiliated group.

SEC. 4281. SMALL AIRCRAFT ON NONESTABLISHED LINES.

The taxes imposed by sections 4261 and 4271 shall not apply to transportation by an aircraft having a maximum certificated takeoff weight (as defined in section 4492(b)) of 6,000 pounds or less, except when such aircraft is operated on an established line.

SEC. 4282. TRANSPORTATION BY AIR FOR OTHER MEMBERS OF AFFILIATED GROUP.

(a) **GENERAL RULE.**—Under regulations prescribed by the Secretary or his delegate, if—

(1) one member of an affiliated group is the owner or lessee of an aircraft, and

(2) such aircraft is not available for hire by persons who are not members of such group. the taxes imposed by sections 4261 and 4271 shall not apply to transportation furnished by such member to another member of the affiliated group by the use of such aircraft.

(b) **AFFILIATED GROUP.**—For purposes of subsection (a), the term “affiliated group” has the meaning assigned to such term by section 1504(a) except that all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

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Subchapter E—Special Provisions Applicable to Services and Facilities Taxes

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SEC. 4291. CASES WHERE PERSONS RECEIVING PAYMENT MUST COLLECT TAX.

Except as otherwise provided in section [4264(a)] 4263(a), every person receiving any payment for facilities or services on which a tax is imposed upon the payor thereof under this chapter shall collect the amount of the tax from the person making such payment.

SEC. 4292. STATE AND LOCAL GOVERNMENT EXEMPTION.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under section 4251 [or 4261] upon any payment received for services or facilities furnished to the Government of any State, Territory of the United States, or any political subdivision of the foregoing or the District of Columbia.

SEC. 4293. EXEMPTION FOR UNITED STATES AND POSSESSIONS.

The Secretary may authorize exemption from the taxes imposed by chapter 31 and 32 and [subchapters B and C] subchapter B of chapter 33, as to any particular article, or service or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States.

SEC. 4294. EXEMPTION FOR NONPROFIT EDUCATIONAL ORGANIZATIONS.

(a) **EXEMPTION.**—Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under section 4251 [or 4261] on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization.

(b) **DEFINITION.**—For purposes of subsection (a), the term “nonprofit educational organization” means an educational organization described in section 503(b)(2) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

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CHAPTER 36—CERTAIN OTHER EXCISE TAXES

- SUBCHAPTER A. [Repealed]
 SUBCHAPTER B. Occupational tax on coin-operated devices.
 SUBCHAPTER C. [Repealed]
 SUBCHAPTER D. Tax on use of certain vehicles.
 SUBCHAPTER E. Tax on use of civil aircraft.

Subchapter E—Tax on Use of Civil Aircraft

- Sec. 4491. Imposition of tax.
 Sec. 4492. Definitions.
 Sec. 4493. Special rules.
 Sec. 4494. Cross reference.

SEC. 4491. IMPOSITION OF TAX.

(a) *IMPOSITION OF TAX.*—A tax is hereby imposed on the use of any taxable civil aircraft during any year at the rate of—

(1) \$25, plus

(2) in the case of any aircraft capable of providing a seating capacity for more than 4 adult individuals (including the crew), 2 cents a pound for each pound of the maximum certificated takeoff weight of the aircraft.

In the case of any turbine engine powered aircraft, the rate under paragraph (2) shall be $3\frac{1}{2}$ cents a pound in lieu of 2 cents.

(b) *BY WHOM PAID.*—Except as provided in section 4493(a), the tax imposed by this section shall be paid—

(1) in the case of a taxable civil aircraft described in section 4492

(a)(1), by the person in whose name the aircraft is, or is required to be registered, or

(2) in the case of a taxable civil aircraft described in section 4492

(a)(2), by the United States person by or for whom the aircraft is owned.

(c) *PRORATION OF TAX.*—If in any year the first use of the taxable civil aircraft is after the first month in such year, that portion of the tax which is determined under subsection (a)(2) shall be reckoned proportionately from the first day of the month in which such use occurs to and including the last day in such year.

(d) *ONE TAX LIABILITY PER YEAR.*—

(1) *IN GENERAL.*—To the extent that the tax imposed by this section is paid with respect to any taxable civil aircraft for any year, no further tax shall be imposed by this section for such year with respect to such aircraft.

(2) *CROSS REFERENCE.*—

For privilege of paying tax imposed by this section in installments, see section 6156.

(e) *SPECIAL RULES FOR PERIOD BEGINNING APRIL 1, 1970, AND ENDING JUNE 30, 1970.*—For purposes of this section, in the case of the year ending June 30, 1970—

(1) there shall not be taken into account any use before April 1, 1970, and

(2) that portion of the tax which is determined under subsection (a)(1) shall—

(A) except as provided in subparagraph (B), be \$6.25 in lieu of \$25, and

(B) not apply in the case of taxable civil aircraft to which the portion of the tax which is determined under subsection (a)(2) does not apply.

(f) **TERMINATION.**—On and after July 1, 1980, the tax imposed by subsection (a) shall not apply.

SEC. 4492. DEFINITIONS.

(a) **TAXABLE CIVIL AIRCRAFT.**—For purposes of this subchapter, the term “taxable civil aircraft” means any engine driven aircraft—

(1) registered, or required to be registered, under section 501(a) of the Federal Aviation Act of 1958 (49 U.S.C., sec. 1401(a)), or

(2) which is not described in paragraph (1) but which is owned by or for a United States person.

(b) **WEIGHT.**—For purposes of this subchapter, the term “maximum certificated takeoff weight” means the maximum such weight contained in the type certificate or airworthiness certificate.

(c) **OTHER DEFINITIONS.**—For purposes of this subchapter—

(1) **YEAR.**—The term “year” means the one-year period beginning on July 1.

(2) **USE.**—The term “use” means use in the navigable airspace of the United States.

(3) **NAVIGABLE AIRSPACE OF THE UNITED STATES.**—The term “navigable airspace of the United States” has the definition given to such term by section 101(24) of the Federal Aviation Act of 1958 (49 U.S.C., sec. 1301(24)), except that such term does not include the navigable airspace of the Commonwealth of Puerto Rico or of any possession of the United States.

SEC. 4493. SPECIAL RULES.

(a) **PAYMENT OF TAX BY LESSEE.**—

(1) **IN GENERAL.**—Any person who is the lessee of any taxable civil aircraft on the day in any year on which occurs the first use which subjects such aircraft to the tax imposed by section 4491 for such year may, under regulations prescribed by the Secretary or his delegate, elect to be liable for payment of such tax. Notwithstanding any such election, if such lessee does not pay such tax, the lessor shall also be liable for payment of such tax.

(2) **EXCEPTION.**—No election may be made under paragraph (1) with respect to any taxable civil aircraft which is leased from a person engaged in the business of transporting persons or property for compensation or hire by air.

(b) **CERTAIN PERSONS ENGAGED IN FOREIGN AIR COMMERCE.**—

(1) **ELECTION TO PAY TENTATIVE TAX.**—Any person who is a significant user of taxable civil aircraft in foreign air commerce may, with respect to that portion of the tax imposed by section 4941 which is determined under section 4491(a)(2) on any taxable civil aircraft for any year beginning on or after July 1, 1970, elect to pay the tentative tax determined under paragraph (2). The payment of such tentative tax shall not relieve such person from payment of the net liability for the tax imposed by section 4491 on such taxable civil aircraft (determined as of the close of such year).

(2) **TENTATIVE TAX.**—For purposes of paragraph (1), the tentative tax with respect to any taxable civil aircraft for any year is an amount equal to that portion of the tax imposed by section 4491 on

such aircraft for such year which is determined under section 4491(a) (2), reduced by a percentage of such amount equal to the percentage which the aggregate of the payments to which such person was entitled under section 6426 (determined without regard to section 6426(c)) with respect to the preceding year is of the aggregate of the taxes imposed by section 4491 for which such person was liable for payment for the preceding year.

(3) **SIGNIFICANT USERS OF AIRCRAFT IN FOREIGN AIR COMMERCE.**—For purposes of paragraph (1), a person is a significant user of taxable civil aircraft in foreign air commerce for any year only if the aggregate of the payments to which such person was entitled under section 6426 (determined without regard to section 6426(c)) with respect to the preceding year was at least 10 percent of the aggregate of the taxes imposed by section 4491 for which such person was liable for payment for the preceding year.

(4) **NET LIABILITY FOR TAX.**—For purposes of paragraph (1), the net liability for the tax imposed by section 4491 with respect to any taxable civil aircraft for any year is—

(A) the amount of the tax imposed by such section, reduced by

(B) the amount payable under section 6426 with respect to such aircraft for the year (determined without regard to section 6426(c)).

SEC. 4494. CROSS REFERENCE.

For penalties and administrative provisions applicable to this subchapter, see subtitle F.

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CHAPTER 62—TIME AND PLACE FOR PAYING TAX

SUBCHAPTER A. Place and due date for payment of tax.

SUBCHAPTER B. Extensions of time for payment.

Subchapter A—Place and Due Date for Payment of Tax

Sec. 6151. Time and place for paying tax shown on returns.

Sec. 6152. Installment payments.

Sec. 6153. Installment payments of estimated income tax by individuals.

Sec. 6154. Installment payments of estimated income tax by corporations.

Sec. 6155. Payment on notice and demand.

Sec. 6156. Installment payments of tax on use of highway motor vehicles and civil aircraft.

Sec. 6157. Payment of Federal unemployment tax on quarterly or other time period basis.

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SEC. 6156. INSTALLMENT PAYMENTS OF TAX ON USE OF HIGHWAY MOTOR VEHICLES AND CIVIL AIRCRAFT.

(a) **PRIVILEGE TO PAY TAX IN INSTALLMENTS.**—If the taxpayer files a return of the tax imposed by section 4481 or 4491 on or before the date prescribed for the filing of such return, he may elect to pay

the tax shown on such return in equal installments in accordance with the following table:

If liability is incurred in—	The number of installments shall be—
July, August, or September.....	4
October, November, or December.....	3
January, February, or March.....	2
* * * * * *	

(e) SECTION INAPPLICABLE TO CERTAIN LIABILITIES.—This section shall not apply to any liability for tax incurred in—

- (1) April, May, or June of any year, or
- (2) July, August, or September of 1972, *in the case of the tax imposed by section 4481.*

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CHAPTER 63—ASSESSMENT

SUBCHAPTER A. In general.

SUBCHAPTER B. Deficiency procedures in the case of income, estate, gift, and certain excise taxes.

Subchapter A—In General

Sec. 6201. Assessment authority.

Sec. 6202. Establishment by regulations of mode or time of assessment.

Sec. 6203. Method of assessment.

Sec. 6204. Supplemental assessments.

Sec. 6205. Special rules applicable to certain employment taxes.

Sec. 6206. Special rules applicable to excessive claims under sections 6420, 6421 [and 6424] 6424, and 6427.

Sec. 6207. Cross references.

SEC. 6201. ASSESSMENT AUTHORITY.

(a) AUTHORITY OF SECRETARY OR DELEGATE.—The Secretary or his delegate is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

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(4) ERRONEOUS CREDIT [FOR USE OF GASOLINE] UNDER SECTION 39.—If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit allowable by section 39 (relating to certain uses of gasoline, *special fuels*, and lubricating oil), the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary or his delegate in the same manner as in the case of a mathematical error appearing upon the return.

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SEC. 6206. SPECIAL RULES APPLICABLE TO EXCESSIVE CLAIMS UNDER SECTIONS 6420, 6421 [AND 6424], AND 6427.

Any portion of a payment made under section 6420, 6421 [or 6424], 6424, or 6427 which constitutes an excessive amount (as defined in section 6675(b)), and any civil penalty provided by section 6675, may be assessed and collected as if it were a tax imposed [by section 4081 (or, in the case of lubricating oil, by section 4091)] by section 4081 (with respect to payments under sections 6420 and 6421), 4091 (with respect to payments under section 6424), or 4041 (with respect to payments under section 6427) and as if the person who made the claim were liable for such tax. The period for assessing any such portion, and for assessing any such penalty, shall be 3 years from the last day prescribed for the filing of the claim under section 6420, 6421 [or 6424], 6424, or 6427 as the case may be.

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

SUBCHAPTER A. Procedure in general.

SUBCHAPTER B. Rules of special application.

Subchapter A—Procedure in General

- Sec. 6401. Amounts treated as overpayments.
- Sec. 6402. Authority to make credits or refunds.
- Sec. 6403. Overpayment of installment.
- Sec. 6404. Abatements.
- Sec. 6405. Reports of refunds and credits.
- Sec. 6406. Prohibition of administrative review of decisions.
- Sec. 6407. Date of allowance of refund or credit.

SEC. 6401. AMOUNTS TREATED AS OVERPAYMENTS.

(a) **ASSESSMENT AND COLLECTION AFTER LIMITATION PERIOD.**—The term "overpayment" includes that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto.

(b) **EXCESSIVE CREDITS.**—If the amount allowable as credits under sections 31 (relating to tax withheld on wages), 39 (relating to certain uses of gasoline, *special fuels*, and lubricating oil) and 667(b) (relating to taxes paid by certain trusts) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1, other than the credits allowable under sections 31 and 39), the amount of such excess shall be considered an overpayment.

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Subchapter B—Rules of Special Application

- Sec. 6411. Tentative carryback adjustments.
 Sec. 6412. Floor stocks refunds.
 Sec. 6413. Special rules applicable to certain employment taxes.
 Sec. 6414. Income tax withheld.
 Sec. 6415. Credits or refunds to persons who collected certain taxes.
 Sec. 6416. Certain taxes on sales and services.
 Sec. 6417. Coconut and palm oil.
 Sec. 6418. Sugar.
 Sec. 6419. Excise tax on wagering.
 Sec. 6420. Gasoline used on farms.
 Sec. 6421. Gasoline used for certain nonhighway purposes or by local transit systems.
 Sec. 6422. Cross references.
 Sec. 6423. Conditions to allowance in the case of alcohol and tobacco taxes.
 Sec. 6424. Lubricating oil not used in highway motor vehicles.
 Sec. 6425. Adjustment of overpayment of estimated income tax by corporation.
Sec. 6426. Refund of aircraft use tax where plane transports for hire in foreign air commerce.
Sec. 6427. Fuels not used for taxable purposes.

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SEC. 6415. CREDITS OR REFUNDS TO PERSONS WHO COLLECTED CERTAIN TAXES.

(a) **ALLOWANCE OF CREDITS OF REFUNDS.**—Credit or refund of any overpayment of tax imposed by section [4251 or 4261] 4251, 4261c, or 4271 may be allowed to the person who collected the tax and paid it to the Secretary or his delegate if such person establishes, under such regulations as the Secretary or his delegate may prescribe, that he has repaid the amount of such tax to the person from whom he collected it, or obtains the consent of such person to the allowance of such credit or refund.

(b) **CREDIT ON RETURNS.**—Any person entitled to a refund of tax imposed by section [4251 or 4261] 4251, 4261 (c), or 4271, paid, or collected and paid, to the Secretary or his delegate by him may, instead of filing a claim for refund, take credit therefore against taxes imposed by such section due upon any subsequent return.

(c) **REFUND OF OVERCOLLECTIONS.**—In case any person required under section [4251 or 4261] 4251, 4261(c), or 4271 to collect any tax shall make an overcollection of such tax, such person shall, upon proper application, refund such overcollection to the person entitled thereto.

(d) **REFUND OF TAXABLE PAYMENT.**—Any person making a refund of any payment on which tax imposed by section [4251 or 4261] 4251, 4261(c), or 4271 has been collected may repay therewith the amount of tax collected on such payment.

SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

(a) **CONDITION TO ALLOWANCE.**—

(1) **GENERAL RULE.**—No credit or refund of any overpayment of tax imposed by chapter 31 (retailers taxes), or chapter 32 (manufacturers taxes) shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary or his delegate, that he—

(A) has not included the tax in the price of the article, with respect to which it was imposed and has not collected

the amount of the tax from the person who purchased such article;

(B) has repaid the amount of the tax to the ultimate purchaser of the article;

(C) in the case of an overpayment under subsection (b)(2), (b)(3) (C), or (b)(4) of this section—

(i) has repaid or agreed to repay the amount of the tax to the ultimate vendor of the article, or

(ii) has obtained the written consent of such ultimate vendor to the allowance of the credit or the making of the refund; or

(D) has filed with the Secretary or his delegate the written consent of the person referred to in subparagraph (B) to the allowance of the credit or the making of the refund.

(2) EXCEPTIONS.—This subsection shall not apply to—

(A) the tax imposed by section [4041(a)(2) or (b)(2) (use of diesel and special motor fuels)], and 4041 (relating to tax on special fuels) on the use of any liquid, and

* * * * *

(b) SPECIAL CASES IN WHICH TAX PAYMENTS CONSIDERED OVERPAYMENTS.—Under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

* * * * *

(2) SPECIFIED USES AND REALES.—The tax paid under chapter 32 (or under section 4041(a)(1) or (b)(1)) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

* * * * *

(G) in the case of a liquid taxable under section 4041, sold for use as fuel in a diesel-powered highway vehicle or as fuel for the propulsion of a motor vehicle, motorboat, or airplane, if *before April 1, 1970* (i) the vendee used such liquid otherwise than as fuel in such a vehicle, motorboat, or airplane or resold such liquid, or (ii) such liquid was (within the meaning of paragraphs (1), (2), and (3) of section 6420(c)) used on a farm for farming purposes;

(H) in the case of a liquid in respect of which tax was paid under section 4041 at the rate of 3 cents or 4 cents a gallon, used during any calendar quarter *beginning before April 1, 1970*, in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes; except that (i) this subparagraph shall apply only if the 60 percent passenger fare revenue test set forth in section 6421(b)(2) is met with respect to such quarter, and (ii) the amount of such overpayment for such quarter shall be an amount determined by multiplying 1 cent (where tax was paid at the 3-cent rate) or 2 cents (where tax was paid at the 4-cent rate) for each gallon of liquid so used by the percentage which such person's commuter fare revenue (as defined in section 6421(d)(2)) derived from such scheduled service during such quarter was of his total passenger

fare revenue derived from such scheduled service during such quarter;

(I) in the case of a liquid in respect of which tax was paid under section 4041(a)(1) at the rate of 3 cents or 4 cents a gallon, used or resold for use *before April 1, 1970*, as a fuel in a diesel-powered highway vehicle (i) which (at the time of such use or resale) is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a diesel-powered highway vehicle owned by the United States, is not used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(J) in the case of a liquid in respect of which tax was paid under section 4041(b)(1) at the rate of 3 cents or 4 cents a gallon, used or resold for use *before April 1, 1970*, otherwise than as a fuel for the propulsion of a highway vehicle (i) which (at the time of such use or resale) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a highway vehicle owned by the United States, is used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(M) in the case of gasoline, used or sold for use in the production of special [motor] fuels referred to in section [4041(b)] 4041;

* * * * *

(1) *IN GENERAL.*—No credit or refund of any overpayment of the taxes imposed by sections 4261 (a) and (b) (taxable transportation of persons by air) shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary or his delegate, that he—

(A) has not included the tax in the amount paid for the transportation and has not collected the amount of the tax from the person who paid for the transportation;

(B) has repaid the amount of the tax to the person who paid for the transportation; or

(C) has filed with the Secretary or his delegate written consent of the person who paid for the transportation to the allowance of the credit or the making of the refund.

(2) *CREDIT ON RETURNS.*—Any person entitled to a refund of tax imposed by section 4261 (a) or (b) paid to the Secretary or his delegate may, instead of filing claim for refund, take credit therefor against the taxes imposed by such sections due on any subsequent return.

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SEC. 6420. GASOLINE USED ON FARMS.

(a) *GASOLINE.*—Except as provided in subsection (h), if gasoline is used on a farm for farming purposes, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline the amount determined by multiplying—

- (1) the number of gallons so used, by
 (2) the rate of tax on gasoline under section 4081 which applied on the date he purchased such gasoline.
- (b) **TIME FOR FILING CLAIM; PERIOD COVERED.**—
- (1) **GASOLINE USED BEFORE JULY 1, 1965.**—Except as provided in paragraph (2), not more than one claim may be filed under this section by any person with respect to gasoline used during the one-year period ending on June 30 of any year. No claim shall be allowed under this paragraph with respect to any one-year period unless filed on or before September 30 of the year which such one-year period ends.
- (2) **GASOLINE USED AFTER JUNE 30, 1965.**—In the case of gasoline used after June 30, 1965.—

(A) not more than one claim may be filed under this section by any person with respect to gasoline used during his taxable year; and

(B) no claim shall be allowed under this section with respect to gasoline used during any taxable year unless filed by such person not later than the time prescribed by law for filing [an income tax return] a claim for credit or refund or overpayment of income tax for such taxable year.

For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A, except that a person's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year.

- (c) **MEANING OF TERMS.**—For purposes of this section—

(1) **USE ON A FARM FOR FARMING PURPOSES.**—Gasoline shall be treated as used on a farm for farming purposes only if used (A) in carrying on a trade or business, (B) on a farm situated in the United States, and (C) for farming purposes.

(2) **FARM.**—The term "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(3) **FARMING PURPOSES.**—Gasoline shall be treated as used for farming purposes only if used—

(A) by the owner, tenant, or operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator; except that if such use is by any person other than the owner, tenant, or operator of such farm, then (i) for purposes of this subparagraph, in applying subsection (a) to this subparagraph, and for purposes of section 6416 (b)(2)(G)(ii) (but not for purposes of section 4041), the owner, tenant, or operator of the farm on which gasoline or a liquid taxable under section 4041 is used shall be treated as the user and ultimate purchaser of such gasoline or liquid, and (ii) for purposes of applying section 6416(b)(2)(G)(ii), any tax paid under section 4041 in respect of a liquid used

on a farm for farming purposes (within the meaning of this subparagraph) shall be treated as having been paid by the owner, tenant, or operator of the farm on which such liquid is used;

(B) by the owner, tenant, or operator of a farm, in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; but only if such owner, tenant, or operator produced more than one-half of the commodity which he so treated during the period with respect to which claim is filed;

(C) by the owner, tenant, or operator of a farm, in connection with—

(i) the planting, cultivating, caring for, or cutting of trees, or

(ii) the preparation (other than milling) of trees for market, incidental to farming operations; or

(D) by the owner, tenant, or operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment.

(4) **GASOLINE.**—The term “gasoline” has the meaning given to such term by section 4082(b).

* * * * *

(i) **Cross References.**—

(1) For exemption from tax in case of [diesel fuel and] special [motor] fuels used on a farm for farming purposes, see section [4041(d)] 4041(f).

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SEC. 6421. GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.

(a) **NONHIGHWAY USES.**—Except as provided in subsection (i), if gasoline is used otherwise than as a fuel in a highway vehicle (1) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (2) which, in the case of a highway vehicle owned by the United States, is used on the highway, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to 1 cent for each gallon of gasoline so used on which tax was paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon. *Except as provided in paragraph (3) of subsection (c) of this section, in the case of gasoline used after March 31, 1970, as a fuel in an aircraft, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons of gasoline so used by the rate at which tax was imposed on such gasoline under section 4081.*

* * * * *

(c) **TIME FOR FILING CLAIMS; PERIOD COVERED.**—

* * * * *

(3) GASOLINE USED AFTER JUNE 30, 1965.—

(A) IN GENERAL.—In the case of gasoline used after June 30, 1965—

(i) except as provided in subparagraph (B), not more than one claim may be filed under subsection (a), and not more than one claim may be filed under subsection (b), by any person with respect to gasoline used during his taxable year; and

(ii) no claim shall be allowed under this subparagraph with respect to gasoline used during any taxable year unless filed by such person not later than the time prescribed by law for filing **[an income tax return]** a claim for credit or refund of overpayment of income tax for such taxable year.

For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A, except that a person's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year.

* * * * *

(e) EXEMPT SALES; OTHER PAYMENTS OR REFUNDS AVAILABLE.—

(1) EXEMPT SALES.—No amount shall be payable under this section with respect to any gasoline which the Secretary or his delegate determines was exempt from the tax imposed by section 4081. The amount which (but for this sentence) would be payable under this section with respect to any gasoline shall be reduced by any other amount which the Secretary or his delegate determines is payable under this section, or is refundable under any provision of this title, to any person with respect to such gasoline.

(2) GASOLINE USED ON FARMS.—This section shall not apply in respect of gasoline which was (within the meaning of paragraphs (1), (2), and (3) of section 6420(c)) used on a farm for farming purposes.

(3) GASOLINE USED IN NONCOMMERCIAL AVIATION.—*This section shall not apply in respect of gasoline which is used after March 31, 1970, as a fuel in an aircraft in noncommercial aviation (as defined in section 4041(c)(4)).*

* * * * *

(j) CROSS REFERENCES.—

[(1) For reduced rate of tax in case of diesel fuel and special motor fuels used for certain nonhighway purposes, see subsections (a) and (b) of section 4041.**]**

(1) *For rate of tax in case of special fuels used in noncommercial aviation or for nonhighway purposes, see section 4041.*

[(2) For partial refund of tax in case of diesel fuel and special motor fuels used for certain nonhighway purposes, see section 6416(b)(2) (I) and (J).**]**

[(3) For partial refund of tax in case of diesel fuel and special motor fuels used by local transit systems, see section 6416(b)(2)(H).**]**

[(4)**]** (2) For civil penalty for excessive claims under this section, see section 6675.

[(5)] (3) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

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SEC. 6424. LUBRICATING OIL NOT USED IN HIGHWAY MOTOR VEHICLES.

(a) **PAYMENTS.**—Except as provided in subsection (g), if lubricating oil (other than cutting oils, as defined in section 4092(b), and other than oil which has previously been used) is used otherwise than in a highway motor vehicle, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such lubricating oil an amount equal to 6 cents for each gallon of lubricating oil so used.

(b) TIME FOR FILING CLAIMS; PERIOD COVERED.—

(1) **GENERAL RULE.**—Except as provided in paragraph (2), not more than one claim may be filed under subsection (a) by any person with respect to lubricating oil used during his taxable year. No claim shall be allowed under this paragraph with respect to lubricating oil used during any taxable year unless filed by such person not later than the time prescribed by law for filing [an income tax return] a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A, except that a person's first taxable year beginning after December 31, 1965, shall include the period after December 31, 1965, and before the beginning of such first taxable year.

* * * * *

SEC. 6426. REFUND OF AIRCRAFT USE TAX WHERE PLANE TRANSPORTS FOR HIRE IN FOREIGN AIR COMMERCE.

(a) **GENERAL RULE.**—*In the case of any aircraft used in the business of transporting persons or property for compensation or hire by air, if any of such transportation during any period is transportation in foreign air commerce, the Secretary or his delegate shall pay (without interest) to the person who paid the tax under section 4491 for such period the amount determined by multiplying that portion of the amount so paid for such period which is determined under section 4491(a)(2) with respect to such aircraft by a fraction—*

(1) *the numerator of which is the number of airport-to-airport miles such aircraft traveled in foreign air commerce during such period while engaged in such business, and*

(2) *the denominator of which is the total number of airport-to-airport miles such aircraft traveled during such period.*

(b) **DEFINITIONS.**—*For purposes of this section—*

(1) **FOREIGN AIR COMMERCE.**—*The term "foreign air commerce" means any movement by air of the aircraft which does not begin and end in the United States; except that any segment of such movement in which the aircraft traveled between two ports or stations in the United States shall be treated as travel which is not foreign air commerce.*

(2) **AIRPORT-TO-AIRPORT MILES.**—*The term "airport-to-airport miles" means the official mileage distance between airports as determined under regulations prescribed by the Secretary or his delegate.*

(c) **REDUCTION IN CASE OF PAYORS OF TENTATIVE TAX.**—In the case of any person who paid a tentative tax determined under section 4493(b) with respect to any aircraft for any period, the amount payable under subsection (a) with respect to such aircraft for such period shall be reduced by an amount equal to—

(1) the amount by which that portion of the tax imposed under section 4491 for such period which is determined under section 4491(a)(2); exceeds,

(2) the amount of the tentative tax determined under section 4493(b) paid for such period.

(d) **TIME FOR FILING CLAIM.**—Not more than one claim may be filed under this section by any person with respect to any year. No claim shall be allowed under this subsection with respect to any year unless filed on or before the first September 30 after the end of such year.

(e) **REGULATIONS.**—The Secretary or his delegate may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) **NONTAXABLE USES.**—Except as provided in subsection (f), if tax has been imposed under section 4041(a), (b), or (c) on the sale of any fuel and, after March 31, 1970, the purchaser uses such fuel other than for the use for which sold, or resells such fuel, the Secretary or his delegate shall pay (without interest) to him an amount equal to—

(1) the amount of tax imposed on the sale of the fuel to him, reduced by

(2) if he uses the fuel, the amount of tax which would have been imposed under section 4041 on such use if no tax under section 4041 had been imposed on the sale of the fuel.

(b) **LOCAL TRANSIT SYSTEMS.**—

(1) **ALLOWANCE.**—Except as provided in subsection (f), if any fuel on the sale of which tax was imposed under section 4041 (a) or (b) is, after March 31, 1970, used by the purchaser during any calendar quarter in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes, the Secretary or his delegate shall, subject to the provisions of paragraph (2), pay (without interest) to the purchaser the amount determined by multiplying—

(A) 2 cents for each gallon of fuel so used on which tax was imposed at the rate of 4 cents a gallon, by

(B) the percentage which the purchaser's commuter fare revenue (as defined in section 6421(d)(2) derived from such scheduled service during the quarter was of his total passenger fare revenue derived from such scheduled service during the quarter.

(2) **LIMITATION.**—Paragraph (1) shall apply in respect of fuel used during any calendar quarter only if at least 60 percent of the total passenger fare revenue derived during the quarter from scheduled service described in paragraph (1) by the purchaser was attributable to commuter fare revenue derived during the quarter by the purchaser from such scheduled service.

(c) **USE FOR FARMING PURPOSES.**—Except as provided in subsection (f), if any fuel on the sale of which tax was imposed under section 4041 (a), (b), or (c) is, after March 31, 1970, used on a farm for farming purposes (within the meaning of section 6420(c)), the Secretary or his