AIRPORT AND AIRWAY TRUST FUND

HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 1649

A BILL TO PROVIDE FOR THE MODIFICATION OF AIRPORT AND AIRWAY USER TAXES, AND FOR OTHER PURPOSES

SEPTEMBER 8, 1980

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE

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AIRPORT AND AIRWAY TRUST FUND

MONDAY, SEPTEMBER 8, 1980

U.S. SENATE,
COMMITTEE ON FINANCE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 2221, Dirksen Senate Office Building, Hon. Harry F. Byrd, Jr. (chairman of the subcommittee) presiding.

Present: Senators Byrd, Packwood, and Dole.

[The press release announcing the hearing, Senator Dole's opening statement, bill S. 1649, and joint committee print describing the bill follow:]

Press Release #H-48

PRESS RELEASE

FOR IMMEDIATE RELEASE
August 26, 1980

COMMITTEE ON FINANCE
UNITED STATES SENATE
Subcommittee on Taxation and
Debt Management
2227 Dirksen Senate Office Bldg.

FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT SETS HEARING ON AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1980, H.R. 6721

Senator Harry F. Byrd, Jr. (I.-Va.), Chairman of the Subcommittee on Taxation and Debt Management, announced today that a hearing on extending the Airport and Airway Trust Fund and the aviation-related excise taxes transferred to that trust fund which are slated to expire or be reduced on October 1, 1980, has been scheduled. The hearing will be held on Monday, September 8, 1980 in Room 2221 of the Dirksen Senate Office Building and will begin at 10:00a.m.

Witnesses who desire to testify must submit a written request to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510, by no later than the close of business on September 2, 1980.

Legislative Reorganization Act. -- Senator Byrd stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committee of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their payment."

Witnesses scheduled to testify should comply with the following rules:

(1) A copy of the statement must be filed by noon the day before the witness is scheduled to testify.

(2) All witnesses must include with their written statement a summary of the principal points included in the statement.

(3) The written statements must be typed on letter size paper (not legal size) and at least 100 copies must be submitted by the close of business the day before the witness is scheduled to testify.

(4) Witnesses are not to read their written statements to the Subcommittee, but are to confine their oral presentations to a summary of the points included in the statement.

Written Testimony. -- Written testimony submitted by witnesses not making oral statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies by September 12, 1980, to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510.

STATEMENT OF SENATOR DOLE

AIRPORT & AIRWAY TRUST FUND EXCISE TAXES

SEPTEMBER 8, 1980

MR. CHAIRMAN -

THE EXCISE TAXES ACCUMULATED IN THE AIRPORT AND AIRWAY TRUST FUND ARE AN IMPORTANT SUBJECT FOR SCRUTINY AT THIS TIME. IT HAS BECOME CLEARER IN RECENT DAYS THAT THIS NATION IS NOT REBOUNDING QUICKLY FROM THE CURRENT RECESSION. ALL INDICATIONS ARE THAT INTEREST RATES ARE ON THEIR WAY UP AGAIN. THIS WILL SLOW THE RECOVERY STILL FURTHER.

THE AVIATION MANUFACTURING INDUSTRY HAS NOT BEEN IMMUNE FROM THIS ECONOMIC DOWNTURN. SEVERAL THOUSAND WORKERS IN STATES, INCLUDING MY STATE OF KANSAS, HAVE LOST THEIR JOBS, AT LEAST TEMPORARILY, AS DEMAND FOR THEIR PRODUCTS HAS DWINDLED. THIS IS A SAD STATE OF AFFAIRS IN ANY INDUSTRY, BUT IT IS EVEN MORE SO IN THE AVIATION INDUSTRY.

UNLIKE MANY OTHER INDUSTRIES, THIS COUNTRY'S AVIATION INDUSTRY IS THE MOST TECHNOLOGICALLY ADVANCED IN THE WORLD. IT IS NOT BECAUSE OF NONCOMPETITIVE PRODUCTS THAT THESE WORKERS HAVE BEEN IDLED. IT IS BECAUSE POTENTIAL PURCHASERS EITHER CANNOT AFFORD, OR FEAR MAKING, MAJOR COMMITMENTS IN TODAY'S ECONOMY.

IN THIS ECONOMIC ENVIRONMENT THE ADMINISTRATION HAS INCREDIBLY PROPOSED RAISING THE AVIATION-RELATED EXCISE TAXES. INCLUDED IN THEIR PROPOSAL IS A NEW TAX ON THE PURCHASE

OF GENERAL AVIATION AIRCRAFT AND AVIONICS (RADIO AND NAVIGATION EQUIPMENT). IF THESE TAXES WERE ENACTED, WHICH I CONSIDER EXTREMELY UNLIKELY, THE COST OF AIRCRAFT WOULD INCREASE, DEMAND WOULD SHRINK, AND MANY THOUSANDS MORE WOULD BE UNEMPLOYED.

THE MOTIVES FOR THIS ATTEMPT TO INCREASE THESE TAXES MUST BE QUESTIONED.

THE AIRPORT AND AIRWAY TRUST FUND WAS ESTABLISHED TO EXPAND AIRPORT AND AIRWAY CAPACITY AND TO IMPROVE SAFETY IN AIR TRANSPORTATION. HOWEVER, THE TRUST FUND, RATHER THAN BEING USED FOR ITS INTENDED PURPOSES, HAS BEEN USED TO SHOW AN ARTIFICIALLY REDUCED BUDGET DEFICIT. RATHER THAN IMPROVING OUR AIRPORT AND AIRWAY SYSTEM, NEARLY $4 BILLION REMAINS IDLE IN THE TRUST FUND.

WITH SUCH A LARGE SURPLUS, IT IS EXTREMELY DIFFICULT TO ARGUE THAT THE EXCISE TAXES WHICH FUND THE SYSTEM REMAIN CONSTANT, LET ALONE BE INCREASED.

THE MEMBERS OF THE HOUSE WAYS AND MEANS COMMITTEE UNDERSTAND THAT THE ECONOMIC SITUATION DOES NOT WARRANT AN INCREASE IN EXCISE TAX LEVELS. THEY MADE A SUBSTANTIAL INITIAL STEP IN REDUCING AND SIMPLIFYING THE TAXES BY LOWERING THE TICKET TAX IMPOSED UPON AIRLINE PASSENGERS AND RESTRUCTURING THE TAXES ON GENERAL AVIATION.

THE SENATE, UNDER THE LEADERSHIP OF SENATORS CANNON, PACKWOOD AND KASSEBAUM HAS PASSED S. 1648 WHICH WOULD SIGNIFICANTLY DECREASE THE NUMBER OF AIRPORTS ELIGIBLE FOR FEDERAL AIRPORT DEVELOPMENT FUNDS. THIS MEASURE FURTHER REDUCES THE FUNDS

NEEDED IN THE TRUST FUND AND WOULD JUSTIFY A FURTHER REDUCTION IN EXCISE TAXES.

THIS SENATOR, FOR ONE, BELIEVES THAT THE PRESENT SLOWDOWN IN THE AVIATION MANUFACTURING INDUSTRY IS ANOTHER GOOD REASON TO REDUCE EXCISE TAXES TO SPUR DEMAND. AT THE SAME TIME, THE SURPLUS IN THE TRUST FUND SHOULD BE USED FOR THE PURPOSES INTENDED TO PROMOTE SAFE, EFFICIENT AIR TRANSPORTATION.

THE SENATOR FROM KANSAS LOOKS FORWARD TO THE TESTIMONY WHICH THIS SUBCOMMITTEE WILL HEAR TODAY AND HOPES THE FINANCE COMMITTEE WILL ACT ON THIS LEGISLATION WITHOUT DELAY.

II

96TH CONGRESS
1ST SESSION

S. 1649

To provide for the modification of airport and airway user taxes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 1979

Mr. CANNON (for himself, Mr. PACKWOOD, Mr. INOUYE, and Mr. SCHMITT) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To provide for the modification of airport and airway user taxes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Airport and Airway Revenue Act of 1979".

SEC. 101. AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference

shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

AVIATION FUEL

SEC. 102. Subsection (c) of section 4041 (relating to tax on fuel used in noncommercial aviation) is amended to read as follows:

"(c) NONCOMMERCIAL AVIATION.—

"(1) IMPOSITION AND RATE OF TAX.—There is hereby imposed a tax of 6 percent of the retail sale price upon any liquid—

"(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.

The tax imposed under this paragraph shall be reduced by any tax imposed under section 4081.

"(2) DEFINITIONS.—

"(A) RETAIL PRICE.—For purposes of this subsection, retail price is the price of the fuel delivered into the purchaser's aircraft or bulk storage facility but shall not include the tax imposed by section 4081 or any State or local gallonage or sales tax imposed on motor fuel.

"(B) NONCOMMERCIAL AVIATION.—For purposes of this subchapter, the term 'noncommercial aviation' means any use of any 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.

"(3) TERMINATION.—On and after October 1, 1990, the tax imposed by paragraph (1) shall not apply.".

TRANSPORTATION OF PERSONS AND PROPERTY BY AIR

SEC. 103. (a) Subsections (a) and (b) of section 4261 (relating to tax on transportation of persons by air) are amended by striking out "8 percent" and inserting in lieu thereof "2 percent".

(b) Subsection (e) of section 4261 (relating to tax on transportation of persons by air) and subsection (d) of section 4271 (relating to tax on transportation of property by air) are amended by striking out "June 30, 1980" and inserting in lieu thereof "September 30, 1990".

USE OF CIVIL AIRCRAFT

SEC. 104. (a) IMPOSITION OF TAX.—Section 4491 (relating to imposition of tax on use of civil aircraft) is amended—

(1) by striking out the period at the end of subsection (a), inserting in lieu thereof a semicolon, and adding at the end thereof:

"(3) In the case of the taxable period beginning on July 1, 1990, and ending on September 30, 1990, the tax under paragraph (1) shall be $6.25 for such period and the rates of tax under paragraph (2) shall be 0.5 and .875 cents a pound respectively.";

(2) by striking out the word "year" wherever it appears in subsection (c) and inserting in lieu thereof "taxable period"; and

(3) by striking out the section heading for subsection (d) and inserting in lieu thereof "ONE TAX LIABILITY PER PERIOD".

CONFORMING AMENDMENT

SEC. 105. Section 6416(a)(1) (relating to certain taxes on sales and services) is amended by striking the words "special fuels" and inserting in lieu thereof "noncommercial aircraft and special fuels".

EFFECTIVE DATE

SEC. 106. The amendments made in sections 102, 103, 104, and 105 of this Act shall take effect on July 1, 1980.

AIRPORT AND AIRWAY TRUST FUND AMENDMENTS

SEC. 201. Section 208 of the Airport and Airway Revenue Act of 1970, as amended (49 U.S.C. 1742), is further amended by—

(a) striking out "October 1, 1980," in subsections (b)(1), (b)(2), and (b)(3), and inserting in lieu thereof "October 1, 1990,";

(b) striking out "October 1, 1980," in subsection (f)(1) and inserting in lieu thereof "October 1, 1990,";

(c) striking out subsection (f)(1)(A) and substituting the following:

"(A) incurred under the Airport and Airway System Development Act of 1979 (as in effect on the date of the enactment of this Act), or the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 et seq.)";

(d) striking out "October 1, 1980," in subsections (f)(1) and (f)(2)(A) and inserting in lieu thereof "October 1, 1990,"; and

(e) striking out "October 1, 1980," in subsection (f)(3) and inserting in lieu thereof "October 1, 1990,".

O

[JOINT COMMITTEE PRINT]

DESCRIPTION OF PROPOSALS RELATING TO AIRPORT AND AIRWAY TRUST FUND TAXES AND BUDGET AUTHORIZATIONS

SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY

PREPARED FOR THE

COMMITTEE ON FINANCE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

SEPTEMBER 5, 1980

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980 JCS-40-80

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INTRODUCTION

This pamphlet was prepared by the staff of the Joint Committee on Taxation for the hearing scheduled by the Subcommittee on Taxation and Debt Management Generally of the Senate Committee on Finance for September 8, 1980, on legislative proposals concerning extension and revision of the Airport and Airway Trust Fund and the aviation excise taxes currently deposited into the trust fund.

The Administration's trust fund and aviation tax proposal is contained in S. 1582 (introduced by request). The Senate has passed a trust fund authorization bill (S. 1648), which does not contain tax or trust fund amendments. The House is scheduled to consider a trust fund authorization and tax bill (H.R. 6721) within a few days. A Ways and Means Committee amendment to be offered to H.R. 6721 would extend the trust fund and aviation taxes for 5 years, or through September 30, 1985, reduce the air passenger ticket tax from 8 percent to 5 percent on October 1, 1982, and would modify certain other aviation taxes. In addition, S. 1649 would reduce or modify certain of the aviation taxes, and S. 2075 would amend the definition of an affiliated group for purposes of the air transportation excise taxes. (A public hearing on S. 2075 was held on June 24, 1980, by the Finance Subcommittee on Taxation and Debt Management Generally.)

The first part of the pamphlet is a discussion of present law and background regarding the trust fund taxes and trust fund budget authorizations. This is followed by a description of current legislative proposals relating to the trust fund taxes and trust fund budget authorizations. Finally, an Appendix presents projected revenue estimates of present law aviation taxes and the provisions of H.R. 6721, for fiscal years 1981–1985. The Appendix also gives a comparison of proposed trust fund authorization levels by program for fiscal years 1981–1985.

68-894 O—80——2

I. PRESENT LAW AND BACKGROUND OF AIRPORT AND AIRWAY TRUST FUND

A. Airport and Airway Trust Fund Taxes

The Airport and Airway Revenue Act of 1970 (title II of the Airport and Airway Development Act of 1970) increased some existing aviation user taxes, imposed some new aviation user taxes and established the Airport and Airway Trust Fund to receive revenues from these user taxes. These excise taxes are scheduled either to expire or be reduced under present law on October 1, 1980.[1]

1. Air passenger and air freight excise taxes

Under present law, excise taxes are imposed on the transportation of persons and property by air.

Air passenger ticket tax

In the case of air passenger transportation within the United States, the tax presently is 8 percent of the amount of the airfare. It is scheduled to revert to 5 percent on October 1, 1980 (the pre-trust fund rate).[2]

Air transportation between the United States and a foreign station which is not more than 225 miles from the nearest point in the continental United States (i.e., within Canada and Mexico), as well as between two such foreign stations, generally is subject to the 8-percent tax where payment for the travel is made in the United States. This tax does not apply to transportation between the United States and other foreign stations where payment is made outside the United States, nor does it apply to the U.S. portions of certain uninterrupted international air transportation.[3] Also, the 8-percent passenger tax does not apply to the portion of flights to or from or between Alaska and Hawaii which are not made over the United States.

International departure tax

There also is a $3 per passenger departure tax (a new tax added by the 1970 Act) for international air transportation that begins in the United States and flights to or from Alaska and Hawaii. This tax is presently scheduled to terminate after September 30, 1980.

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[1] Public Law 96-298 (H.R. 7477) extended the present trust fund taxes from July 1, 1980, through September 30, 1980, with a provision that the aircraft registration and use tax return (Code sec. 4491) for the taxable year beginning on July 1, 1980, would not have to be filed until October 31, 1980.

[2] In the absence of further legislation, the revenues from the 5-percent air passenger tax would go into the general fund (as was the case prior to the 1970 Act).

[3] For the $3 international departure tax to apply in lieu of the domestic air passenger ticket tax, the air transportation must be an uninterrupted international flight from a point beginning in the United States and ending outside the United States (and outside the 225-mile zone in Canada and Mexico). An uninterrupted international flight may have a stopover at a domestic point, without being subject to the domestic ticket tax, of no more than 6 hours.

3

Air freight waybill tax

In the case of air transportation of property, the 1970 Act imposed a new tax of 5 percent of the air freight waybill charge. This tax is scheduled to terminate on October 1, 1980. In determining taxable transportation, the same rules generally apply as for transportation of persons, except that the air freight tax applies only to amounts paid for transportation of property by air which begins and ends in the U.S.

Collection of taxes and exemption

These taxes are collected as part of the fare or waybill by the air carrier, for subsequent transfer by the Treasury to the trust fund. Exemptions from these taxes are provided for transportation by small aircraft on nonestablished lines and for private air transportation services provided within a group of affiliated corporations. (See a more detailed discussion of affiliated groups in item 5, below.) Aircraft not subject to these passenger or freight taxes are subject to the fuels tax, described below.

2. Aviation excise taxes on fuels, aircraft use, and tires and tubes

In addition to the taxes on air passenger and air freight fares, there is a 7-cents-per-gallon tax on aviation fuels (gasoline and other fuels, including jet fuels) used by noncommercial (general) aviation, an aircraft registration and use tax,[4] and a tax on aircraft tires and tubes.[5] The fuels tax was an increase from the previous net tax of 2 cents per gallon on gasoline for aviation use; the tax on gasoline is scheduled to be reduced to 4 cents per gallon on October 1, 1980, while the 7-cents-per-gallon tax on non-gasoline fuels (e.g., kerosene—jet fuels) is scheduled to expire on October 1, 1980. The aircraft use tax was new under the 1970 Act, and is scheduled to expire on October 1, 1980; and the tax on aircraft tires and tubes was merely a transfer of revenues from the excise taxes on such tires and tubes from the Highway Trust Fund.[6]

There is a general exemption (a refund or credit) from the aviation fuels tax for fuel sold for use or used on a farm for farming purposes. Also, the tax on aviation fuels and the tax on aircraft use do not apply to aircraft owned by a tax-exempt aircraft museum operated exclusively for the procurement, care, and exhibition of World War II aircraft. Further, there is a general exemption from the fuels tax for fuel sold for use or used by a State or local government, by a nonprofit educational organization, for fuels exported, and fuels used by commercial aircraft.

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[4] A tax of two parts: (1) a $25 annual per plane registration tax, plus (2) a weight tax of 8½ cents per pound for turbine-powered (jet) aircraft and 2 cents per pound for nonturbine-powered aircraft for each pound in excess of 2,500 pounds of "maximum certificated takeoff weight."

[5] Taxed at the general rates for nonhighway tires (5 cents per pound) and tubes (10 cents per pound) under Code sec. 4071. (The tax on tubes is scheduled to decline to 9 cents per pound on October 1, 1984.)

[6] In the absence of further legislation, the revenues from the taxes on aircraft tires and tubes would revert to the Highway Trust Fund on October 1, 1980.

3. Schedule of Airport and Airway Trust Fund excise taxes under present law

The following table shows the present law aviation excise taxes and the rate scheduled for October 1, 1980 under present law. (Appendix Table A–1 shows the estimated aviation tax revenues for fiscal years 1981–1985 under present law).

SCHEDULE OF AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES UNDER PRESENT LAW

Tax (and Code section)	Present rate	Rate scheduled for October 1, 1980
Air passenger ticket tax (secs. 4261 (a) and (b))	8%	5%
Air freight waybill tax (sec. 4271)	5%	----
International departure tax (sec. 4261(c))	$3	----
Fuels tax for noncommercial (general) aviation (per gallon) (sec. 4041(c))[1]	7¢	[4] 4¢
Aircraft use tax (sec. 4491)[1]	[2]	----
Aircraft tires and tubes tax (secs. 4071)	[3]	[3]

[1] The tax does not apply to aircraft, owned by a tax-exempt aircraft museum defined in sec. 4041(h), which are operated exclusively for the procurement, care, and exhibition of World War II aircraft.

[2] A tax of two parts: (1) a $25 annual per plane registration tax, plus (2) a weight tax of 3½ cents per pound for turbine-powered (jet) aircraft and 2 cents per pound for nonturbine-powered aircraft for each pound in *excess* of 2,500 pounds of "maximum certificated takeoff weight."

[3] Taxed at the general rates for nonhighway tires (5 cents per pound) and tubes (10 cents per pound) under Code sec. 4071.

[4] Tax on gasoline fuel only. As of October 1, 1980, the additional 3 cents-per-gallon tax on gasoline used in noncommercial aviation aircraft would expire, and the 7-cents-per-gallon tax on non-gasoline fuels (e.g., kerosene—jet fuel) would also expire.

4. Manner in which the tax on air transportation is required to be shown on airline tickets

For air transportation that is entirely subject to the air passenger ticket tax imposed under Code section 4261 (a) and (b), present law (Code sec. 7275) requires that an airline ticket show the total of (a) the amount paid for the air transportation and (b) the Federal excise tax on the air transportation. Further, if amounts paid with respect to any segment of the air transportation are shown on the ticket, the ticket also must show the total of the amount paid and the Federal excise tax with respect to each segment, as well as for the sum of the segments.

In addition, any advertising of taxable air transportation (i.e., as taxed under Code sec. 4261 (a), (b), and (c)) which states the cost of such transportation is required to state such cost as the total of (a) the amount paid for the air transportation and (b) the Federal excise tax. Where the advertising separately states the amount to be paid for the air transportation and the Federal excise tax, the advertising must show the combined total (transportation plus tax) at least as prominently as the other stated amounts, and the excise tax is to be described substantially as "user taxes to pay for airport construction and airway safety and operations." Finally, present law provides a penalty of not more than $100 for each violation upon conviction (as a misdemeanor).

5. Definition of an affiliated group for purposes of the air transportation excise taxes

The excise taxes on air passenger tickets (under Code sec. 4261) and air freight waybills (under Code sec. 4271) apply to commercial aviation, that is, as a business of transporting persons or property for compensation or hire by air.

Code sections 4281 and 4282 provide two exceptions to the air passenger and air freight taxes. Code section 4281 provides that the taxes do not apply to transportation by an aircraft having a maximum takeoff weight of 6,000 pounds or less, except when the aircraft is operated on an established line. Code section 4282 provides for an exception for certain air transportation provided for other members of an affiliated group. This exception is applicable for air transportation provided by a member of an affiliated group [7] to another member of the affiliated group where the aircraft so used is not available for hire by persons who are not members of the affiliated group.

The aviation fuels taxes for noncommercial aviation (under Code sec. 4041(c)) apply in such instances where the transportation taxes do not apply.

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[7] "Affiliated group" is a group of corporations connected through common stock ownership (as defined in Code sec. 1504(a), except that, for purposes of the transportation tax exception, all such corporations are treated as the includible corporation, without any exclusion under Code sec. 1504(b)).

B. Airport and Airway Trust Fund Budget Authority

1. Background

1970 Act and 1971 amendment

The Airport and Airway Trust Fund was established as of July 1, 1970 (Title II of the Airport and Airway Development Act of 1970; Public Law 91–258), and authority to appropriate from the trust fund is scheduled to expire as of September 30, 1980. The 1970 Act provided that new and increased aviation user taxes were to be deposited into the trust fund and, with interest earned on the deposits, were to be available to meet specified airport and airway obligations of the United States incurred under Title I of the 1970 Act, as it was in effect on the date of enactment. As a result, subsequent expansion of Title I trust fund budget authority was to require corresponding amendments to the Title II trust fund language, which is within the jurisdiction of the Ways and Means and Finance Committees.

The 1970 Act authorized trust fund expenditures through fiscal year 1975 for the maintenance and operation of air navigation facilities, qualified airport planning and construction purposes, airway facilities and equipment, research and development, safety, and related departmental administrative expenses. A 1971 amendment (Public Law 92–174) to Title I of the 1970 Act, however, removed the authority for spending trust fund monies for maintenance and operation of the airway system. This amendment also limited the authority for meeting administrative costs from the trust fund only to such administrative expenses related to the remaining authorized purposes.

1973 amendment

A 1973 amendment (Public Law 93–44) to Title I of the 1970 Act increased the authorization levels for airport grants for fiscal years 1974 and 1975, increased the Federal share for certain airport grants and safety and security equipment costs, and amended the definition of airport development to specifically include airport security equipment required under DOT regulations.

1976 amendment

The Airport and Airway Development Act Amendments of 1976 (Public Law 94–353) further amended Title I of the 1970 Act to include several additional expenditure categories to be authorized from the trust fund. The new expenditure categories were: snow removal equipment; noise suppressing equipment; construction of physical barriers and landscaping for the purpose of reducing the effect of aircraft noise in areas adjacent to public airports; acquisition of land or property interests for airport noise control purposes; airport terminal development (the public, nonrevenue-producing areas, including baggage facilities and passenger moving equipment); and specified amounts for maintenance of airway facilities. Thus, the 1971 prohibi-

tion against authorizing airway maintenance costs from the Trust Fund was partially removed in the 1976 amendment.

In addition, the 1976 Act provided authorization levels for airport grants and other existing trust fund expenditure programs through fiscal year 1980, and increased the Federal share for certain airport grants for fiscal years 1977 and 1978. The 1976 Act also included a Ways and Means Committee amendment to the trust fund language to conform to the Public Works Committee authorization provisions added by the Act.

1979 amendment

The Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) further amended title I of the 1970 Act to authorize trust fund appropriations for airport noise compatibility planning and airport noise compatibility grants. $15 million was authorized for the planning grants for the fiscal year 1980, and $25 million was authorized for fiscal year 1980 for the program grants.

The 1979 Act also increased the airport development authorization amounts for fiscal year 1980 from $525 million to $569 million for air carrier airports and from $85 million to $98 million for general aviation airports. In addition, the Act amended the trust fund language (sec. 208(f)(1)(A) of the Airport and Airway Revenue Act of 1970; 49 U.S.C. 1742(f)(1)(A)) to conform to the 1979 amendments. Thus, the present trust fund statute contains language to authorize obligations incurred under Title I of the 1970 Act, under the 1976 Act amendments or under the 1979 Act amendments; that is, "as such Acts were in effect on the date of enactment of the Aviation Safety and Noise Abatement Act of 1979."

2. Present law trust fund authorization purposes

The following outline presents a summary listing of the Airport and Airway Trust Fund expenditure programs authorized under present law.

AIRPORT AND AIRWAY TRUST FUND EXPENDITURE PURPOSES UNDER PRESENT LAW

1. *Airport planning.*—grants to planning agencies for airport system planning and public agencies for airport master planning; also, airport noise compatibility planning grants for air carrier airports eligible for terminal development costs.

2. *Airport Development Aid Program (ADAP).*—

(*a*) *Airport construction.*—Construction, improvement or repair of a public airport (includes removal of airport hazards and construction of physical barriers and landscaping to diminish noise).

(*b*) *Airport terminal facilities.*—Nonrevenue-producing public-use areas which are directly related to movement of passengers and baggage at certificated air carrier airports having required safety and security equipment (includes baggage facilities and passenger-moving equipment); does not include costs of construction of public parking facility for passenger automobiles or costs of construction, alteration, or repair of a hangar or any airport building unless used to house facilities or activities directly related to safety of persons at the airport. These facilities include multimodal terminal development and bond retirement for certain airports.

(*c*) *Land acquisition.*—Includes land or property interests for airport noise control purposes.

(*d*) *Airport-related equipment.*—Airport security equipment required by DOT regulations, snow removal equipment, noise suppressing equipment, navigation aids, and safety equipment required for airport certification.

(*e*) *Airport noise compatibility programs.*—Includes soundproofing of public buildings; local governmental units are eligible for project grants as well as airports.

3. *Facilities and Equipment Program (F&E).*—Costs of acquiring, establishing, and improving air navigation facilities.

4. *Research, Engineering, Development, and Demonstration Program (R&D).*—Projects in connection with FAA research and development activities.

5. *Operations and Maintenance Programs (O&M.)*—Flight check and maintenance of air navigation facilities; services provided under international agreements relating to the joint financing of air navigation services assessed against the U.S. Government.

6. *Other costs.*—Certain airline costs of international passenger security screening facilities.

3. Trust fund balance

As of the end of fiscal year 1979 (September 30, 1979), the Airport and Airway Trust Fund had a cash balance of $4,392 million, of which $2,742 million was the uncommitted balance. The trust fund balance is estimated to be $3.5 billion at the end of fiscal year 1980.

II. DESCRIPTION OF LEGISLATIVE PROPOSALS

A. Aviation Excise Taxes

1. H.R. 6721—Airport and Airway Revenue Act of 1980

The House Committee on Ways and Means approved a committee amendment on May 28, 1980, to be offered as a separate title II to H.R. 6721, as reported by the Committee on Public Works and Transportation and the Committee on Science and Technology.

The following is a description of the Ways and Means Committee amendment to extend the Airport and Airway Trust Fund and aviation excise taxes for 5 years. (The estimated revenue effects of the Ways and Means Committee amendment are shown in Appendix tables A–2 and A–3.)

Air passenger ticket tax

Tax rate

The Ways and Means Committee amendment extends the present 8-percent air passenger ticket tax through September 30, 1982. On October 1, 1982, the rate of tax will be 5 percent. (The revenues from this tax will be transferred to the Airport and Airway Trust Fund through September 30, 1985.)

The Committee on Ways and Means indicates that it intends to thoroughly review the financing of the Airport and Airway Trust Fund prior to the October 1, 1982 reduction in the air passenger ticket tax from 8 percent to 5 percent.[1] The Ways and Means Committee states that it wants to insure that the issues of appropriate tax levels and the appropriate types of taxes on various users of the airway system will be reexamined prior to that time. The Ways and Means Committee expects that these issues and alternatives to the present taxes will be studied during this period by the Departments of Treasury and Transportation, in consultation with the staff of the Joint Committee on Taxation, and that resulting recommendations will be available to the Ways and Means Committee by the time it is ready to act on this matter.

225-mile zone

The Ways and Means Committee amendment grants the Secretary of the Treasury the authority to waive the 225-mile zone rule if the Secretary determines that Canada or Mexico has entered into a "qualified agreement" regarding the tax treatment of persons travelling by air between the United States and that country. The agreement must set forth what transportation of persons by air is to be subject to tax by which country as well as an agreed upon appropriate tax for such

[1] See Ways and Means Committee document: "Explanation of the Airport and Airway Revenue Act of 1980" (WMCP: 96–62; June 9, 1980, p. 9).

air travel. The agreement is to provide a satisfactory definition of transportation beginning or ending in the United States and ending or beginning in the other country. The Ways and Means Committee's intention is that transportation beginning in the United States and ending in Canada or Mexico, as well as transportation beginning in Canada or Mexico and ending in the United States, be subject only to an appropriate tax by one country. This is intended by the Ways and Means Committee to avoid double taxation of round-trip flights between countries under their respective domestic air passenger ticket tax, as is the case now with respect to Canada-United States air transportation.

Once the Secretary of the Treasury determines that Canada or Mexico has entered into a qualified agreement, the Secretary shall publish a notice of the determination in the *Federal Register*, along with a notice of the effective date of the waiver of the 225-mile zone rule. The waiver may be terminated by the Secretary if it is determined that a qualified agreement is no longer in effect. Upon such a determination, the Secretary is also to publish a notice in the *Federal Register*, indicating the effective date of the termination.

International departure tax

The Ways and Means Committee amendment extends the present $3 international departure tax through September 30, 1985. In addition, the committee amendment changes the present 6-hour layover rule for determining whether a flight is an international flight to a 12-hour rule. Thus, for a ticket purchased in the U.S., a flight beginning in the United States and ending outside the U.S. (and outside the present 225-mile zone) will be treated as an uninterrupted international flight (subject only to the $3 international departure tax) if a U.S. stopover is not more than 12 hours. For example, a trip beginning in Chicago, and continuing on to London, may have a stopover point in New York for up to 12 hours without being subject to the 8-percent ticket tax on the domestic portion of the flight.

Air freight tax

The Ways and Means Committee amendment also extends the present 5-percent air freight waybill tax through September 30, 1985.

Fuels taxes on noncommercial aviation

The Ways and Means Committee amendment increases the fuels tax on gasoline and other fuels (e.g., kerosene-jet fuel) from 7 cents per gallon to 8½ cents per gallon, for the period July 1, 1980 through September 30, 1985.

Aircraft registration and use tax

The Ways and Means Committee amendment repeals (allows to expire) the aircraft use tax ($25 per plane tax and weight tax) for noncommercial aircraft, effective July 1, 1980. The amendment extends the present aircraft use tax for commercial aircraft, for the period July 1, 1980 through September 30, 1985. Commercial aircraft means any civil aircraft operating in the navigable airspace of the United States in a business of transporting persons or property for compensation or hire by air. Thus, the aircraft use tax will apply to aircraft subject to the air passenger ticket or air freight waybill taxes. The

Ways and Means Committee indicates that where an aircraft is used both for commercial transportation and for noncommercial purposes, the aircraft use tax will apply upon the first such commercial use during the taxable year.

The taxable year continues to be July 1–June 30 for purposes of the aircraft use tax, and the weight portion of the tax will continue to be imposed as of the month in which the aircraft is first used for commercial purposes. The weight portion of the tax is prorated if the first use occurs after the first month of the taxable year. (The $25 portion of the use tax is not prorated.) For example, if the aircraft is first used in November of the taxable year, the weight portion of the use tax is 2/12 of the annual rate.[2]

Tax on aircraft tires and tubes

In addition, the Ways and Means Committee amendment continues the transfer to the Airport and Airway Trust Fund of the revenues from the existing excise taxes on tires and tubes used on aircraft. This is merely a transfer of such revenues from the Highway Trust Fund.

Manner in which the tax on air transportation is required to be shown on airline tickets [3]

The Ways and Means Committee amendment also repeals the present requirement that air transportation tickets show the total of the amount paid and the Federal excise tax for each segment of the transportation in cases where the ticket shows the amount paid by segments. It retains the requirement, however, that the tickets show the total of the amount paid and the amount of Federal excise tax imposed on the air transportation.

This provision of the committee amendment is effective with respect to transportation beginning after the date of enactment.

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[2] Under the committee amendment, there is a special transitional rule for the 3-month period, July 1, 1985–September 30, 1985, so that the tax will only apply for that 3-month portion of the taxable year.

[3] On May 21, 1980, this provision was reported by the Committee on Ways and Means as a separate bill (H.R. 4725; H. Rept. 96–1046).

2. Administration proposal (S. 1582)

S. 1582 (introduced by request) contains the Administration's aviation excise tax proposals. This bill (the same as title II of H.R. 3745) would provide the following:

(a) extend the 8-percent air passenger ticket tax through September 30, 1990;

(b) extend the 5-percent air freight waybill tax through September 30, 1990;

(c) extend the $3 international departure tax through September 30, 1990;

(d) change the general aviation fuels tax from 7 cents per gallon to an *ad valorem* tax of 10 percent of the retail price, effective July 1, 1980 through September 30, 1990; and

(e) impose a new 6-percent excise tax on the retail sale or lease of general aviation aircraft and avionics (electrical or electronic equipment used for communication or navigation purposes), effective October 1, 1980 through September 30, 1990.

Thus, the Administration proposal would extend most of the existing aviation excise taxes through September 30, 1990 (fiscal 1990) at their present tax rates, change the general aviation fuel tax to an *ad valorem* tax at retail, and impose a new excise tax on general aviation aircraft and avionics. (The Administration proposal also would extend, as noted below, the Airport and Airway Trust Fund through September 30, 1990.)

3. S. 1649—Airport and Airway Revenue Act of 1979

The bill would (for the period July 1, 1980 through September 30, 1990):

(a) reduce the air passenger ticket tax to 2 percent;

(b) extend the 5-percent air freight waybill tax;

(c) change the general aviation fuel taxes to a 6-percent *ad valorem* tax at retail; and

(d) extend the present aircraft use tax.

(S. 1649 also would extend the Airport and Airway Trust Fund through September 30, 1990.)

4. S. 2075—Definition of an affiliated group for purposes of the air transportation excise taxes

The bill would expand the affiliated group exception from the air transportation excise taxes for controlled corporations to include tax-exempt labor organizations (under Code sec. 501) and their tax-exempt trusts (and any wholly-owned corporations of such trusts) established for the sole and exclusive benefit of the members of such labor organization and their families and dependents.

Effective date

The bill would be effective upon the date of enactment.

Revenue effect

This bill is estimated to have a insignificant revenue effect.

B. Airport and Airway Trust Fund

1. Extension of the trust fund

S. 1582 and S. 1649

The Administration proposal (in S. 1582) and S. 1649 would extend the Airport and Airway Trust Fund for 10 years, or through September 30, 1990 (fiscal year 1990).

H.R. 6721

The Ways and Means Committee amendment to H.R. 6721 would extend the Airport and Airway Trust Fund for five years, or through September 30, 1985, to provide financing for the fiscal 1981–1985 program authorization under the bill.

2. Trust fund budget authorization levels

While S. 1582 and S. 1649 would extend the life of the trust fund through fiscal year 1990, the Senate-passed authorization bill, S. 1648,[1] and H.R. 6721 would only provide specific trust fund budget authorizations for 5 years, or through fiscal year 1985.

Subsequent to the Senate passage of S. 1648, H.R. 6721 (the Airport and Airway Improvement Act of 1980) was introduced and was referred to the House Committees on Public Works and Transportation and Science and Technology. The Committee on Science and Technology reported H.R. 6721 on April 21, 1980 (H. Rept. 96–887, part 1), and the Public Works and Transportation Committee reported H.R. 6721 on May 13, 1980. (H. Rept. 96–887, part 2).

Appendix Table A–4 gives a summary comparison of the Airport and Airway Trust Fund program authorization levels for fiscal years 1981–1985 under the Administration proposal (contained in H.R. 3745), H.R. 6721, and S. 1648.

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[1] S. 1648 (the Airport and Airway System Development Act of 1979) was reported by the Senate Committee on Commerce, Science, and Transportation on November 15, 1979 (S. Rept. No. 96–415), and was passed by the Senate on February 5, 1980. While S. 1648 authorizes appropriations from the Airport and Airway Trust Fund for fiscal years 1981–1985, the bill does not specifically amend the trust fund language nor does it amend the aviation excise tax provisions.

3. Trust fund expenditure purposes

S. 1648

Under S. 1648, as passed the Senate, the following additional expenditure purposes would be authorized from the Airport and Airway Trust Fund.

Airport development.—

(1) *Public-use airports.*—Modifies the definition of eligible airports to include (in addition to public airports) privately-owned reliever airports used or to be used for public purposes.

(2) *Airport-related equipment.*—Aviation-related weather reporting equipment (presently allowed under the Facilities and Equipment program, if it is a navigational aid).

Also, S. 1648 would delete the present law authority to use ADAP funds to retire the principal on bonds used to finance terminal development. In addition, the bill would, after fiscal 1981, remove certain larger air carrier airports from the ADAP grant program.

H.R. 6721

Under H.R. 6721, as reported by the Public Works and Transportation Committee, the following additional expenditure purposes would be authorized from the Airport and Airway Trust Fund (all of which are approved as eligible functions under the Ways and Means Committee amendment, except for ground access costs).

1. *Airport development*—

(*a*) *Public-use airports.*—Modifies the definition of eligible airports to include (in addition to public airports) privately-owned reliever airports or other privately-owned airports enplaning 2,500 or more passengers annually and receiving scheduled public passenger service. (The public use must be available for the economic life, not less than 10 years, of the facility that was developed with Federal funds.)

(*b*) *Terminal facilities.*—Adds commuter airports as eligible.

(*c*) *Ground access costs.*—Developing, constructing, reconstructing, or improving a ground access system (public transportation or highway system), within 5 miles of the airport property; no such ground access system may be approved for funding unless the Secretary determines that there are no unmet safety needs at the airport and the system will be used primarily by those traveling to or from the airport.[2]

(*d*) *Airport-related equipment.*—Aviation-related weather reporting equipment (presently allowed under the Facilities and Equipment program, if it is a navigational aid).

2. *Research, Engineering, Development, and Demonstration.*—Unlike present law, research and development funds (and specific amounts) are specifically earmarked for:

[2] This expenditure purpose is not to be allowed under the Ways and Means Committee amendment.

(*a*) air traffic control purposes;
(*b*) navigation purposes;
(*c*) aviation weather purposes;
(*d*) aviation medicine purposes; and
(*e*) amounts as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law.[3]

3. *Airway operations.*—Limited costs of operating air navigation facilities would be added to certain costs of maintaining such facilities.

4. *Training of State and local government employees.*—Up to $250,000 per year would be authorized for training purposes related to the provisions of the bill.

5. *Study of certain air traffic control needs.*—Relating to air traffic control needs in the northeastern United States (6-month study).

Effective date

The trust fund amendments are effective for fiscal years 1981--1985.

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[3] As reported by the Committee on Science and Technology, R&D authorizations would also include specific funds for Air Traffic Control computer modernization. (The Science and Technology Committee also increased the amounts authorized for R&D.)

APPENDIX:

STATISTICAL DATA ON AIRPORT AND AIRWAY TRUST FUND TAXES AND AUTHORIZATIONS, FISCAL YEARS 1980–1985

Table A-1.—Estimated Aviation Excise Tax Receipts Under Present Law, Fiscal Years 1980–1985

[Millions of dollars]

Tax	1980	1981	1982	1983	1984	1985
Passenger ticket tax [1]	1,584	1,077	1,181	1,298	1,432	1,573
Air freight waybill tax [2]	93					
International departure tax [2]	79					
Fuels tax for non-commercial aviation [3]	74	17	18	18	19	8
Registration and use tax [2]	26					
Tires and tubes [4]	1	1	1	1	1	1
Total, present law receipts	1,857	1,095	1,200	1,317	1,452	1,582

[1] The passenger ticket tax would decrease to 5 percent after September 30, 1980, and the revenues would go into the general fund.
[2] This tax would expire after September 30, 1980.
[3] The tax on jet fuel would expire after September 30, 1980. The tax on aviation gasoline would decrease to four cents for the period October 1, 1980, through September 30, 1984, and to one and one-half cents thereafter.
[4] After September 30, 1980, the revenues from the taxes on aircraft tires and tubes would revert to the Highway Trust Fund.

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Table A–2.—Estimated Increase in Airport and Airway Trust Fund Tax Receipts Under Ways and Means Committee Amendment to H.R. 6721, Fiscal Years 1981–1985

[Millions of dollars]

Tax	1981	1982	1983	1984	1985
Passenger ticket tax [1]	646	709	106	----	----
Air freight waybill tax [2]	111	130	150	171	195
International departure tax [3]	81	87	91	97	102
Fuels tax for noncommercial aviation [4]	75	80	84	91	110
Registration and use tax [5]	17	18	19	19	20
Tires and tubes [6]	----	----	----	----	----
Total, committee amendment receipts	930	1,024	450	378	427

[1] Extended at 8 percent through September 30, 1982, and then at 5 percent beginning on October 1, 1982 (same as present law rate for after September 30, 1980). The Ways and Means Committee amendment also removes the present 225-mile zone rule with respect to air travel within the zone in Canada and Mexico when the Secretary of the Treasury reaches a satisfactory agreement with those countries. When implemented, receipts will be decreased by approximately $25 million per year.

[2] Extended at 5 percent through September 30, 1985.

[3] Extended at $3 per person through September 30, 1985.

[4] Increased this tax to eight and one-half cents total per gallon July 1, 1980 through September 30, 1985.

[5] Extended at rates existing before July 1, 1980, only for commercial aircraft.

[6] Extended at present law rates.

TableA–3.—Estimated Total Airport and Airway Trust Fund Tax Receipts Under Ways and Means Committee Amendment to H.R. 6721, Fiscal Years 1981–1985

[Millions of dollars]

Tax	1981	1982	1983	1984	1985
Passenger ticket tax [1]	1,723	1,890	1,404	1,432	1,573
Air freight waybill tax [2]	111	130	150	171	195
International departure tax [3]	81	87	91	97	102
Fuels tax for non-commercial aviation [4]	92	98	102	110	118
Registration and use tax [5]	17	18	19	19	20
Tires and tubes [6]	1	1	1	1	1
Total, trust fund receipts	2,025	2,224	1,767	1,830	2,009

[1] 8 percent through September 30, 1982, and then at 5 percent beginning on October 1, 1982. The committee amendment also removes the present 225-mile zone rule with respect to air travel within the zone in Canada and Mexico when the Secretary of the Treasury reaches a satisfactory agreement with those countries. When implemented, receipts will be decreased by approximately $25 million per year.

[2] At 5 percent through September 30, 1985.

[3] $3 per person through September 30, 1985.

[4] At eight and one-half cents per gallon through September 30, 1985.

[5] Extended at rates existing before July 1, 1980, only for commercial aircraft.

[6] Extended at present law rates.

Table A–4.—Comparison of Proposed Airport and Airway Trust Fund Program Authorization Levels for Fiscal Years 1981–85 (and Present Law Level for Fiscal 1980)

[Millions of dollars]

Fiscal year	Administration (H.R. 3745)	H.R. 6721 (as reported)	S. 1648 (as passed the Senate)
Airport Development and Planning (ADAP)			
1980 (present law)	682	682	682
1981	[1] 700	875	825
1982	750	936	600
1983	800	1,002	550
1984	850	1,072	600
1985	900	1,147	650
1981–85 subtotal	**4,000**	**5,032**	[2] **3,225**
Airway Facilities and Equipment (F & E)			
1980 (present law)	250	250	250
1981	350	525	400
1982	385	562	450
1983	420	601	550
1984	455	643	600
1985	490	688	750
1981–85 subtotal	**2,100**	**3,109**	**2,750**
Operations and Maintenance (O & M)			
1980 (present law)	325	325	325
1981	1,300	400	350
1982	1,450	428	375
1983	1,600	458	400
1984	1,750	490	425
1985	1,900	524	450
1981–85 subtotal	**8,000**	**2,300**	**2,000**

[1] In its revised fiscal 1981 budget proposal, the Administration reduced this amount to $650 million.

[2] For fiscal years beginning after 1981, S. 1648 would "defederalize" the medium and large-sized airports, thereby reducing the amount of ADAP funds after fiscal 1981.

Table A-4.—Continued

[Millions of dollars]

Fiscal year	Administration (H.R. 3745)	H.R. 6721	S. 1648
Research and Development (R&D)			
1980 (present law)	50	50	50
1981	90	[3] 85	90
1982	95	([3])	95
1983	100	([3])	100
1984	105	([3])	105
1985	110	([3])	110
1981–85 subtotal	**500**	[3] 85	**500**
Noise Abatement Planning and Programs			
1980 (present law)	40	40	40
1981	([4])	150	([4])
1982	([4])	165	([4])
1983	([4])	180	([4])
1984	([4])	195	([4])
1985	([4])	210	([4])
1981–85 subtotal	([4])	**900**	([4])
Total Trust Fund Authorizations			
1980 (present law)	1, 347	1, 347	1, 347
1981	2, 455	2, 035	1, 680
1982	2, 695	2, 091	1, 535
1983	2, 935	2, 241	1, 615
1984	3, 175	2, 400	1, 745
1985	3, 415	2, 569	1, 975
1981–85 total	**14, 675**	**11, 396**	**8, 550**

[3] The 1-year R. & D. amount included in H.R. 6721 for $85 million is as reported by the House Committee on Public Works and Transportation; the bill as reported by the House Committee on Science and Technology includes $107 million for fiscal year 1981. R. & D. authorizations for fiscal years 1982–85 would be made later.

[4] H.R. 3745 and S. 1648 would include certain noise abatement purposes within the ADAP funding authorization amount rather than authorizing separate. additional amounts as under H.R. 6721.

Senator BYRD. The hour of 9 o'clock having arrived, the committee will come to order.

The current aviation related excise taxes will expire on October 1, 1980. H.R. 6721 is now pending in the House. This is authorizing legislation for user funds from the Airport and Airways Trust Fund. The House Ways and Means Committee has agreed to an amendment to be added to H.R. 6721 dealing with the tax provisions. A Senate bill, S. 1649, introduced by the distinguished Senator from Nevada, Mr. Cannon, also will receive careful attention. It takes a different approach from the Ways and Means Committee and significantly reduces the passenger tax.

The subcommittee today will consider each of these proposals dealing with taxes to fund the Airport and Airways Trust Fund.

The subcommittee is very pleased to have Senator Cannon here today. Senator, we are delighted to have you, and you may proceed in any manner you wish.

STATEMENT OF HON. HOWARD W. CANNON, U.S. SENATOR FROM THE STATE OF NEVADA

Senator CANNON. Thank you very much, Mr. Chairman. I appreciate the opportunity to be here and to present my views to the chairman and the distinguished members of the committee and the subcommittee.

I am presenting the views of the Committee on Commerce, Science, and Transportation and we do consider this an important matter of reauthorizing the Airport and Airway Revenue Act of 1970.

Mr. Chairman, the past fiscal management of the Airport and Airways Trust Fund has been nothing short of a disgrace. That may seem to be a strong statement, but I assure you that I have evidence—3.7 billion pieces of evidence.

The trust fund was established in 1970 so that the Federal Government could assure that aviation user taxes would be dedicated to improving the safety and capacity of the airport and airway system. But somewhere in the past decade we have gotten badly off track.

One dollar out of every three we have collected from airline passengers in the past 10 years was brought to Washington and kept here, put to absolutely no use whatsoever. We have been overcharging the users and underfunding the important safety needs in the facilities and equipment programs, while at the same time the public demands to know why we can show a $3.7 billion surplus in this safety fund and still make excuses when two airplanes collided over San Diego for the lack of a second instrument landing system in that major metropolitan area.

Our embarrassment is not and should not be eased when we read in the papers that money which is being spent from this fund is not going for safety items, but for terminal statues and electric flagpoles such as at Atlanta-Hartsfield Airport.

We must all accept some of the responsibility for this disgraceful condition—my committee, your committee and the administrations of the past 10 years. But while our sins of the past are highly regrettable, to refuse to do our best to remedy this program's future would be unforgivable.

I expect that you will hear from some witnesses who will profess, as they did before the Aviation Subcommittee, that this trust fund program has been a major success. Indeed, it has made some positive improvements if one takes a myopic look at airport facilities. But to accept this program as a whole as successful ignores the facts, and I for one find it impossible to ignore $3.7 billion.

That amount would have paid the increase in last year's fuel bills for all the airlines with more than a billion dollars left over. Instead you can look at your ticket prices and see who paid for that fuel increase on top of paying for that trust fund surplus.

I have to wonder whether a local airport operator would be considered successful if he overcharged the passengers and users of his facility by one-third in a decade, just so that he could keep millions locked away in a fat bank account.

I know of no local government that would accept such behavior of a public enterprise, and certainly the Federal Government should not continue to embarrass itself by blindly perpetuating the fiscal mismanagement of the Airport and Airways Trust Fund.

Mr. Chairman, I am here to seek your committee's help in curing this badly ailing program. S. 1648, which was overwhelmingly adopted by the Senate on February 4 of this year, contains provisions aimed at many of the existing program's shortcomings on the expenditure side and I can assure you that we will not fund more statues such as we have funded in Atlanta.

While some of our changes were not unanimously endorsed, they all received extremely strong support by the full committee and the Senate. Therefore, we now need a revenue bill to companion the approved Senate expenditure legislation. Together our bill must meet the two baseline tests for a healthy and useful future program: (1) Are the safety needs of the air transportation system accommodated, and (2) will the trust fund be brought into balance by the end of this 5-year program.

I am not a tax expert, Mr. Chairman, and therefore would not presume to advise the distinguished members of the Finance Committee on the specifics of any airport and airway tax legislation. However, I can read a bottom line and wish to address myself to the end results of some of the proposals before this committee.

I regret to say that I cannot support S. 1649, introduced by Senators Packwood, Inouye, Schmitt and myself, although I find it preferable to other measures currently before the committee. But, frankly, S. 1639 keeps taxes much too high in my opinion. Because of a recalculation of future inflation estimates by the administration, what we believed would be a surplus of $800 million at the end of fiscal year 1985 when we wrote S. 1649, turns out now to be an estimated surplus of $1.9 billion.

In order to ever achieve a reasonably balanced aviation trust fund, I believe we must get the surplus below $1 billion by the end of fiscal year 1985 and then reestablish appropriate tax and expenditure levels for the next 5 years in 1984.

Airline, passenger, and general aviation groups will be recommending to you changes to S. 1649 to lower its figures for international departure, waybill and fuel taxes. I encourage you, Mr. Chairman, to seriously consider these specific suggestions.

I would add the footnote that my references to S. 1649 are intended to include the changes recommended by the Commerce Committee in its resolution endorsing that bill. A copy of that resolution and accompanying correspondence are attached to my testimony.

A second measure before this committee is the House Ways and Means proposal. If the Senate were to adopt the House tax bill, we would be making a combined tax and expenditure recommendation that would result in an $8.3 billion surplus in the trust fund by the end of fiscal year 1985. I submit to you that it is on its face unacceptable.

Finally, if your committee were to simply continue the existing 8 percent ticket tax and the other user taxes, the surplus would amount to $11.4 billion under current projections. I am not sure how to characterize this idea, except to say that I find the $3.1 billion worse than acceptable.

Mr. Chairman, the Finance Committee will be hearing from groups and from the administration which will say that the trust fund should be balanced by changing the Senate's position on the authorizing legislation. They suggest more money for FAA salaries and expenses, more money for buying land, and no defederalization of the larger airports.

These groups all have legitimate arguments which have already lost before the full Senate when it considered S. 1648. They are now asking the Finance Committee to approve an irresponsibly high tax level to try to win in a backdoor fashion what they were unable to win on the merits of their arguments at the proper time.

Indeed, some of these issues will have to be compromised in conference considering the House bill's provisions. But these expenditure arguments are clearly over issues which have already been settled by the full Senate, and the unhappy losers are asking you to write a tax bill based upon their minority wishes of what might have been.

Perhaps most distressing is the Federal budget argument I have heard as a reason to refuse this tax reduction. The trust fund is not a general treasury account. It is a separate fund with its own revenues, its own expenditures, and its own $3.7 billion surplus. But because we mistakenly include such accounts as part of the Federal Unified Budget, the trust fund's annual excess revenues over expenditures gives the illusory image of reducing the Federal deficit, even though the trust fund revenue cannot be used to offset the debts of other accounts.

Nevertheless, some would argue that we should continue to fool ourselves with this budgetary slight-of-hand and keep the ticket tax high, "because the Federal budget needs the revenue." I cannot think of a better way to destroy the integrity of the congressional budget process than to say that process will not permit a reduction in this user tax because it creates a fantasy impact on the Federal deficit.

Ignoring reality did not make an "emperor's new clothes" appear when they did not exist, and ignoring financial reality about this independent trust fund account will not aid the interests of our Federal budget no matter how many times our budget's tailors tell us it looks good.

Mr. Chairman, as you know, time is running short for the Congress to meet the September 30, 1980, deadline for extending the expenditure and revenue authorizations of the Airport and Airways Trust Fund. It is my sincere hope that the Finance Committee will act expeditiously to report a revenue bill which is an appropriate companion to S. 1648 in order that we might continue this program without interruption.

In closing, I want to repeat my statement that this fund is in a disgraceful condition. My conviction in that statement has brought me to the conclusion that the air transportation system and the public would be far better served by our not reauthorizing this program in its present form, or some worse fiscal condition. No program, Mr. Chairman, would be highly preferable to a continue overtaxing of our airline passengers.

I sincerely hope that we can work together to repair a program that was based upon a fine idea, but which has gone astray while the Federal Government was focused on larger and different issues of fiscal concern.

I thank you, Mr. Chairman, and Senator Packwood for giving me the opportunity to present these views.

Senator BYRD. Thank you, Senator Cannon.

You make a point on page 5 that I think is not only interesting, but important. That is using the surplus from the trust funds to reduce the deficit in the general fund. I think that that is very misleading. The deficit for the general operation of Government is far worse or far greater than it would appear merely because the trust funds collectively are running a huge surplus. This is one of those trust funds that has a substantial surplus.

Senator CANNON. Mr. Chairman, you are absolutely correct. These trust funds cannot be used for other purposes. They can be used in the overall budget total as they are being used now, and this is very misleading to the public, but they cannot be devoted to retiring part of the deficit.

Senator BYRD. No, they can be only for a specific purpose, and in this case for the airports. The largest surplus, I suppose, is in the employees retirement trust funds, and those moneys cannot be used for general operation of the Government either. They can only be used for their specific purpose, the same way as the Social Security Trust Fund.

Thank you, Senator Cannon.

Senator Packwood.

Senator PACKWOOD. Senator, do you have any personal feeling one way or another on cutting the freight shippers' waybill tax proportionately to a cut in the airline passenger ticket tax?

Senator CANNON. No, I would have no problem with that. We did not do that because we were looking at the larger problem here. But I certainly would find no problem with it.

I think you might see two effects come out of this, both if you reduce the waybill and if you reduce the ticket tax, we might actually have more people traveling as a result of that reduction in the ticket tax, and you might have more shippers shipping freight as a result of reducing the waybill. So in the long run you would have more than our estimated revenues as they are based on present factors now.

Senator PACKWOOD. Mr. Chairman, I want to echo what Howard said in his opening statement. He and I have worked on this issue for the better part of 2 years now, and I agree with his conclusion. I would almost rather have nothing than to see these taxes continue to mount up.

Your argument that no local government could get away with this is correct. The Federal Government can barely get away with it. I know that, in Oregon if you had a unit of local government mounting up a hundred million dollar surplus, let alone billions of dollars of surplus, you would either act to reduce the surplus or you would be voted out of office.

Senator CANNON. When you look at those last figures that I gave based on a 1985 estimate, if you continue it as it is, of over $11 billion surplus, that is just absolutely unconscionable. It is the passengers that are traveling today that are being soaked to come up with that surplus that cannot be used for any other purpose.

Senator BYRD. Thank you very much, Senator Cannon.

Senator CANNON. Thank you very much, Mr. Chairman.

[The prepared statement of Senator Cannon follows:]

TESTIMONY OF SENATOR HOWARD W. CANNON, CHAIRMAN, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. Chairman and distinguished members of the Finance Committee, I appreciate the opportunity to present the views of the Committee on Commerce, Science, and Transportation on the important matter of reauthorizing the Airport and Airway Revenue Act of 1970.

Mr. Chairman, the past fiscal management of the Airport and Airway Trust Fund has been nothing short of a disgrace.

That may seem to be a strong statement, but I assure you that I have evidence—3.7 billion pieces of evidence. The trust fund was established in 1970 so that the federal government could assure that aviation user taxes would be dedicated to improving the safety and capacity of the airport and airways system. But somewhere in the past decade we have gotten badly off track. One dollar out of every three we have collected from airline passengers in the past ten years was brought to Washington and kept here—put to no use whatsoever! We've been overcharging the users and underfunding the important safety needs in the Facilities and Equipment Program, while at the same time, the public demands to know why we can show a $3.7 billion surplus in this safety fund and still make excuses when two airplanes collided over San Diego for the lack of a second instrument landing system in that major metropolitan area. Our embarrassment is not, and should not, be eased when we read in the papers that money which is being spent from this fund is going not for safety items, but for terminal statutes and electric flagpoles at Atlanta-Hartsfield Airport.

We must all accept some of the responsibility for this disgraceful condition—my Committee, your Committee and the Administrations of the past 10 years. But, while our sins of the past are highly regrettable, to refuse to do our best to remedy this program's future would be unforgivable.

I expect that you will hear from some witnesses who will profess (as they did before the Aviation Subcommittee) that this trust fund program has been a major success; and indeed, it has made some positive improvements if one takes a myopic look at airport facilities. But, to accept this program as a whole as successful ignores the facts, and I for one find it impossible to ignore $3.7 billion dollars.

That amount would have paid the increase in last year's fuel bills for all the airlines with more than a billion dollars left over. Instead you can look at your ticket prices to see who paid for that fuel increase on top of paying for the trust fund surplus. I have to wonder whether a local airport operator would be considered successful if he overcharged the passengers and users of its facility by one third in a decade, just so that it could keep millions locked away in a fat bank account.

I know of no local government that would accept such behavior of a public enterprise, and certainly the federal government should not continue to embarrass itself by blindly perpetuating the fiscal mismanagement of the Airport and Airway Trust Fund.

Mr. Chairman, I am here to seek your Committee's help in curing this badly ailing program. S. 1648, which was overwhelmingly adopted by the Senate on

February 4th of this year, contains provisions aimed at many of the existing program's shortcomings on the expenditure side and I can assure you we will fund no more statues. And, while some of our changes were not unanimously endorsed, they all received extremely strong support by the full Senate. Therefore, we now need a revenue bill to companion the approved Senate expenditure legislation. Together our bills must meet the two baseline tests for a healthy and useful future program: (1) are the safety needs of the air transportation system accommodated, and (2) will the trust fund be brought into balance by the end of this five year program.

I am not a tax expert, Mr. Chairman, and therefore, would not presume to advise the distinguished members of the Finance Committee on the specifics of any airport and airway tax legislation. However, I can read a bottom line and wish to address myself to the end results of some of the proposals before this Committee.

I regret to say that I cannot support S. 1649, introduced by Senators Packwood, Inouye, Schmitt and myself, although I find it preferable to the other measures currently before this Committee. But, frankly S. 1649 keeps taxes much too high in my opinion. Because of a recalculation of future inflation estimates by the Administration, what we believed would be a surplus of $800 million at the end of fiscal year 1985 when we wrote S. 1649, turns out to be a surplus of $1.9 billion.

In order to ever achieve a reasonably balanced aviation trust fund, I believe we must get the surplus below one billion by the end of fiscal year 1985, and then reestablish appropriate tax and expenditure levels for the next five years in 1984.

Airline passenger and general aviation groups will be recommending to you changes to S. 1649 to lower its figures for international departure, waybill and fuel taxes. I encourage you, Mr. Chairman, to strongly consider these specific suggestions. I would add the footnote that my references to S. 1649 are intended to include the changes recommended by the Commerce Committee in its resolution endorsing that bill. A copy of that resolution and accompanying correspondence are attached to my testimony.

A second measure before this Committee is the House Ways and Means proposal. If the Senate were to adopt the House tax bill, we would be making a combined tax and expenditure recommendation that would result in an $8.3 billion surplus in the trust fund by the end of fiscal year 1985. I submit to you that it is on its face unacceptable.

Finally, if your Committee were to simply continue the existing 8 percent ticket tax and the other user taxes, the surplus would amount to $11.4 billion under current projections. I'm not sure how to characterize this idea, except to say that I find the $3.1 billion worse than unacceptable.

Mr. Chairman, the Finance Committee will be hearing from groups and the Administration, which will say that the trust fund should be balanced by changing the Senate's position on the authorizing legislation.

They suggest more money for FAA salaries and expenses, more money for buying land, and no defederalization of the larger airports. These groups all have legitimate arguments which have already lost before the full Senate when it considered S. 1648.

They now ask the Finance Committee to approve an irresponsibly high tax level to try to win in a back-door fashion what they were unable to win on the merits of their arguments at the proper time.

Indeed, some of these issues will have to be compromised in conference considering the House bill's provisions. But, these expenditure arguments are clearly over issues which have already been settled by the full Senate, and the unhappy losers are asking you to write a tax bill based upon their minority wishes to what might have been.

Perhaps most distressing is the Federal Budget argument I have heard as a reason to refuse this tax reduction. The trust fund is not a general treasury account. It is a separate fund with its own revenues, its own expenditures, and its own $3.7 billion surplus. But, because we mistakenly include such accounts as part of the Federal Unified Budget, the trust fund's annual excess of revenues over expenditures gives the illusory image of reducing the federal deficit—even though the trust fund revenue cannot be used to offset the debts of other accounts.

Nevertheless, some would argue that we should continue to fool ourselves with this budgetary slight-of-hand and keep the ticket tax high, "because the Federal Budget needs the revenue." I cannot think of a better way to destroy the integrity of the Congressional Budget process than to say that process will not permit a reduction in this user tax because it creates a fantasy impact on the federal deficit.

Ignoring reality did not make an "Emperor's New Clothes" appear when they did not exist; and ignoring financial reality about this independent trust fund will not aid the interests of our federal budget no matter how many times our budget's tailors tell us it looks good.

Mr. Chairman, as you know, time is running short for the Congress to meet the September 30, 1980, deadline for extending the expenditure and revenue authoriza-

tions of the Airport and Airway Trust Fund. It is my sincere hope that the Finance Committee will act expeditiously to report a revenue bill, which is an appropriate companion to S. 1648, in order that we might continue this program without interruption.

In closing, I want to repeat my statement that this fund is in a disgraceful condition. My conviction in that statement has brought me to the conclusion that the air transportation system and the public would be far better served by our not reauthorizing this program in its present form, or in some worse fiscal condition. No program, Mr. Chairman, would be highly preferable to a continued overtaxing of our airline passengers.

I sincerely hope that we can work together to repair a program that was based upon a fine idea, but which has gone astray while the federal government was focused on larger and different issues of fiscal concern.

Thank you for the opportunity to present these views.

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C., April 21, 1980.

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee,
Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The attached resolution was reported by the Committee on Commerce, Science and Transportation without objection, and is offered for the consideration of the Committee on Finance.

It is the opinion of our Committee that the concept of overriding importance in our joint endeavor to reauthorize the Airport and Airway Trust Fund is to bring that fund into balance. The existing unobligated surplus of some three billion dollars is a useless excess which should certainly not be increased, and which we believe should be drawn down to a reasonable level over the next five years.

We are hopeful that in the Congress' commitment to balance the Federal Budget, which we support, the Airport and Airway Trust Fund will not be used as an artificial means to create the appearance of balancing that budget. The Senate has voted in S. 1648 austere expenditure levels, which even include the total elimination of funding for the nation's largest 72 airports. Because these multi-million dollar airports are all capable of self-finance, the Senate was able to vote for this savings of over $1.5 billion through fiscal year 1985 as estimated by the CBO. In addition, the Senate Budget Committee has recommended still further cuts of $300 million in fiscal year 1981 which may have to be achieved.

However, despite these spending cuts and the existing Trust Fund surplus, the Senate Budget Committee has recommended a continuing increase in its revenues to support the fund. Adoption of the Senate Budget Committee recommendations on tax levels in combination with the expenditure levels already approved by the Senate will result in a Trust Fund surplus of over $10 billion by the end of fiscal year 1985. Such a surplus of unspendable dollars certainly does not constitute prudent management of this user tax supported program. We are also of the opinion that the public will not accept the concept of collecting unneeded revenues that are piled up in Washington and never spent as a legitimate means of balancing the Federal Budget.

Finally, we have been made aware of disturbing reports that the House Ways and Means Committee may indeed retain the existing tax levels or provide only a minor decrease over the life of the tax authorization. We hope the Finance Committee will consider the need to have a maximum range of flexibility in conference once the House and Senate authorization committees establish final expenditure levels. Establishing tax levels commensurate with both the Senate bill's expenditure levels and eliminating the Trust Fund's unobligated surplus over the next five years will certainly provide that needed flexibility in conference with the House.

We appreciate your consideration of our Committee's resolution on this important matter.

Sincerely,

HOWARD W. CANNON,
Chairman.

NANCY LANDON KASSEBAUM,
Ranking Minority Member,
Aviation Subcommittee.

Attachment.

RESOLUTION

To urge the Committee on Finance to amend certain taxes applicable to the users of general aviation aircraft.

Whereas the uses of general aviation aircraft currently pay a federal tax of 7 cents on each gallon of aviation fuel used in such aircraft; and

Whereas the Committee on Finance is currently considering legislation (S. 1649 and 1582) that would modify this tax so as to implement and ad valorem tax of 6 percent or 10 percent on the purchase price of such aviation fuel; and

Whereas such an ad valorem tax would place inequitable burdens on the users of general aviation aircraft in certain States because the price of fuel for such aircraft varies from State to State by as much as 40 percent; and

Whereas such an ad valorem tax would unjustly discriminate against the users of general aviation aircraft who must pay higher costs for aviation fuel than commercial aircraft; and

Whereas the proportional contribution of the users of general aviation aircraft to the Airport and Airway Trust Fund would dramatically increase if proposals to reduce the current tax on passengers on commercial aircraft are adopted; and

Whereas, in addition to the tax on aviation fuel, the users of general aviation aircraft currently pay an aircraft registration tax that involves excessive paperwork and complicated reporting procedures; and

Whereas the users of general aviation aircraft account for over 90 percent of flights made in this Nation each year; and

Whereas it is in the national interest to promote the continued growth of general aviation; and

Whereas due to the current state of the economy and the need to reduce the projected surplus of $3,200,000,000 in the Airport and Airway Trust Fund, it is difficult to predict the level of tax revenues that will be needed to maintain such Fund for the next ten years; and

Whereas on October 25, 1979, the Committee on Commerce, Science and Transportation reported favorably legislation (S. 1648) that would substantially alter the programs financed by the Airport and Airway Trust Fund during fiscal years 1981 through 1985; and

Whereas, with the recommended amendments contained in this resolution, the Committee on Commerce, Science and Transportation believes that the tax revenues generated by S. 1649 would be consistent with the goals and expenditures authorized by this Committee in S. 1648: Now, therefore, be it

Resolved, That the Committee on Commerce, Science and Transportation urges the Committee on Finance, in its consideration of the taxes applicable to the users of general aviation aircraft, to—

(1) Avoid the imposition of an ad valorem tax on the purchase price of aviation fuel;

(2) Exempt the users of general aviation aircraft from the current aircraft registration tax;

(3) Insure that the users of general aviation aircraft contribute their fair share to the Airport and Airway Trust fund by increasing the current tax on aviation fuel for general aviation aircraft to 8 cents per gallon and providing for the further increase of such tax by 1 cent every two years, and

(4) The taxes described in S. 1649 be effective for fiscal years 1981 through 1985 and be reviewed prior to the end of fiscal year 1985 to determine the appropriate future funding levels for continuation of the Airport and Airway Trust Fund.

Senator BYRD. Next, the Honorable Langhorne Bond, Administrator of the Federal Aviation Administration; the Honorable Mort Downey, Assistant Secretary for Budget and Programs, U.S. Department of Transportation; and the Honorable Donald C. Lubick, Assistant Secretary for Tax Policy, U.S. Department of the Treasury.

Welcome, gentlemen. You may determine the order in which you want to speak.

Mr. LUBICK. Mr. Chairman, Mr. Bond is on his way, so with your permission I will speak very briefly to the tax side of this problem. Mr. Bond will deal more generally with the problems of the management of the Airport and Airways System.

Mr. Chairman, with your indulgence, I would like to ask that my prepared statement be inserted in the record.

Senator BYRD. Without objection, so ordered.

STATEMENT OF DONALD C. LUBICK, ASSISTANT SECRETARY FOR TAX POLICY, U.S. DEPARTMENT OF THE TREASURY

Mr. LUBICK. Mr. Chairman, the existing Airport and Airway Trust Fund, and most of the air user taxes expire at the end of this month. As you know, H.R. 6721 is awaiting passage by the House and would generally extend most of these charges and the trust fund through the year 1985.

The industry has had very severe difficulties this year because of the uncertainty as to the continuation of the taxes. The June 30 deadline imposed some very severe problems to them as to their uncertainty as to whether the taxes would be extended, and we are facing the same problem this month. Therefore, we certainly believe that it is in everyone's interest to get this matter settled very quickly.

If it does appear that there is going to be some unexpected delay, we would urge that there be a very quick temporary extension for that purpose. We would suggest an extension of 1 year so that we don't constantly face these deadlines, and then we can proceed to a more permanent solution, which of course would supersede any action that is taken by way of extension.

The House bill as amended by the Ways and Means Committee accepts the concept that like the Highway Trust Fund, the users of the airways who derive the primary benefits from the system ought to bear the costs through user charges. That is a principle which you have accepted in the Highway Trust Fund. You have accepted it in the Inland Waterway situation as well.

The goal is, and ought to be, a self-sustaining civilian part of the air system.

There has been considerable discussion about the developing surpluses in the trust fund, and we certainly agree with you and with Senator Cannon that it is not appropriate for these user charges to finance the reduction of the Federal deficit generally. But at the same time, the principle has been made clear in the enactment of the original legislation, and I believe it is one to which you have subscribed in these other areas that we have referred to, that the financing of the airport and airway system ought to be borne by those who derive the special benefits of it.

The reason for the surpluses is quite a simple one. The taxes have gone into the fund. The charges for the use have gone into the fund. But the largest expenditures for providing the benefits to the users of the airways system, namely, operation and maintenance of the system, have been financed by general revenues.

So it is quite easy to build up a very large surplus in the fund if you make the expenditures which are appropriately chargeable from the fund out of the general revenues, and this is what has been happening.

Since the early 1970's operation and maintenance have been largely financed by general revenues, by taxpayers as a whole, and the result is that the revenues are going in, but, if the expenditures are not to be made from it, we are going to have a surplus.

Senator BYRD. Why has that been done?

Mr. LUBICK. There were some political controversies in 1971 which led to Congress putting restrictions on the use for operation and maintenance, perhaps to require some greater expenditures in hardware and other areas. I am not totally familiar with it.

Senator BYRD. What about 1977, you were in office then.

Mr. LUBICK. The fact of the matter is that the Congress has been moving in the other direction, and it has been appropriating larger and larger amounts from the trust fund for operation and maintenance, but still a small percentage of the total of O. & M. These charges have been paid from the general revenues, thereby increasing the Federal deficit.

In other words, the very thing, Senator Byrd, which you abhor has come about because of the fact that there have been charges against the Federal revenues for that which should have been appropriated out of the trust fund. So the result has been, with the financing of operation and maintenance from general revenues, that the deficit has been increasing, and the general public, the American taxpayers as a whole have had to bear these charges which you originally levied the user taxes for.

The House bill has increased the expenditures for operation and maintenance from the trust fund, and we urge that they should be substantially expanded even from that level. Our figures indicate that if this expansion is made, the trust fund surplus will disappear very rapidly.

We would suggest that it not be done all at once, that it be done gradually so we don't instantly throw the trust fund into a deficit. We have suggested a program for phasing out the surplus, all in accordance with the goal originally set forth in 1970 that the financing of the airport and airway system be done through the user charges, and that can all be done over a period of time through proper charging to the trust fund those items which are appropriate.

In point of fact, the other issue that I would like to address myself to is related to this, and that is the general level of taxation on general aviation.

Commercial aviation currently is paying through taxes levied 90 percent or better of the charges for which it is responsible in the maintenance of the system. General aviation is paying anywhere from a seventh to a fifth of the charges for which it is responsible.

The administration has made some proposed changes in the taxes and the user charges on general aviation. The House bill did not choose, and the Ways and Means Committee did not choose to increase the share of general aviation. It did raise the fuel tax from 7 cents to 8½ cents per gallon, but at the same time it repealed the user tax on noncommercial planes.

As far as we are concerned, it is an acceptable result to go in the direction of a tax on fuel as opposed to the use tax. If we are going to repeal it for general aviation, we might as well at a very small cost in revenue go all the way to simplify it and repeal it for commercial aviation as well.

However, this does not answer the question that additional revenues still should be raised from general aviation, and if the administration's proposals for new taxes on avionics are not adopted,

it is then appropriate to do it through a tax on fuel. But, nevertheless, we would have to go beyond the 8½ cents of the House bill in order that general aviation would bear its share.

We would, therefore, urge that we move rapidly in the direction of extending the taxes. The House Ways and Means bill would call for the 8-percent ticket tax to go to 5 percent on October 1, 1982, and it also calls for a study of the appropriate level of financing. We would suggest that it is appropriate to leave it at the 8 percent for the 5-year period, and then, when we have had a chance to assess our needs, we can see if changes are appropriate.

But, it is important to continue the principle that the users of the system bear the charges, and that the charges for which the users are responsible are, indeed, funded out of the trust fund instead of being used to increase the Federal deficit as a burden on all taxpayers.

Once again, if we cannot have a speedy resolution of the uncertainty, we think that it is important that we have a 1-year or more extension in order to permit sufficient time to consider the appropriate tax levels.

Mr. Bond is here, and he will deal generally with the principles of the appropriate management of the system.

[The prepared statement of Mr. Lubick follows:]

STATEMENT OF DONALD C. LUBICK, ASSISTANT SECRETARY OF THE TREASURY (TAX POLICY)

Mr. Chairman and members of the subcommittee, we welcome the opportunity to present the Administration's views on the extension of the Airport and Airway Trust Fund and the aviation user charges. As a frame of reference for my comments, I will use H.R. 6721, the Airport and Airway Improvement Act of 1980, and the Ways and Means Committee Amendment to H.R. 6721, both of which are to be voted upon soon by the House of Representatives. We hope that, with a few changes, the proposed revenue and trust fund provisions of this bill will be enacted promptly, within the deadline recently set by Congress.

The existing Airport and Airway Trust Fund (Trust Fund) and the air user taxes originally were scheduled to expire on July 1, 1980. The bill generally would extend them until October 1, 1985. Although Congress has enacted a temporary extension of the taxes and Trust Fund in order to provide additional time for Congressional consideration of H.R. 6721, this extension will expire on September 30. New legislation must be enacted, therefore, within the next few weeks.

We also recognize that there may be some unexpected delay. If that occurs, there should be a further temporary extension. Such an extension should provide adequate time to enact H.R. 6721 or its equivalent in the next Congress. For this purpose we would recommend a one year extension, which could always be superseded by a permanent measure before the end of the one year period.

H.R. 6721 preserves the basic principle embodied in the Airport and Airway Revenue Act of 1970 of collecting tax revenues from civilian users of the airway to recover the costs of providing airway service to civilian users of the system. We supported the air user charge system in 1970 and continue to support it. We do not believe that taxpayers in general should be required to pay for the provision of goods and services by the Federal government which specifically benefit a limited group of persons who utilize them for business and personal concerns. We think it can also be truly said that the Congress agrees with this position, as evidenced by the imposition of the air user taxes in 1970, the highway user taxes in 1956, and the tax on fuel used on the inland waterways in 1978 (effective October 1, 1980).

In light of this basic principle, the questions that need to be addressed on H.R. 6721 are these: First, should higher taxes than at present be levied on general aviation? And second, what Federal aviation expenditures should be paid for by the tax revenues?

General aviation tax levels

While the taxes on commercial aviation and their customers are estimated to represent 90 percent or more of the airway costs allocated thereto, the ratio for

general (noncommercial) aviation is only 14 to 22 percent, depending on the assumption used. In order to obtain a contribution from general aviation more in line with the amount of Federal air expenditures that cost allocation studies of the Federal Aviation Administrtion (FAA) attribute to general aviation, the President recommended in his Fiscal Year 1981 Budget changing the 7 cents per gallon tax on fuel used by noncommercial aviation to a 10 percent ad valorem tax and the imposition of two new taxes of 6 percent on retail sales of planes and avionics for domestic noncommercial aviation use.

By contrast, H.R. 6721 does not provide for any increase in the contribution of general aviation to its share of Federal air expenditures. The bill does raise, from 7 cents per gallon to 8½ cents per gallon, the tax on fuel used in noncommercial aviation, but retains the present contribution level by at the same time repealing the annual aircraft use tax on planes used in noncommercial aviation. Since there are approximately 200,000 general aviation planes and less than 3,000 commercial planes, this change does relieve general aviation owners and the Internal Revenue Service of a considerable amount of paperwork. If the use tax is to be repealed for general aviation, however, we think that consideration should be given to repealing the use tax on all planes. A complete exemption would simplify the air user taxes and would eliminate the problem under H.R. 6721 that planes used partly in noncommercial and partly in commercial aviation would be taxed exactly as those used entirely in commercial aviation. An exension of the exemption to all planes would cost less than $20 million.

In any case, additional revenue should be raised from general aviation to achieve a more reasonable level of contribution toward the benefits it receives. One approach is that recommended by the President which was mentioned earlier. If this is not done, an alternative is to retain the annual use tax and raise the fuel tax beyond the 10 percent ad valorem level (or the equivalent) proposed by the President. A third alternative, if, as under the House bill, the use tax is repealed, is to increase the fuel tax enough to offset the use tax repeal plus an additional amount as suggested in the second alternative.

Trust fund expenditure levels

Expenditures from the Airport and Airway Trust Fund are also a major issue. The originial intent of the Congress, when the Airport and Airway Trust Fund was enacted in 1970, was that the taxes on civil aviation would eventually raise enough revenue to finance aid to airports and the civilian portion of the airways costs. Since it was intended that the air user taxes reflect Federal aviation costs represented by civilian use, the Trust Fund could not fully finance the Federal aviation system without additional financing to cover the costs considered attributable to military usage of the system. In addition, it was estimated that the 1970 user taxes would not generate enough revenues from civil users to cover costs attributable thereto for some years to come. Accordingly, Section 208(d) of the law establishing the Trust Fund authorized the appropriation to the Trust Fund of "such additional sums as may be required to make the expenditures referred to in subsection (f) of the section."

In addition to grants for airport development, this subsection listed expenditures of the FAA "which are attributable to planning, research and development, construction, or operation and maintenance of: (i) air traffic control, (ii) air navigation, (iii) communication, or (iv) supporting services, for the airway system".

Operation and maintenance of the airway system is the largest element in Federal expenditures for aviation, and the 1970 law recognized this as an essential part of the airway system that users should pay for. The operation of the airway system is the cornerstone of our air system, for without the air controllers and communication personnel airports and hardware lose their value. At the same time, the operational function is costly, for it is labor intensive.

Unfortunately, as a result of concern about the administration of the airport grant system during the first year after the 1970 legislation, the functions which could be financed by the Trust Fund were changed by Public Law 92-174, enacted on November 27, 1971, to eliminate costs of operation and maintenance for the airway system. Since that time, some revisions have been made to reinstate certain costs associated with equipment and its maintenance, but the large element of airway operation has remained outside the scope of the Trust Fund.

The result of the 1971 amendment has been twofold. With the exclusion of a major cost element, the Trust Fund has accumulated a large uncommitted balance, estimated to be $3.7 billion as of the beginning of fiscal 1981. At the same time, much of the civil portion of airway costs has had to be financed by taxpayers in general rather than by airway users as was originally intended. The Administration recommends a gradual reduction of the large balance in the Trust Fund by funding more airway costs from the Trust Fund. H.R. 6721 provides for paying part of the

operational costs of the airways from the Fund, but we have recommended expanding the amount set forth in the bill.

The growth of the balance in the Trust Fund has led some to conclude that airway users, particularly air passengers, are being taxed more than is required to offset Federal expenditures for their direct benefit. Suggestion to reduce the air ticket tax have been made as a result of this.

H.R. 6721 now provides that the 8 percent tax on air passenger tickets will be reduced to 5 percent on October 1, 1982. However, the report of the House Committee on Ways and Means notes that the Committee intends to reexamine the need for the reduction before that time. We believe that scheduling the reduction before the reexmaination of need is premature. A system of user charges obviously needs to be reviewed periodically to check on its reasonableness in relation to the purpose for which the charges are levied, but we believe there should be no reduction contemplated until further progress has been made in the funding of airway operations from the air user taxes.

Additional considerations

Before closing I would like to suggest two minor changes to the air user taxes that would serve to make more equitable the user charge system. These changes involve taxing terminal handling charges for mail shipped by the U.S. Postal Service and deleting the few exemptions remaining in the Fuel tax for State and local governments, private nonprofit schools, and aircraft museums. A short statement on these two proposals is appended to this statement.

Conclusion

Without new legislation, the Airport and Airway Trust Fund will cease to exist on October 1 and the taxes designated to finance the fund will be reduced or expire at the same time. We hope that the Congress prior to this date will enact long term air user tax legislation that will promote the appropriate recovery of airway system cost from civilian users of the system. While we prefer a long term measure, if an unanticipated delay arises, we recommend another temporary extension of the air user taxes.

Appendix

1. Terminal handling charges

The report of the Senate Finance Committee on the 1970 legislation stated that charges for accessorial services are subject to the transportation of property tax "if such service can only be provided by the airline and if the charge for the service is applicable to all using it." It also added that exemption from tax required that the accessorial charge be separately stated. The Treasury Department has ruled on the tax status of a number of such services. In particular, it held that the U.S. Postal Service was liable for tax on terminal handling charges under a contract to carry mail whereby two separate rates were quoted, a line haul charge, and a terminal handling charge. The latter covered such services as receipt of the mail at the terminal, transfer between planes, and loading and unloading planes. When the Post Office objected to the ruling, it was decided to get an opinion from the Department of Justice. The latter Department upheld the objection of the U.S. Postal Service and the Treasury reversed its earlier position in Rev. Rul. 80-53.

We wish to recommend that the law be amended to specifically include terminal handling charges of the type covered by the Post Office contract within the scope of the tax on transportation of property by air. Other customers of the airlines pay a single element rate which includes line haul and terminal handling services.

2. Exemptions from air user taxes

When the air user taxes were enacted in 1970, the Congress decided that the purpose of the legislation necessitated removal of the exemptions for domestic flights which the then existing taxes contained. For instance, unlike the general excise tax rules, State and local governments were not exempted from the taxes on passenger tickets, transportation of property, or the aircraft use tax. However, the law continued the exemption from the tax on fuel used in noncommercial aviation by State and local governments, private nonprofit schools, and farming. Subsequently, exemption from the fuel and aircraft use taxes was extended to aircraft museums.

We believe it would be consistent with the purpose of these taxes to repeal the exemptions, except that for farming. The farm exemption applies to flights over a farm for crop dusting and seeding, but not to and from the farm.

STATEMENT OF LANGHORNE BOND, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ACCOMPANIED BY HON. MORT DOWNEY, ASSISTANT SECRETARY FOR BUDGET AND PROGRAMS, U.S. DEPARTMENT OF TRANSPORTATION

Mr. BOND. Mr. Chairman, I apologize that I am not on time for my turn. Senator Cannon has typically addressed and disposed of these global issues in about 15 minutes. As always I underestimated Senator Cannon.

I thought that since Mr. Lubick has so adequately addressed these issues, perhaps I could put my statement into the record and not read it.

Senator BYRD. It will be so received.

Mr. BOND. I am available for questions if Senator Packwood might have them.

Senator BYRD. Very good.

Mr. Downey, do you wish to comment?

Mr. DOWNEY. I associate myself with Mr. Bond's statement.

Senator BYRD. Senator Packwood?

Senator PACKWOOD. Mr. Chairman, this is a problem I am familiar with because of the Commerce Committee's jurisdiction over this subject. I don't have any questions.

I understand the difference between Mr. Lubick's and Mr. Bond's position, and that of general aviation which is going to testify later on increasing the cost on general aviation. I have read their statements. I understand the issues. I don't have any questions.

Senator BYRD. Thank you, gentlemen.

[The prepared statements of Mr. Bond and Mr. Downey follow:]

STATEMENT OF HON. LANGHORNE M. BOND, FEDERAL AVIATION ADMINISTRATOR

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you today to discuss the Administration's position regarding the aviation user taxes needed to finance our Nation's airport and airway system through the Airport and Airway Trust Fund. With me today are Mort Downey, Assistant Secretary for Budget and Programs, Department of Transportation, and Robert Aaronson, FAA's Associate Administrator for Airports.

Mr. Chairman, there are two basic factors that we considered as we developed our aviation user tax proposals: Tax equity and Revenue needs. I would like to address both of these factors.

First, I want to touch on the subject of tax equity. I know the Members of the Committee deal with this subject on a daily basis. An equitable distribution of tax burdens is a fundamental tenet of our taxing system, and it should be. Yet, in the tax structure that has evolved to finance the needs of our airport and airway system, it seems to me that the notion of equity has fallen by the wayside. We need to correct that problem and the time to do so is now, when proposed legislation to meet the future needs of our air transportation system pending before the Congress. If we don't, the general taxpayer will continue to bear a disproportionate share of the tax burden.

When the original Airport and Airway Development Act of 1970 was enacted, there was a clear sentiment of the part of the Congress and the Executive Branch that the needs of the system should be largely financed by the users of the system. In fact, it is clear that the intent was to seek funding by the general taxpayer as a supplemental or stopgap measure if the revenues from the users were not sufficient to meet all the needs of the system.

It was only after a previous Administration failed to spend the amounts authorized by Congress for capital programs that the Congress amended the Act in 1971 to eliminate the provisions allowing for substantial O&M funding from the Trust Fund. In 1976, Congress determined that the increasing burden on the general taxpayer and the sufficiency of funds in the Trust Fund mandated the partial reinstatement of O&M funding. These same factors argue even more persuasively today for increasing the amount of O&M funding allowed to be financed from the Trust Fund. I want to stress that we are seeking the financing of O&M costs from

the Trust Fund only after the capital needs of the system have been met. This approach is fully consistent with the original concept underlying the establishment of the Trust Fund. I might add that the failure in the past to reinstitute this approach has been the largest contributing factor to the growing Trust Fund surplus.

I want to emphasize that our proposal to increase Trust Fund financing of O&M is not a proposal to increase program levels, since FAA operating costs will be incurred whether they are funded from the Trust Fund or from the General Fund. Moreover, O&M contributes directly to system safety since a navigational aid or facility must be operated and maintained if it is to do any good.

The notion of tax equity is also consistent with the Administration's view that each class of system users should pay its fair share of the costs of operating and maintaining the Federal airport and airway system. Currently, aviation taxes collected from system users amount to about 56 percent, in the aggregate, of the costs allocable to civil aviation that are incurred by the FAA in equipping, operating, and maintaining the airport and airway system. The users of commercial air service are paying amounts equivalent to about 90 percent of the costs incurred by the FAA on their behalf, while the comparable figure for general aviation is in the range of 14 to 22 percent, depending on the assumptions used in allocating costs.

Our goal is a gradual increase in the overall cost recovery through a progressively higher level of tax collection from general aviation, and recovery from all users of an increasing portion of the FAA's costs of operating and maintaining the airway system. The increased cost recovery from general aviation would primarily arise from the conversion of the existing 7 cents per gallon tax on aviation fuel into a 10 percent "ad valorem" tax. This concept, set forth in the Administration bill, S. 1582, is analogous to the domestic passenger ticket tax or freight waybill tax, both of which are based directly on a percentage of the cost of the service provided.

Enactment of our proposed tax changes along with our proposed program authorizations for operations and maintenance would increase the level of recovery from general aviation to about 24 to 44 percent, again depending on allocation assumptions. Though the general aviation users would still be paying a much smaller share of the FAA costs attributable to them than would the users of commercial air service, the gap would not be as great, and thus would represent more equitable treatment of all system users.

Let me take this opportunity to make clear that general aviation really does place demands on the system, and the growth rate of general aviation continues to exceed substantially the growth rates of all other system users. For example, the fiscal year 1980 cost of equipping and operating our network of flight service stations, which is just one element of the services provided to general aviation users, is projected to be over $120 million, yet athe total amount of revenues collected from general aviation is estimated to be about $83 million. We are going forward with a major capital improvement program for flight service stations that will enable us to keep pace with the demand for their services at a cost of $495 million through fiscal year 1986. Additionally, general aviation planes are becoming increasingly sophisticated, are often used for business purposes, and are more and more frequently able to use the all-weather capability of the facilities purchased with Trust Fund revenues. As general aviation increases its utilization of our system, it is only fair that we increase its contribution to the financing of the system, and we strongly support tax changes to accomplish that end.

I would also like to stress that the user charge approach is not an idea whose time has come and gone. To the contrary, the House Budget Committee, in a report focusing on the fiscal year 1981 budget, stated that "It is the opinion of a majority of the Committee, in keeping with the aim of reducing future deficits and lowering the general tax burden, that wherever possible government services which benefit particular groups or businesses in the economy be substantially supported by those beneficiaries rather than the general taxpayer." They recommended continuation of the existing 8 percent passenger tax and that the general aviation user class begin paying 50 percent of their share in fiscal year 1982. On the subject of the increased general aviation taxes, the Committee stated: "As a matter of equity, an increase to 50 percent is recommended and strengthens the whole concept of users paying for the benefits they receive."

I'd like to turn now to the subject of meeting the revenue needs of the system. At the outset, we made determinations independent of the amount of money available in the Trust Fund as to the appropriate amounts to be spent over the next five years for aviation Research, Engineering and Development and for our capital programs of Airport Development Grants and for Facilities and Equipment. The five year program we have proposed would authorize nearly twice the expenditure that was authorized for the five years 1976 through 1980. We believe that our proposed

funding levels will provide for the continued improvement of the airport and airway system.

Implicit in this discussion of revenue estimates is one other point that I'd like to emphasize. That is, that both the current tax structure and the Administration's proposal generate sufficient revenues to finance substantial O&M without skimping on the capital programs financed from the Trust Fund. It is my understanding that all the legislation proposed for continuation of the Airport and Airway Trust Fund gives priority to funding airport grants, research and development, and capital investment before operations and maintenance are funded; thus there is no risk that safety needs will not be funded. O&M will be financed from the residual revenues over and above those used for grants, F&E, and R&D.

Another concern is selecting a tax package that will provide adequate revenues and also bring the Trust Fund into better balance. We believe that legislation should provide for reducing the Trust Fund balance to near zero without necessitating severe changes in tax collections or program expenditures. To accomplish this, we developed a proposal that we believed would result in a steady decline in the Trust Fund balance over the next ten years, but would leave a self-sustaining Trust Fund balance after the surplus is depleted. To attempt to draw the balance down more rapidly by substantial tax reductions would require major changes when the surplus is eliminated. Enactment of S. 1649, which proposes reducing the ticket tax from 8 to 2 percent, would bring the Trust Fund balance down quickly, but in the not too distant future annual expenditures are estimated to be more than double the annual tax revenues. At that time, fiscal balance would require either tax increases or major decreases in program expenditures to provide continuity in the program. Moreover, the tax cut would preclude appropriate cost recovery from system users.

Let me be candid, however, and acknowledge that since the time the Administration bill was developed our estimates of future Trust Fund revenues have been revised upward as a result of escalating ticket prices, primarily due to higher fuel costs. We continue to believe in the basic approach we have proposed. If, however, revenues exceed expenditure levels, the excess should be directed to the operating and maintenance costs of the system fairly allocable to civil aviation. This will have the effect of controlling the Trust Fund surplus without increasing Federal expenditures and while establishing a more equitable system of financing the operation and maintenance of the airway system.

Lastly, I would like to emphasize the need for prompt action on aviation user taxes. Just this July, the Congress enacted and the President signed a 90 day extension of out present system of aviation user taxes. That extension will expire on October 1, just 3 weeks from now, and we strongly support Congressional action before that time.

In closing, I would like to reiterate our support for aviation user tax legislation that will make this system of taxes more equitable both as to users generally and as to general aviation. S. 1649 would make it difficult to achieve those goals, and it would require major modifications in a fairly short time frame.

On the other hand, the proposal of the House Ways and Means Committee (H.R. 6721) is closer to our proposal than S. 1649, and we much prefer it to S. 1649. Should the Committee choose to use H.R. 6721 rather than the Administration bill as a mark-up vehicle, we would support amendments to that bill consistent with the positions we have set forth today.

Mr. Chairman, that concludes my prepared statement. We would be pleased to respond to any questions you may have.

Mr. BYRD. Next we will have a panel of Mr. Paul R. Ignatius, president and chief executive officer of the Air Transport Association of America; Mr. Edward W. Stimpson, president of the General Aviation Manufacturers Association; and Mr. John W. Winant, president of the National Business Aircraft Association, Inc.

Welcome, gentlemen.

STATEMENT OF PAUL R. IGNATIUS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. IGNATIUS. Good morning, Mr. Chairman, and Senator Packwood.

I am Paul Ignatius from the Air Transport Association. We will proceed in the order that you called forth our names.

Mr. Chairman, I, like the other witnesses, have a statement and would like to have it reported in full in the record of the hearing.

Senator BYRD. Without objection, so ordered.

Mr. IGNATIUS. I would now propose to summarize my statement and then respond to questions.

First, I want to say, as I point out on page 2 of my statement, that the airlines agree that the funding levels in the authorization bill, which has already passed the full Senate overwhelmingly, are realistic and reasonable levels, and will provide the airport and airway system the support essential for the operation of a safe and efficient air transportation system.

It seems to me that this has got to be the first test, are the funds adequate to meet the needs? We believe they are.

The second point I want to make is that we support the tax reductions that are called for in Senate bill 1649 because these levels are sufficient to meet the authorization needs. I will say more about this in just a moment.

Having indicated first support for the basic authorization levels and the tax reductions that are contemplated by the companion Senate bill, there are three additional points that I want to make very quickly.

First, by its action in February in approving S. 1648, the Senate removed the hand of Government from an area where the Federal Government simply did not need to be involved.

The Senate bill which has passed the full Senate, as you know, removes the 70 or so largest airports from participation in the airport grant aid program. It does so because it recognizes that these larger airports are adequately staffed with competent professionals and that the airlines are adequately staffed with competent professionals, so that the two parties can come together and negotiate their needs and reach agreement in matters where they have a reciprocal interest.

Obviously, we cannot operate airlines without the participation of, and goodwill of, and the cooperative efforts of the airport operators. They, in turn, are dependent upon us because the whole existence of the airport is to receive airplanes.

I might point out, Mr. Chairman, that over the years that this Federal program has been in effect, the ADAP type needs, the airport aid type needs, at these larger airports as a whole have been met to the tune of 90 percent of those needs through the process of negotiation between airport operators and the users of the airports, which are principally the airlines.

So my point simply supports what the Senate did in February. If we can satisfactorily reach agreement through negotiation on 90 percent of the financial needs, it does not seem to me that we should have any trouble with that final 10 percent. Indeed, if the 10 percent becomes an item of contention, we truly have a case of the tail wagging the dog.

So that is my first point. Where you have an opportunity to remove the hand of the Federal Government in circumstances where it is not needed, it seems to me as citizens and as business-

men we ought to take advantage of those opportunities where they exist.

This leads me to my second point, and that is that people should not be overtaxed by their Government. Senator Cannon has pointed out, and others have pointed out, that the 8-percent ticket tax on domestic transportation, which is the principal source of trust fund revenue, has produced an enormous surplus which now totals some $3.5 billion or more, and will continue to grow substantially unless corrective action is taken.

My third point, Mr. Chairman, is that the level of the taxes should be matched to the level of the authorizations. We have heard about Ways and Means Committee amendments to the House bill that would lower the 8-percent tax to 5 percent in 1982, but that tax, Mr. Chairman, is related to the House authorization bill. The whole House has not yet passed that bill, but it has been reported by the cognizant committee.

The House authorization bill provides for substantially more program funding, and there are two reasons for it. First, they do not remove the Federal Government from these 70 large airports, and as a result there is a larger Federal program.

Second, individual program elements in the House bill are proposed to be funded at a higher level and an unnecessarily higher level, we believe, than in the Senate bill.

This concludes my summary, Mr. Chairman. At a later point or now, if you wish, I would be very pleased to respond to questions.

Senator BYRD. Before calling on the next witness, just one question of fact. How much revenue does the air passenger ticket tax raise?

Mr. IGNATIUS. The principal revenue comes from the 8-percent ticket tax on domestic transportation.

Senator BYRD. How much is that?

Mr. IGNATIUS. That represents on the order of $1.1 or $1.2 billion a year. I would like to check the exact figure for the record, Mr. Chairman, but that is my recollection.

[The following was subsequently supplied for the record:]

SEPTEMBER 10, 1980.

Hon. HARRY F. BYRD, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BYRD: During the hearing on the aviation trust fund, you asked me how much the 8 percent passenger ticket tax contributed annually to the trust fund. I responded that the amount was on the order of $1.1 to $1.2 billion per year but that I would like to check the facts and respond more precisely for the record.

For the fiscal year ending September 30, 1979, the 8 percent tax contributed $1.284 billion. Projections for 1980 and subsequent years principally higher because of increased air fares necessitated principally by rapidly rising jet fuel costs. The table below shows Federal Aviation Administration estimates over the next three-year period at the 8 percent rate. For purposes of contrast, the FAA estimates at the 5 percent rate are also shown.

Fiscal year ending—	Billions of dollars	Tax rate (percent)
September 30, 1980	$1.584	8
September 30, 1981	1.723	8
September 30, 1982	1.890	8

Fiscal year ending—	Billions of dollars	Tax rate (percent)
September 30, 1981	1.077	5
September 30, 1982	1.181	5

I would appreciate it if this letter could be made a part of the hearing record.

Sincerely yours,

PAUL R. IGNATIUS.

Mr. IGNATIUS. The other taxes that passengers and shippers pay represent a much, much smaller proportion. There is currently a departure charge on international travel of $3 per person, and there is a 5-percent freight waybill tax. But most of the money comes from the domestic tax of 8 percent, and my recollection is that on an annual basis it currently runs in excess of $1 billion.

Senator BYRD. Thank you.

Mr. Stimpson.

STATEMENT OF EDWARD W. STIMPSON, PRESIDENT, GENERAL AVIATION MANUFACTURERS ASSOCIATION

Mr. STIMPSON. Thank you, Mr. Chairman. I, too, would like to put my full statement in the record.

Senator BYRD. It will be received.

Mr. STIMPSON. Thank you.

The Airport and Airway Trust Fund and aviation taxes are being considered by this committee. The trust fund has been a deep disappointment to us for 10 years mainly because the fund has not been used for the purposes we fully intended it to be used for. We have found it to be a paper-budget balancer rather than a tool for really increasing air safety and capacity in the system.

Frankly, we were shocked when we learned earlier this year that the administration proposed to increase taxes on general aviation. The proposed 6-percent excise tax on new general aviation aircraft and avionics equipment and the 10-percent ad valorem fuel tax for all noncommercial flying would simply create a larger surplus. These proposals were made when current economic conditions had severely impacted the general aviation segment of the air transportation industry.

In recent weeks layoffs have occurred at most general aviation manufacturing plants throughout the Nation. Today, factories in Florida, Kansas, California, Pennsylvania, Alabama, and other locations have been affected. Thousands of employees in the general aircraft industry are out of work, either temporarily or permanently, thus contributing to the unemployment problem in the country.

High interest rates and lack of available financing have had a serious impact on our industry's sales. Some of the proposals now before the committee would only increase the current problems, and create new ones for the industry.

The proposals for increased taxes on general aviation usually stem from the 1973 cost allocation study. This study has many deficiencies, which are again summarized in my statement, and I would hope that this committee would closely examine the proposals of the study before acting upon them.

Currently, general aviation is paying 7 cents a gallon fuel tax on all turbine and aviation gasoline. We have consistently supported reasonable fuel taxes at the fixed rate established by Congress. In addition, we also pay weight and registration fees, and taxes for tires and tubes.

Currently, the price of aviation gasoline varies from $1.34 cents to $1.96 cents per gallon, with reports of $2.50 or more in isolated cases. Turbine fuel now costs $1.26 to $1.85 with a few places higher. Consequently, a 10-percent ad valorem fuel tax as proposed by the administration would range from 12 cents a gallon for fuel to 19 cents a gallon at current prices.

With the increase in prices of fuel, it is likely that the ad valorem tax proposed by the administration could easily result in a 20-cent fuel tax or more, or triple the current fuel tax that we pay. Because of geography, one operator would pay significantly more in one area of the country than in an other, while using the same airport and airway system.

Because fuel prices have increased at such a rapid rate, an ad valorem tax is not only unfair, it is not the proper way to equalize the tax impact upon all users.

The administration's 6-percent excise tax on new aircraft and avionics runs counter to recent actions by this committee and the Congress in removing excise taxes on other transportation vehicles. Such a tax is strictly a revenue measure and bears no relationship to the use of the airway system.

The tax on avionics also poses serious safety questions. By regulation, operators must have certain safety and navigation equipment, and they are encouraged by the FAA to have this additional equipment. An excise tax would discourage the purchase of safety equipment such as transponders and encoding altimeters, and could have a detrimental impact on safety.

The House is presently considering H.R. 6721. Title II of that legislation represents the considered judgment of the Ways and Means Committee and authorizes 1½-cent increase in aviation fuel taxes. This would raise the present 7 cents a gallon to 8½ cents per gallon. To offset this increase, the aircraft use tax would be eliminated.

The use tax comes from an annual registration fee of $25 per plane plus certain weight charges. So this would equal a $17 million raise which would balance out in the total picture.

Our industry opposes any tax increase in these trying economic times. We support the House approach, particularly the elimination of the use tax and its complicated reporting and voluminous paperwork requirements. The elimination of the use tax has also been recommended by the Senate Commerce, Science, and Transportation Committee.

In summary, we would recommend to this committee that:

One, the substantial public benefits of the airport and airway system be confirmed.

Two, the cost allocation study be discarded as a basis for assessing taxes for the use of the airport and airway system.

Three, reject the 6-percent excise tax on aircraft and avionics.

Four, reject as unfair, inequitable, and an administrative nightmare, the ad valorem fuel tax.

Five, accept the provisions of title II of H.R. 6721 as it pertains to the elimination of the aircraft use tax, and increasing the general aviation fuel tax to 8.5 cents per gallon.

Finally, I would again remind the committee that the general aviation industry is now experiencing extremely difficult economic times. Last year we produced 17,048 aircraft. This year it now appears that production will approach only about 12,000 aircraft. Actions by this committee will have a significant impact upon our future. We seek no preferential treatment. We do ask for fair and equitable treatment.

Thank you.

STATEMENT OF JOHN H. WINANT, PRESIDENT, NATIONAL BUSINESS AIRCRAFT ASSOCIATION, INC.

Mr. WINANT. I, too, would like to request the privilege of having our statement entered into the record, and I will give simply a very brief summary.

Senator BYRD. It will be received.

Mr. WINANT. We in NBAA are in essential agreement with the points that have just been made by GAMA with respect to imbalance of the trust fund surplus, and with its comments on the cost allocation study, and its comments on the administration's tax proposals.

Essentially, we make three points in our statement to you.

First, hold the line on the taxes paid by general aviation users.

Second, examine the law to see if a more rational division between commercial and noncommercial aircraft operations can be devised.

Third, examine the trust fund and the projections of revenue and expenditures to determine if taxes, primarily the tax on transportation by air or the ticket tax as it is sometimes called, could be reduced because of ever increasing trust fund balance.

I would like to set forth briefly the details on our position on the second point above, as respects commercial and noncommercial aircraft and the IRS determination of what tax applies. Such determinations have become a catch-22 type of situation in recent years.

On page 4 of my statement the point to be addressed concerns what tax should apply.

The current law requires that all users of our national airspace pay either a tax of 7 cents per gallon for each gallon of fuel used in aircraft or, if the aircraft is employed in a commercial venture, a tax of 8 percent of the amounts paid for the transportation of persons by air. This has erroneously been dubbed "the passenger ticket tax."

I am sure that this committee understands the so-called ticket tax applies to a great many circumstances other than just the sale of airline tickets.

Fortunately, the taxes on the transportation by air of persons and property are mutually exclusive from the fuel taxes, and the use of aircraft is subject to either, but not both as to any trip. Congress intended and this committee affirmed that the tax that will apply will depend on the purpose of the flight.

That is, if a flight is for the transportation of persons or property for hire, the transportation tax applies. But on other flights not for hire the fuel tax applies.

A flight-by-flight determination seems simple enough, but it has become very troublesome for the Internal Revenue Service, especially in the case of affiliated groups of business organizations which are exempted from the transportation taxes for those flights by members wherein services are provided to other members of the group. The fuel tax, in such cases, is the applicable levy.

The problem which affiliated groups suffer is that they are essentially forbidden from any occasional commercial use of their aircraft, which would include, incidentally, carrying candidates for Federal office.

Under terms set down by the Federal Election Commission, one such flight, by IRS interpretation, voids the exemption and makes the aircraft operator liable for the transportation tax on all of the affiliates' internal business flights. This problem evolves from section 4282(a)(2) which requires that "such aircraft is not available for hire by persons who are not members of such groups."

The present House Bill, H.R. 6721 and other similar proposals, if adopted, will create more problems as it attempts to further differentiate between commercial and noncommercial operators in the application of the use tax. Here, flight-by-flight application of the tax breaks down completely since use taxes are assessed annually, rather than flight by flight.

How will the IRS determine if an aircraft should be taxed or not?

Suppose it is routinely flown in private carriage but is used for one flight by a candidate for Federal elective office, will the owner then become liable for the use tax in addition to the ticket tax on the charges which are mandated by FEC regulations?

How many additional inspectors will IRS need in the field to examine flight records in order to insure compliance with the use tax once a loophole has been created for noncommercial users?

Absent any clear and specific instructions from Congress, we feel pretty certain that the IRS regulations will create the most complicated rules and procedures for paying or not paying the use tax. For example, it would not be beyond imagination that the IRS might require all private operators to file for exemptions.

We urgently ask that this committee provide guidance to the taxpayers and the IRS so that for tax purposes the demarcation between commercial and noncommercial operation will be clearly understood.

Attached to our statement is a simple proposed language change to section 4041 of the 1954 Code which in our opinion will clarify this situation so that given a private operation, occasional flights in which charges are made, the tax liability would not change for taxing purposes and all of the consequent and necessary paperwork, forms, exemptions, and refunds could be eliminated.

Thank you, Mr. Chairman, for the opportunity to present this statement before you.

[The prepared statement of the preceding panel follows:]

Summary
Statement of Paul R. Ignatius
President and Chief Executive Officer
Air Transport Association of America
Before the Committee on Finance
United States Senate
September 8, 1980

1. The airlines support S. 1649, a necessary companion measure to the Senate-passed Airport and Airway System Development Act of 1980 (S. 1648).

2. S. 1648 and S. 1649 recognize that the uncommitted surplus in the Aviation Trust Fund is in excess of $3.5 billion and that a significant reduction in the current level of taxes imposed on airline passengers and shippers is warranted.

3. The airlines believe that the Committee on Finance should report a bill that would establish tax rates based upon the S. 1648 authorization levels and the surplus.

4. Tax rates should be lowered from current levels and be established through FY'85 at:

   - 2 percent on airline passengers
   - 3 percent on freight
   - $2.00 on international departures

5. The lower tax rates will meet essential safety and capacity needs, relate taxes paid to these essential requirements, and bring the Trust Fund into better balance.

Statement of Paul R. Ignatius
President and Chief Executive Officer
Air Transport Association of America
Before the Subcommittee on Taxation and Debt Management
Committee on Finance
United States Senate
September 8, 1980

Mr. Chairman and Members of the Committee:

On behalf of the scheduled airlines, I appreciate the opportunity to present our comments in support of S. 1649, a necessary companion measure to S. 1648, which was passed by the Senate on February 5, 1980, by voice vote. I am accompanied by William M. Hawkins, Vice President-Finance and Taxation.

In previous testimony before the Aviation Subcommittee of the Commerce, Science and Transportation Committee, I addressed the innovative features of the Senate-passed Airport and Airway System Development Act of 1980 (S. 1648) and described the airline industry support for its significant and positive effect on the safety, efficiency and capacity of this Nation's airports and airways. Among the concepts embodied in S. 1648 are:

- The safe operation of the airport and airway system will continue to be the highest aviation priority.
- Essential airport and airway improvement programs will be assured.
- Airports which have the capability to finance their capital requirements through fees and charges paid by users of the airport do not need federal grant-in-aid assistance under the Airport and Airway Development Act.

The Senate-passed Airport and Airway System Development Act of 1980 (S. 1648) authorizes a five-year program amounting to $8.6 billion. The major program funding levels are as follows:

- Facilities and Equipment - $400 million in FY'81, increasing to $750 million in FY'85, a total of $2.75 billion for the five years.
- Research Engineering and Development and Demonstrations - $90 million in FY'81, increasing to $110 million in 1985, a total of $500 million for the five years.
- Operating and Maintenance Expenses - $350 million for FY'81, increasing to $450 million for FY'85, a total of $2 billion for the five years.
- Airport Improvement Grants - $825 million for FY'81, declining to $550 million in FY'83, because of the elimination of the large and medium hub airports from the ADAP program, and $650 million in FY'85. The total for the five years is $3.2 billion.

The airlines agree that the programs and funding levels adopted by the Senate in S. 1648 are realistic and reasonable, and will provide the airport and airway system support essential for the operation of safe and efficient air transportation.

The airlines strongly endorse S. 1649, which would establish the required tax levels to support the programs and funding levels authorized in S. 1648.

S. 1648 and S. 1649 recognize that the uncommitted surplus in the Aviation Trust Fund is in excess of $3.5 billion. This massive surplus would increase to approximately $11 billion by FY'85 at the approved S. 1648 authorization levels if the present tax rates were to continue. The current surplus has developed because requirements, expenditures and Trust Fund income, for the most part, have not been related to one another during the ten-year life of this program. The $3.5 billion surplus and the proposed level of funding authorizations contained in the Senate-passed bill, S. 1648, warrant a significant reduction in the current level of taxes imposed on airline passengers and shippers.

The airlines believe that this Committee should report a bill that would establish tax rates based upon the S. 1648 authorization levels and the surplus. For this reason, the airlines support S. 1649, which would establish the passenger tax at 2 percent through FY'85. The airlines also recommend that the freight transportation tax be established at 3 percent, and the international facilities use tax at $2.00, in order to bring income and expenditures into better balance.

The following chart depicts the impact on the Trust Fund with these tax levels in effect:

TRUST FUND PROJECTION

(Millions of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85
Trust Fund Income	706.5	785.7	869.8	971.0	1075.7
Prior Year Surplus	3517.6	2929.1	2568.7	2210.9	1812.5
Total:	4224.1	3714.8	3438.5	3181.9	2888.2
Less Authorizations	(1665.0)	(1520.0)	(1600.0)	(1730.0)	(1960.0)
Balance:	2559.1	2194.8	1838.5	1451.9	928.2
Plus Interest	370.0	373.9	372.4	360.6	333.0
Surplus:	2929.1	2568.7	2210.9	1812.5	1261.2

Notes: 1. Interest computed at 8% on unexpended balances.
2. Income is based on FAA estimate dated 5/13/80.
3. Tax structure includes S. 1649 taxes adjusted by ATA proposed waybill and international taxes.
4. Authorizations are from Senate-passed S. 1648.

The House of Representatives soon will consider its version of the airport and airway legislation (H.R.6721), which has been reported by the House Public Works and Transportation Committee. An amendment by the House Ways and Means Committee to provide tax levels based upon the authorizations in H.R. 6721 also will be considered.

The programs and authorization levels of the House airport and airway legislation are substantially higher and different than the Senate-passed bill (S. 1648). For example, the House bill continues grants-in-aid for all airports, including those having the capability to

finance their own capital requirements. Notwithstanding these higher authorizations, the Ways and Means Committee has determined that the present surplus warrants a reduction in the taxes.

It is essential to recognize, however, that the tax levels proposed by the Ways and Means Committee are based upon the substantially higher authorizations contained in the House airport and airway legislation. If the Ways and Means proposed tax levels and S. 1648 were adopted, the Trust Fund would have an enormous $8.3 billion surplus at the end of FY'85. Therefore, we urge this Committee to establish tax levels for the next five years based upon the program authorization levels contained in the Senate-passed bill (S. 1648).

S. 1649 should be adopted with the changes we have recommended in the tax on transportation of property and the international facilities use tax. This action will take into account the fact that the millions of users of air transportation are being taxed exhorbitantly. Senate approval of S. 1649, consistent with its earlier vote on S. 1648, meets all essential needs -- most particularly for enhanced safety -- and will mark another progressive step in making possible a reduction of Federal intervention in the private business sector. Moreover, the taxes paid by air transportation users would be reduced $7 billion over the next five years as shown in the attached state-by-state summary.

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Also, we wish to make several recommendations for technical changes which will greatly simplify administrative burdens imposed by the passenger tax. At the present time, the system required to administer this tax involves sales of airline tickets by more than 17,000 travel agents and more than 5,000 airline ticketing personnel to millions of passengers each year. The problems which pervade the entire system and their recommended solutions have been discussed with Finance Committee staff and a description of them is attached to my statement.

One situation which arises each time the tax rate is changed bears particular attention. Unlike all other excise taxes, the tax rate on airline tickets is not the rate in effect when the ticket is purchased, but is the rate in effect when the ticket is used. This necessitates programming computers to permit the operation of a system for selling tickets at two rates and then imposing a nearly impossible burden on manually adjusting the tax rate on thousands of tickets when they are used. We believe the solution is simple. Impose the tax at the rate in effect when the ticket is purchased instead of when the ticket is used.

This change would relieve the airlines of the onerous burden now imposed and permit them to make systematic switchovers in their ticket computers without the need for later corrections.

In conclusion, Mr. Chairman, we wish to emphasize that with the enactment of S. 1648 and S. 1649:

- Essential safety and capacity needs would be met; and
- The taxes paid by airline passengers and shippers would be related to these essential requirements, and the Trust Fund would be brought into better balance.

TAX SAVINGS TO AIRLINE PASSENGERS
IF S. 1649 WERE ENACTED

State	1979 Passengers Enplaned 1/ (000)	Estimated Annual Tax Reduction 2/ (000)	Estimated Five Year Tax Reduction 3/ (000)
Alabama	1,807	$ 9,000	$ 45,000
Alaska	1,784	8,000	40,000
Arizona	4,623	22,000	110,000
Arkansas	739	4,000	20,000
California	39,322	190,000	950,000
Colorado	10,445	50,000	250,000
Connecticut	1,608	8,000	40,000
District of Columbia	8,388	40,000	200,000
Florida	19,952	95,000	475,000
Georgia	21,401	105,000	525,000
Hawaii	9,688	46,000	230,000
Idaho	663	4,000	20,000
Illinois	21,706	105,000	525,000
Indiana	2,489	12,000	60,000
Iowa	1,246	6,000	30,000
Kansas	782	4,000	20,000
Kentucky	1,501	8,000	40,000
Louisiana	4,095	20,000	100,000
Maine	461	3,000	15,000
Maryland	1,665	8,000	40,000
Massachusetts	6,782	35,000	175,000
Michigan	7,133	34,000	170,000
Minnesota	5,123	25,000	125,000
Mississippi	664	4,000	20,000
Missouri	8,999	45,000	225,000
Montana	868	5,000	25,000

State	1979 Passenger Enplaned 1/ (000)	Estimated Annual Tax Reduction 2/ (000)	Estimated Five Year Tax Reduction 3/ (000)
Nebraska	1,356	7,000	35,000
Nevada	6,123	30,000	150,000
New Hampshire	88	1,000	5,000
New Jersey	4,144	20,000	100,000
New Mexico	1,297	7,000	35,000
New York	19,735	95,000	475,000
North Carolina	3,774	20,000	100,000
North Dakota	588	3,000	15,000
Ohio	8,375	40,000	200,000
Oklahoma	2,213	11,000	55,000
Oregon	2,560	13,000	65,000
Pennsylvania	10,630	51,000	255,000
Rhode Island	495	3,000	15,000
South Carolina	1,367	7,000	35,000
South Dakota	562	3,000	15,000
Tennessee	4,830	25,000	125,000
Texas	20,967	100,000	500,000
Utah	2,185	11,000	55,000
Vermont	209	1,000	5,000
Virginia	2,303	11,000	55,000
Washington	5,554	27,000	135,000
West Virginia	480	3,000	15,000
Wisconsin	2,792	14,000	70,000
Wyoming	334	2,000	10,000
TOTAL	286,895	$1,400,000	$7,000,000

1/ Passenger enplanements expressed in thousands and based on Civil Aeronautics Board figures as of December 31, 1979.

2/ Tax reduction resulting from proposed decrease in the passenger ticket tax from 8% to 2% based on average fare of $79.00.

3/ Annual savings projected for a five year period assuming no traffic growth.

PROBLEMS AND RECOMMENDED SOLUTIONS IN ASSESSMENT AND COLLECTION OF TAXES ON AIR TRANSPORTATION

I. Application of the Tax to Transportation Between the Continental U.S. and Hawaii or Alaska and Between Alaska and Hawaii

Under Section 4261 and Regulation 49.4261-3(c), a trip between points in the U.S. and Hawaii/Alaska must be divided into taxable and non-taxable portions. In the Regulation, two methods are provided as follows: (a) prorate based upon "mileage of the taxable portion" to total mileage or (b) basis of the applicable local fare for transportation. This Regulation was issued as TD 6430 which reflected the law prior to the enactment of the Airport and Airways Revenue Act of 1970.

The airlines, with the encouragement of the CAB and the Congress, have published dozens of joint fares from a large number of cities in the U.S., both large and small. Since airline transportation is sold through over 17,000 travel agent outlets and a large number of airline ticket offices, the calculations required by the present law and regulations are complex and time-consuming to administer and have become extremely burdensome.

Recommended Solution A new provision be added to Section 4261 which would apply a standard tax rate to all travel between the continental U.S. and Alaska or Hawaii and between Alaska and Hawaii. The provision requiring the trip to be divided should not be re-enacted. Since a substantial portion of these trips are flown outside the continental U.S., a lower rate of tax than that applied to mainland travel is recommended.

II. The 225-Mile Border Zone in Defining Taxable Transportation - Section 4262

Transportation sold in the U.S. and performed solely within the 225-mile zone in Canada or between U.S. points and Canadian points in the 225-mile zone is treated as domestic transportation subject to the 8% tax. This results in the collection of a U.S. airport and airway system "user charge" when no or limited service is performed. It has also invited retaliation, and the Canadian government is presently taxing transportation involving Canadian airports without regard to where the ticket is sold. Thus, a ticket sold in New York for round-trip transportation between New York and Montreal bears a 12% tax since, under the U.S. law, a ticket purchased in the U.S. for transportation solely between these two airports is taxed at 8% as though both were located in the United States. The Canadian transportation tax also applies at the rate of 4%.

Recommended Solution The concept of the 225-mile border zone should be eliminated by the repeal of Section 4262 and both Canada and Mexico should be treated as international air transportation, the same as all other countries in the world. Additionally, the Administration should commence negotiation with the Canadian government to reduce its taxes on U.S. citizens traveling into and out of Canada.

H.R. 6721 grants the Secretary of the Treasury the authority to waive the 225-mile zone rule if the Secretary determines that Canada or Mexico has entered into a "qualified agreement" regarding the tax treatment of persons traveling by air between the United States and that country. The agreement must set forth what transportation of persons by air is to be subject to tax by which country as well as an agreed upon appropriate tax for such air travel. The airlines endorse this approach.

III. Requirement to Allocate Total Tax Paid by Segment of Transportation Section 7275(a)(2)

When the Airport and Airways Revenue Act of 1970 was passed, Section 7275 was enacted to provide that the ticket should not reflect a breakdown between taxes and transportation charges if all of the transportation was taxable. Subsequently, a portion of this provision was deleted, but there still is a requirement in Section 7275(a)(2) that "if the ticket shows amount paid with respect to any segment of such transportation", it shall show the total of the amount paid for transportation and tax "with respect to such segments as well as with respect to the sum of the segments". Inasmuch as this requires that the fare construction ladder in the upper left-hand corner of the ticket reflect taxes on a segment-by-segment basis, it requires showing superfluous tax information of no meaning to the passenger, the airline, or the Treasury.

Recommended Solution The requirement that the amount of tax for each segment be shown on the ticket be eliminated by repealing Section 7275(a)(2).

Attachment III

PROBLEMS WITH MODIFICATIONS MADE BY COMMITTEE ON WAYS AND MEANS AND INCLUDED IN TITLE II TO H.R. 6721 AND RECOMMENDED SOLUTIONS

I. The Committee determined that the present six-hour layover rule for determining whether a flight is an international flight for purposes of the international departure tax is too restrictive and changed it to a 12-hour rule. The airlines believe that any layover rule is arbitrary. Any change which lessens the administrative burden on over 17,000 travel agents and 5,000 airline ticketing personnel responsible for its enforcement is recognized as a step in the right direction.

Recommended Solution The layover rule should be completely abolished. International air travel should be defined as travel from a point within the United States to a point outside the United States or from a point outside the United States to a point within the United States. International travel to points outside the United States would be subject to the $2.00 international departure charge. Domestic air travel from one point to another point within the United States would be subject to the domestic ad valorum tax.

II. The Committee eliminated the annual aircraft use tax ($25 per plane tax and weight tax) for noncommercial aircraft, concluding that the present aircraft use tax is a compliance and administrative burden both for the aircraft owner and the Internal Revenue Service. However, the Committee believed that replacement revenue for the repeal of the aircraft use tax on non-commercial aircraft should come from non-commercial aviation. The fuel tax on non-commercial aviation was increased by 1½ cents per gallon. The aircraft use tax represents the same compliance and administrative burden for commercial aviation. Historically, over 90 percent of Trust Fund revenue came from and will continue to come from airline passengers and shippers. For this reason the aircraft use tax also should be removed from commercial aircraft.

Recommended Solution Eliminate the aircraft use tax on all aircraft.

Attachment IV

PROBLEM WITH AND RECOMMENDED SOLUTION TO PROPOSED INTERNAL REVENUE SERVICE RULING ON AIRPORT DEVELOPMENT BONDS

Proposed Change in Definition of Airport

In 1968 the Congress amended Section 103 of the Internal Revenue Code to limit the tax exemption of interest on industrial development bonds. The Congress did not intend to limit the exemption of interest for all activities which would fall literally within the definition of industrial development bonds. The use of industrial development bonds to develop public transportation facilities, including airports, was an activity for which the exemption of interest remained.

The Department of Treasury issued a regulation which defined an "airport". It remains in effect and has been relied upon by numerous airport operators and developers in the U.S. for purposes of financing airport development. Treasury has issued notice of proposed rulemaking to revise its long standing regulation to exclude certain airport facilities which have been historically treated as exempt. This would severely narrow what has been the accepted definition of "airport".

Recommended Solution A new paragraph (G) be added to Section 103(6)(4) to read: "Facilities located on an airport related, directly or indirectly, to the needs of passengers or the air transportation business of shipping companies and airlines either at such airports, or for their air transportation system as a whole." The word "airport" would then be deleted from Section 103(6)(4)(D).

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September 8, 1980

WITNESS: Edward W. Stimpson
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Summary of principal points:

1. Support renewal of the Trust Fund.

2. Airport capacity and airway safety needs have not been met.

3. Huge surplus exists in the Trust Fund which should be used for purposes intended, i.e., safety and airport improvement and not for defraying operations and salary costs of FAA personnel.

4. DOT/FAA - Cost Allocation Study misdirected and fails to meet Congressional objective. Should be disregarded and discarded.

5. The general aviation industry has experienced economic downturn - production is down and unemployment is up. Not the time to increase taxes.

6. Oppose six percent Excise Tax on aircraft and avionics. Retrogressive and lacks constructive purpose.

7. Ad valorem fuel tax unfair and inequitable. Established fuel tax is fairer method.

8. Support the provisions of HR-6721 (Title II) eliminating the use tax and accompanied by a 1-1/2 cent increase in fuel taxes to 8.5 cents per gallon.

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STATEMENT OF THE
GENERAL AVIATION MANUFACTURERS ASSOCIATION
ON STATUS OF AIRPORT/AIRWAY TRUST FUND
BEFORE
SUBCOMMITTEE ON TAXATION
U.S. SENATE FINANCE COMMITTEE
September 8, 1980

I am Edward W. Stimpson, President of the General Aviation Manufacturers Association. Our Association has 39 member corporations representing about 95 percent of the United States manufacturers of general aviation aircraft, engines, avionics and accessories.

We appreciate the opportunity to present our views on the matter of aviation taxes being considered by this Committee. The Airport and Airway Trust was created by the Airport and Airway Revenue Act of 1970, has been a deep disappointment. The Fund has not been used to the fullest extent necessary to meet the air safety needs of this nation. The Fund, which now has a surplus of almost $4 billion, seems to serve as a paper budget balancer.

Monies collected from the users of the nations air transportation system - the airline passengers, the general aviation aircraft owners and pilots and shippers - were intended to expand and improve the nation's airport and airway capacity and to keep our airway system the most technologically safe and efficient in the world. Today, we

find that our airport system is in need of extensive expansion and improvement. Many needs have been identified and documented for a number of major hub areas of the country in a study conducted by the Air Transport Association and several general aviation associations.

Capital improvements of the airway system have not kept pace with available technology, while the funds to accomplish the job gather interest in the Trust Fund. For 10 years, the revenues into the Trust Fund have exceeded expenditures. The authorizing Committees of Congress have sought to meet these airport and airway needs but the OMB and the Congressional appropriating committees have kept expenditures below the levels of identified needs. The huge surplus in the Trust Fund has become a pawn of the budget process.

Frankly, we were shocked and bewildered when we learned of the Administration proposals to increase taxes on general aviation. The proposed six percent excise tax on new general aviation aircraft and avionics equipment, and the 10 percent ad valorem fuel tax on all non-commercial flying would simply create a larger surplus. These proposals were made when current economic conditions have severely impacted the general aviation segment of the air transportation industry. They clearly reflect lack of Administration knowledge as to what is happening outside of Washington.

In recent weeks, layoffs have occurred at most general aviation manufacturing plants throughout the nation. Today, factories in Florida, Kansas, California, Pennsylvania, Alabama and other locations have been affected. Thousands of employees in the general

aviation industry are out of work, either temporarily or permanently, thus contributing to the unemployment compensation debt rather than to the tax base of the country. To lay new tax burdens on such an industry will only further aggravate the problems that now confront us.

High interest rates and lack of available financing have had a serious impact on industry sales. Some of the proposals now before this Committee would only exacerbate current problems and create new ones for the industry and the nation. I ask that you keep in mind that the aircraft manufacturing industry is one of the few remaining United States industries that retains world leadership. This translates directly to export sales and to jobs.

Proposals for increased taxes on general aviation usually stem from the 1973 Cost Allocation Study, which was directed by Congress when it passed the Airport and Airways Development Act of 1970. Unfortunately, the Cost Allocation Study conclusions do not fulfill the task that Congress directed, which was:

> "The Secretary of Transportation shall conduct a study respecting the appropriate method for allocating the cost of the airport and airway system among the various users, and shall identify the cost to the Federal Government that should appropriately be charged to the system and the value to be assigned to any general public benefit, including military, which may be determined to exist... .
> "Sec 4 PL 91-258

The Study ironically and mistakenly concluded that there was no public benefit in the airport/ airway system except for the military use. This, despite the fact that when the Congress passed the Air Commerce Act of 1926, the U. S. Government initially developed, operated and maintained the air traffic control and navigation system for the benefit of the public. Extensive use by the military only occurred just prior to and since World War II. The nation obviously receives tremendous benefits from the airport/airway system in employment, time savings and productivity, emergency and disaster services, transportation of mail and cargo, industrial growth, balance of trade and in hundreds of other ways. The determination of socio-economic benefits is the responsibility of the Congress, not social economists.

The Cost Allocation Study additionally failed to recognize that the nation's airport/airway system matured to meet the needs of the airlines and the military, which have been the driving force behind its development. If all general aviation aircraft disappeared tomorrow, the costly air traffic control and navigation systems would have to essentially remain intact to serve the airline and military needs. Only the limited number of air traffic control towers, landing aids, and other facilities at airports used exclusively by general aviation aircraft could be closed.

Currently, general aviation pays a seven cent per gallon tax on all aviation fuel. Our Association has consistently supported reasonable fuel taxes, at the fixed rate established by the Congress. In addition, general aviation pays weight and registration fees and

taxes on tires and tubes. As I mentioned earlier, the Administration proposes to change the seven cent fuel tax to a 10 percent ad valorem tax. Currently, the price of aviation gasoline varies from $1.34 to $1.96 per gallon, with reports of $2.50 or more in isolated cases. Turbine fuel now costs from $1.26 to $1.85, with a few places higher. Consequently, a 10 percent ad valorem tax would range from 12 cents a gallon to 19 cents a gallon, at current prices. It is likely that $2.00 per gallon may be the prevalent price by FY81 and the ad valorem tax proposed by the Administration would triple the present fuel user charge. Because of geography, an operator would pay significantly more in one area of the country than in another, while using the same airway system. Because fuel prices have increased at such a rapid rate, an ad valorem tax is not only unfair, it's not a proper way to equalize the tax impact on all users.

In addition, consider the process of collections. Thousands of fixed base operators compute fuel bills by hand, carrying two or three different grades of fuel, with prices changing rapidly. How could the government possibly audit this myraid of transactions? Moreover, how could the government require this reporting in the face of the Administration's pledge to reduce the reporting burden placed on small businesses? Not insignificant is the possible impact on safety, should a pilot try to stretch his fuel a little too far to obtain cheaper fuel.

The Administration's six percent excise tax on new aircraft and avionics runs counter to recent action by this Commitee and the Congress in removing excise taxes on other transportation vehicles. Such a tax is strictly a revenue measure and bears no relationship to use of the airport/airway system. An operator would pay the same tax whether he flies 10 hours a year or 1,000 hours a year. Consequently, this tax is patently unfair as a user tax.

The tax on avionics poses serious safety questions. By regulation, operators must have certain safety and navigation equipment, and are encouraged by FAA to have additional equipment. An excise tax would discourage the purchase of safety equipment, such as transponders and encoding altimeters, and could have a detrimental impact on safety. Such actions literally fly in the face of FAA exhortations that all airplanes should have more equipment.

Moreover, consider the logic whereby the Congress has authorized a 10 percent investment tax credit to provide incentives for business expansion and is considering additional incentives. The Administration's proposed excise tax on aircraft and avionics would have the opposite effect.

The House is presently considering HR-6721. Title II of that legislation represents the considered judgment of the Ways and Means Committee and authorizes a 1-1/2 cent increase in aviation fuel taxes. This would raise the present seven cent per gallon to eight and one-half cents per gallon. To offset this increase, the aircraft use tax would be eliminated. The use tax revenue comes from an

annual registration fee of $25 per plane plus a weight tax of three and one-half cents per pound for jet aircraft and two cents per pound for each pound in excess of 2500 pounds of maximum certificated take-off weight for other aircraft. Approximately $17 million annually goes into the Trust Fund from this tax. The one and one-half cent increase in aviation fuel tax would generate about this same amount. While our industry opposes any tax increase in these trying economic times, on balance, we support the House approach...particularly the elimination of the use tax and its complicated reporting and voluminous paperwork requirements. The elimination of the use tax has also been recommended by the Senate Commerce Science and Transportation Committee.

In summary, we would recommend that this Committee:

1. Recognize and confirm the substantial public benefits of the airport/airway system.

2. Discard the Cost Allocation Study as a basis for assessing taxes for use of the airport/airway system.

3. Reject the six percent excise tax on aircraft and avionics as unwarranted and not compatible with the Administration's positions, to provide tax relief as incentive to capital formation and productivity and to improve aviation safety.

4. Reject, as unfair, inequitable, and an administrative nightmare the ad valorem fuel tax concept.

5. Accept the provisions of Title II of HR-6721 as it pertains to elimination of the aircraft use tax and the accompanying fuel tax increase from seven cents to 8.5 cents per gallon.

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6. Require that the billions of dollars unused in the Airport and Airway Trust Fund be spent for the purposes intended or if this surplus is not utilized, consider reducing revenues into the Fund.

7. Oppose, absolutely, the undue use of the Trust Fund surplus for salaries and operational costs of the FAA, at the expense of safety improvements.

And finally, I would again remind the Committee that the general aviation industry is now experiencing extremely difficult times. Last year the industry produced 17,048 aircraft. This year, it now appears that production will approach only about 12,000 aircraft. Actions by this Committee will have a significant impact upon our future. We seek no preferential treatment. We do ask for fair and equitable treatment.

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STATEMENT OF THE

NATIONAL BUSINESS AIRCRAFT ASSOCIATION

BEFORE THE

COMMITTEE ON FINANCE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY

SEPTEMBER 8, 1980

SUMMARY OF PRINCIPAL POINTS:

1. The Cost Allocation Study is irretrievably flawed.

2. The Airport and Airways Trust Fund should be balanced so that expenditures for safety and capacity improvement will equal revenues.

3. The IRS and taxpayers need further instructions from Congress defining commercial and non-commercial aircraft operations.

4. Hold the line or reduce taxes.

For NBAA:

John H. Winant
President

Mr. Chairman and gentlemen, my name is John Winant and I am the President of the National Business aircraft Association.

The National Business Aircraft Association (NBAA) represents business aviation in the United States. Business aviation comprises nearly 40% of all general aviation activity. In the United States, approximately fifty thousand aircraft are dedicated to business pursuits, providing on-call air transportation to all of our nation's airports, and linking those many communities which enjoy little or no air carrier service with the rest of the nation. NBAA's membership consists of over 2250 companies which own and operate aircraft of all sorts, turbojets, propeller driven small airplanes and helicopters, to satisfy the day-to-day transportation demands which active, productive corporations generate. Without our national business aircraft fleet, many of our nation's smaller communities would be out of the mainstream of American economic life, essentially cut off from the flow of management and enterprise essential to maintaining our highly productive national economy. NBAA represents the aviation related interests of persons and corporations using aircraft to further their business objectives.

What makes business aircraft worthwhile? This is usually the first question asked about aircraft in the role of a business tool. Many people suppose airline service should be sufficient, but this is like suggesting that bus service should be sufficient. Bus service is dandy if you happen to live near a bus route and only need to go where the bus route takes you. The same applies to airline service. It's a little faster en route and goes to places further away, but for flexibility and efficiency for the traveller in any mode, the private conveyance is essential, be it automobile or airplane.

WHO PAYS A FAIR SHARE FOR THE USE OF THE AIRSPACE SYSTEM?

Through the years, various schemes have been proposed to "fair share" the cost of our national airport and airway system among the various users. In 1970, Congress directed that the Secretary of Transportation conduct a study to determine the appropriate method of allocating the costs. Included in that mandate was a charge to identify the value to be assigned to any general public benefit.* This congressional instruction has been ignored completely by those persons responsible for the various iterations of the "cost allocation study". Indeed, in the most recent of these, dated November 1978, the authors again choose to ignore Congress' specific directions. In citing the law, they choose to read it as follows, completely ignoring the requirement to identify the value to be assigned to any general public benefit: (Page 27, foot note 1/ Financing the Airport and Airway System: Cost Allocation and Recovery, Report #FAA-AVP-78-14, November 1978)

> 1/ The Airport and Airway Development and Revenue Act of 1970 directed the Secretary of Transportation: (1) to determine the costs of the Federal airport and airway system, (2) to determine how these costs should be allocated among the various users, and (3) to recommend an equitable way of recovering these costs. In accordance with congressional instructions, the Office of the Secretary of Transportation conducted a study and submitted its results to Congress--September 1973--in Cost Allocation Study: Determination, Allocation, and Recovery of System Costs [35].

What this means is that the Cost Allocation Study is irretrievably flawed, right from the start, by this serious lack of attention to the letter of the law. It is indeed unfortunate that the Cost Allocation Studies combine to become one of the ghastly untruths that seem to take on a little patina of respectability by being dredged up occasionally and placed on the table and used in horrible error as the basis on which to make legislative proposals.

* Public Law 91-258; 49 U.S. Code 1703.

At least fifty percent of the investment in airport and airway system should be assigned to general public benefit. The stitching which holds together the fabric of the nation's productive economy is its transportation systems, and the air transportation system is the primary intercity people mover, not just the principal air carriers which interconnect our largest cities, but all of aviation which links our many diverse production centers together. Fifty percent benefit is rational and reasonable for a system which certainly benefits everyone in the United States.

HOW SHOULD AIRPORT DEVELOPMENT BE FINANCED?

In 1969, before this committee and others in the House and Senate, spokesmen for the National Business Aircraft Association endorsed user taxes in the form of a cents-per-gallon tax on all fuels consumed by all civil users of the civil airspace system, and recommended that the funds derived from that tax be applied to improvements in the airport/airway system. At that time, the growth in public demand for air transportation had far outstripped the ability of the Department of Transportation to plan for or apply the state-of-the-art procedures and technology of that day.

What evolved ten years ago was the Airport and Airway Revenue Act of 1970, which set tax levels for both commercial and non-commercial aviation. The tax for non-commercial aircraft operators was set at seven cents per gallon, three cents per gallon higher than the federal taxes on motor gasoline used in non-commercial autos and trucks.

All of those revenues from aircraft operators have been placed in the Aviation Trust Fund and reserved for the correction of the gross deficiencies in the nation's system of airports and airways. Getting the money out of the trust fund, however, has proven to be quite more difficult than putting it in. As each year passed, the trust fund balance has grown until now the uncommitted balance was, by Administration estimates, $3,517,648,000 at the end of this fiscal year.

In 1969, we were naive enough to suppose that the taxes would go directly to the development of the system, and recommended that some cents from each gallon taxed be spent on airway development. We are still naive enough, and I suppose naive is the correct word, to believe that the revenues added to the trust fund should be balanced with the expenditures therefrom.

We have therefore consistently urged that more of the trust fund surplus be expended for those safety items needed in the nation's airport and airway system. We cannot argue with those who point to our system as the safest in the world, which is the posture taken by administration spokesmen when critics call for more investment in the system from the trust fund. We urge today, that we spend the surplus, spend all the taxes collected, to give us the capacity and safety we need.

WHAT TAX SHOULD APPLY?

The current law requires that all users of our national airspace pay either a tax of seven cents per gallon for each gallon of fuel used in aircraft or, if the aircraft is employed in a commercial venture, a tax of eight percent of the amounts paid for the transportation of persons by air. This has erroneously been dubbed the "passenger ticket tax". I am sure that this committee understands that the so-called "ticket tax" applies to a great many circumstances other than just the sale of airline tickets. Fortunately, the taxes on the transportation by air of persons and property are mutually exclusive from the fuel taxes, and the use of aircraft are subject to either but not both as to any one trip. Congress intended, and this committee affirmed, that the tax that will apply will depend on the purpose of the flight, that is if a flight is for the transportation of persons or property for hire, the transportation tax applies, but on other flights not for hire, the fuel tax applies. A flight-by-flight determination seems simple enough, but it has become very troublesome for the Internal Revenue Service, especially in the case of affiliated groups of business organizations which are exempted from the transportation taxes for those flights by members wherein services are provided to other members of the group. The fuel tax, in such cases, is the applicable levy.

The problem which affiliated groups suffer is that they are essentially forbidden from any occasional commercial use of their aircraft, which would include, incidentally, carrying candidates for Federal office (please see NBAA's Management Aids Volume VIII, No. 6, November 1979 "Candidates, Senators, Representatives and Business Aircraft Use".) One

such flight, by IRS interpretation voids the "exemption" and makes the aircraft operator liable for the transportation tax on all of the affiliates' internal flights. This problem evolves from section 4282 (a)(2) which requires that "...such aircraft is not available for hire by persons who are not members of such group."

The present House Bill, HR 6721 and other similar proposals, if adopted will create more problems as it attempts to further differentiate between commercial and non-commercial aircraft operators in the application of the use tax. Here, flight-by-flight application of the tax breaks down completely, since use taxes are assessed annually. How will the IRS determine if an aircraft should be taxed or not? Suppose it is routinely flown in private carriage but is used for one flight by a candidate for Federal elective office; will the owner then become liable for use tax in addition to the "ticket tax" on the charges which are mandated by FEC regulations? And how many additional inspectors will IRS need in the field to examine flight records, in order to insure compliance with the use tax, once a "loophole" has been created for non-commercial users? Absent any clear and specific instructions from Congress, we feel pretty certain that the IRS regulations will create the most complicated rules and procedures for paying or not paying the use tax. For example, it would not be beyond imagination that the IRS might require all private operators to file for exemptions. We urgently ask this committee to provide some guidance to the taxpayers and the IRS so that for tax purposes, the demarkation between commercial and non-commercial operations will be clearly understood. Attached hereto is some simple proposed language which, in our opinion, will clarify the situation so that, given a private operation, occasional flights in which charges are made, the tax liability would not change for taxing purposes and all of the consequent and necessary paperwork, forms, exemptions and refunds could be eliminated. We offer our assistance for any further research into the problem which the committee and its staff may need, and stand ready to help you solve this problem.

HOW MUCH SHOULD THE TAXES BE?

There have been, in the past few years, several schemes to raise the taxes on non-commercial aviation. Most such proposals have been based upon the thoroughly discreditable cost allocation studies which have so poorly answered the Congress' mandate. We suggest that the time has

come to examine the trust fund and its extraordinary balance, its inflow and outgo, and the effect of rapidly escalating operating costs on aircraft operators of every ilk and see if these taxes ought not be reduced! The revenue estimates from the taxes proposed by the administration were in error almost as soon as the ink dried on the President's first budget proposal, primarily because of the steep rise in aviation fuels prices, and the concommitant increases in the cost of air transportation. We suggest that the line be held on taxes on non-commercial aviation and every effort be made to reduce the tax on transportation by air.

WHAT NEEDS TO BE DONE?

We ask that this Committee do three things:

1. Hold the line on taxes paid by general aviation users of the national airspace system.
2. Examine the law to see if a more rational division between commercial and non-commercial aircraft operations can be devised, particularly to provide relief to affiliates caught in the IRS trap of voided exemptions.
3. Examine the trust fund and projections of revenue and expenditures to determine if taxes, parimarily the tax of transportation by air, could be reduced because of ever-increasing trust fund balance.

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management aids

a supplement to the nbaa recommended standards manual

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CANDIDATES, SENATORS, REPRESENTATIVES AND BUSINESS AIRCRAFT USE

There are a number of statutes, rules and regulations that pertain to providing air transportation to candidates for federal elective office, to members of Congress and their staffs. The first premise is that those guidelines are intended to preserve and promote the integrity of public officials and institutions. Ostensibly, they protect candidates and Congressmen from compromising their own positions.

The second premise is what NBAA paraphrases out of the "caveat emptor" principle and that is, "let the provider beware". The aforementioned statutes and rules may very well compromise the business aircraft operator since the various government agencies who are involved do not coordinate their rulings, clarify them or otherwise set a clear path for the business aircraft operator to follow.

NBAA has published a series of "For Your Information" bulletins reflective of the government processes. The purpose of this MANAGEMENT AIDS is to give guidance to business aircraft operators who may be asked to provide transportation to this specific group. Congress and the regulatory agencies may change the game rules at any time. If such action happens, NBAA will issue appropriate bulletins to supersede the information contained in this AIDS.

CANDIDATES FOR FEDERAL ELECTIVE OFFICE

The Federal Election Campaign Act (FECA) (2U.S.C.§431 et sq.) applies, in part, to carriage of candidates in business aircraft. Sections 431, 441b and 441c are those pertinent.

Section 431 defines the relevant terms used throughout the statute. "Contribution" and "expenditure" use the all-inclusive "anything of value" as applied to "candidates" for "election" to "Federal office". Without going into unnecessary detail, suffice it to say that the latter three terms are very broadly defined and, have been in some instances equally as broadly interpreted to include anyone related to any facet of the electoral process, including party nominating conventions.

Section 441 declares it unlawful for any national bank, any labor organization, any corporation organized under authority of the U.S. Congress, or any corporation whatever to make a contribution or expenditure in connection with any Federal election.

Section 441c prohibits anyone who enters into any contract with the U.S. Government for services and/or materials from making any contribution at any time between the beginning of contract negotiations and the later of (1) completion of performance of, or (2) termination of negotiations for, any such contract. Such contracting corporations are known, for purposes of the FECA, as "Federal contractors".

Section 441j prescribes the penalties for violations of the provisions of the FECA: a fine not exceeding the greater of $25,000 or 300% of the amount of any contribution or expenditure and/or imprisonment for not more than one year.

The Rules and Regulations of the Federal Election Commission ("FEC"), Parts 114 and 115, detail the requirements of the abovementioned Sections of the FECA. Section 114.9(e) deals spe-

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cifically with air transportation of candidates or their agents by private corporations, including "Federal contractors".

(e) *Use of airplanes and other means of transportation.*

(1) A candidate, candidate's agent, or person traveling on behalf of a candidate, who uses an airplane which is owned or leased by a corporation or labor organization other than a corporation or labor organization licensed to offer commercial services for travel in connection with a Federal election must, *in advance*, reimburse the corporation or labor organization—

(i) In the case of travel to a city served by regularly scheduled commercial service, the first class airfare;

(ii) In the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

(Emphasis supplied)

Should there be no advance reimbursement, the transportation would be considered a "contribution", according to the General Counsel's office of the Federal Election Commission, thereby constituting a violation of the FECA.

Please note that §114.9 of the FEC Rules and Regulations does *not* mention national banks or corporations authorized by any act of the U.S. Congress. The prohibitions on these entities' election activities are generally much more stringent than those on private corporations or organizations; in particular, the FECA prohibits national banks and corporations organized under a charter of the U.S. Congress to provide transportation on their aircraft under any circumstances in *any* elections, Federal, State, or local.

With the requirement for payment by candidates to the business aircraft operator who operates under Federal Aviation Regulations, Part 91 governing noncommercial operations, would the aircraft operator still be considered as noncommercial or would an appropriate commercial operator certificate be required? The Federal Aviation Administration answered those questions by issuing Special Federal Aviation Regulation (SFAR) No. 37, September 22, 1978. Noncommercial operators may receive payment for carriage of candidates, their agents and persons travelling on behalf of candidates, provided that the payment is required by the Federal Election Campaign Act and does not exceed the amounts required by the FECA regulation. Business aircraft operators would *not* be required to comply with the FAR's applicable to operations for compensation or hire.

Enter the Internal Revenue Service and its Excise Tax Branch. For some years NBAA has had dialogue with this branch concerning appropriate excise taxes under Public Law 91-258, the Airport and Airway Revenue Act, for time sharing agreements classified as noncommercial operations by FAA under FAR Part 91. The IRS position has been adamant in that they considered time sharing a wet lease and, consequently, the aircraft operator was engaged in transportation for hire. Instead of paying 7¢ per gallon tax at the pump, the operator must remit the 8% transportation tax. NBAA posed simple questions to IRS. What would be the appropriate tax under Public Law 91-258, 7¢ per gallon or 8% when a business aircraft operator complied with the FECA provisions for payment? IRS responded:

1. The IRS does not accept the Federal Aviation Administration regulations determining noncommercial operations. (IRS Revenue Ruling 78-75).

2. The amount paid for a federal political candidate's air transportation would be subject to the air transportation tax. (Under the Public Law either the 7¢ per gallon tax *or* 8% has to be paid but not both. Therefore, when 8% tax is required, the business aircraft operator must apply for an exemption of the 7¢ per gallon tax). (IRS Revenue Ruling 77-405)

3. If an affiliated group (as defined by IRS) makes its aircraft available to a candidate, that affiliated group would lose its exemption from the 8% transportation tax *for all of its internal operations*. This means that the affiliated group would be required to pay an 8% transportation tax on all charges made to its subsidiaries and affiliates for air transportation. IRS could insist on retroactive accounting, a payment if 8% should exceed the 7¢ per gallon previously paid, and a penalty payment for violation of the Code. (IRS Revenue Ruling 77-405)

4. Aircraft owned by companies that do not provide transportation to an affiliated group but provide transportation to a candidate are required to remit the 8% tax on the appropriate charges made to the candidate. The aircraft operator can claim exemption from the 7¢ per gallon fuel tax for those flights and remit the 8% tax to the government. (IRS Revenue Ruling 77-405).

Because of the aforementioned IRS rulings, NBAA recommends that affiliated groups shun requests from Federal office candidates, or persons traveling in their behalf, for air transportation as the tax position on all other company flights could be compromised. Others may want to consider the weight and volume of paperwork involved in obtaining an exemption from the 7¢ per gallon fuel tax and remitting 8% to the IRS.

In any case, NBAA suggests that business aircraft operators check aircraft liability insurance policies to see if coverage is provided when the company accepts remuneration from candidates under the FECA rules. Under some insurance policies, coverage may be denied on a flight where a transportation charge is made.

MEMBERS OF THE U.S. SENATE AND HOUSE OF REPRESENTATIVES

The rules of the Federal Election Commission apply only to *candidates* for Federal office. Once the candidate is elected he becomes subject to the rules of the office to which he was elected.

The Senate Select Committee on Ethics has published a number of interpretative rulings which relate to the use of private, business or charter aircraft. Eventually, this Committee will produce a manual for distribution to the Congress. While these rules refer to Senators, officers and employees of the Senate specifically, some assumption can be made that similar rulings would apply to other government officials.

Several of the Senate rulings require that the passenger reimburse the corporation for the use of the corporate aircraft. If the Internal Revenue Service applies the same logic as to appropriate taxes under Public Law 91-258 that they applied to business aircraft operators complying with the rules of the Federal Election Commission, they would hold that the 8% transportation tax must be paid, that an exemption from the 7¢ per gallon fuel tax should be applied for, that affiliated groups would lose their exemption from the 8% tax and that taxes collected should be remitted to IRS.

The Senate's interpretative rulings follow:

INTERPRETATIVE RULING NO. 35

Date issued: June 28, 1977.
Applicable Rule: 43.
Question considered:
May a Senator on an official business inspection tour organized by a Senator of the State to be visited accept travel on private aircraft and other travel expenses (lodging and food) from a corporation with a direct interest in the legislation when the corporation's installation or property is the principal subject of the inspection tour and the corporation is, at least in part, sponsoring the tour?

Ruling:

A colloquy with Senator Ribicoff as well as other discussions during the debate on S. Res. 110, established guidelines for this kind of travel insofar as Rule 43 pertaining to gifts is concerned. The Committee hopes to issue an advisory opinion on this area in the near future.

As long as the sponsoring organization provides the transportation and the trip is for an official purpose, the acceptance of the travel is allowable under Rule 43 since it is considered to be reimbursement for or provision of a necessary expense.

INTERPRETATIVE RULING NO. 41

Date issued: July 1, 1977.
Applicable Rules: 42 and 43.
Question considered:
May a Senator accept from a person with an interest in legislation private air transportation with a value in excess of $100 to a location where the Senator is to give an address, when the donor is a member of the group sponsoring the address?

Ruling:

Travel may be accepted from an entity with a direct interest in legislation if: (1) it is the sponsor of the appearance; or (2) the sponsor of the appearance reimburses the entity for the value of the transportation; or (3) the Senator reimburses the entity for the value of the transportation.

The travel would not be made acceptable solely because the individual providing it is a member of the group sponsoring the address or has been asked by an officer of the sponsoring group to provide the transportation without reimbursement for the cost if he has a direct interest in legislation.

Necessary expenses of travel incident to making a speech or an appearance do not have to be reported as a gift under old Rule 44 or under Rule 42.

No rule prohibits acceptance of transportation from a person or organization not having a direct interest in legislation, but such travel would be reportable as a gift under old Rule 44 if it is ac-

cepted in 1977 and its value exceeds $50, or under Rule 42 if it is accepted during 1978 and the aggregate value of gifts of transportation, lodging, food or entertainment from the same source in the calendar year (excepting those of $35 or less) exceeds $250.

INTERPRETATIVE RULING NO. 46

Date issued: July 20, 1977.
Applicable Rules: 42 and 43.
Question considered:

For a Senator to accept transportation in a private aircraft to address a State Party fundraiser outside his home state, must the provider of the aircraft bill the sponsor for use of the aircraft and under what conditions must the Senator report such transportation as a gift?

Ruling:

If the provider of the private aircraft has a direct interest in the legislation as defined in Rule 43.1(b), or is a foreign national, he must be reimbursed by the sponsor of the Senator for the Senator's travel, or the Senator's acceptance is prohibited. If the provider has been reimbursed, the necessary expenses incident to an appearance by the Senator do not need to be reported as a gift. Although an organization is a prohibited source when it maintains a separate segregated fund for political purposes (commonly called a P.A.C.), reimbursement for travel expenses does not create a gift when one is making an appearance at the fundraiser or activity sponsored by the organization.

If the provider does not have a direct interest in legislation, and is not a foreign national, reimbursement of the provider is not necessary to permit a Senator's acceptance of the travel, but when the provider of the travel is not the sponsor of the appearance and is not reimbursed the travel must be reported as gift pursuant to paragraph 2(b) of Rule 42.

INTERPRETATIVE RULING NO. 51

Date issued: August 5, 1977.
Applicable Rules: 42 and 43.
Question considered:

May a Senator traveling on official business in a state from which he is not elected accept from a private source (which has no direct interest in legislation before the Congress as defined in Rule 43 and is not a foreign national) travel in that state for himself and members of his family who accompany him?

Ruling:

Here the private individual is not a prohibited source of travel and is not an organization sponsoring the Member's appearance in connection with his official business. Travel (the services or expenses of transportation, lodging, food and associated entertainment) may be accepted by a Senator and members of his family if not from a prohibited source. Such travel must be reported as a gift under old Rule 44 and Rule 42 whether it is or is not incidental to official business.

INTERPRETATIVE RULING NO. 57

Date issued: September 8, 1977.
Applicable Rules: 42, 43 and old 44*.
Question considered:

May a Senator accept a constituent's offer to be flown to the Senator's home state from Washington in an aircraft owned by a corporation which is neither a lobbyist nor maintains a separate, segregated political fund within the meaning of Rule 43?

Ruling:

The Rule 43 prohibitions on the acceptance of gifts apply only to gifts offered by persons or organizations which have a direct interest in legislation pending before Congress. In this instance, the offer of air transportation to the Senator's home state may be accepted. However, this travel will be reportable as a gift under old Senate Rule 44 if it is accepted prior to January 1, 1978 and its value exceeds $50, or it will be reportable as a gift under new Senate Rule 42 if it is accepted after January 1, 1978 and the aggregate value of gifts of transportation, lodging, food or entertainment from the same source in the calendar year (excepting those of $35 or less) exceeds $250.

*New Rule 42 superseded old Rule 44 January 1, 1978.

INTERPRETATIVE RULING NO. 65

Date issued: September 26, 1977.
Applicable Rule: 43.
Question considered:

Has a Senator violated the Code of Official Conduct by reimbursing a corporation in the amount of a commercial air fare after returning to Washington (with family members) via a corporate plane?

Ruling:

The legislative history (CONGRESSIONAL RECORD, March 31, 1977, p. 5264) of Rule 43 indicates that:

"It is the intent of the sponsors of S. Res. 110 that if a Senator travels on a private airplane owned by a corporation, that transportation is not a gift if the Senator reimburses the owner of the plane for the cost of the equivalent commercial air transportation."

The reimbursement in this case takes the matter outside of the reach of Rule 43 and is in accord with the above statement.

INTERPRETATIVE RULING NO. 71

Date issued: September 29, 1977.

Applicable Rules: 43 and old Rule 44*.

Question considered:

May a Senator and his or her spouse accept air travel on a charter flight, arranged by a Member of the House, in order to accompany the Representative to a function at which both the Senator and Representative (Congressman) are to appear?

Ruling:

The travel on the charter flight does not constitute a prohibited gift under Rule 43 on gifts and may be accepted. If the value of the gift exceeds $50, it should be reported under old Rule 44.

*New Rule 42 superseded old Rule 44 January 1, 1978.

INTERPRETATIVE RULING NO. 80

Date issued: October 12, 1977.

Applicable Rule: 43.

Question considered:

Whether a Senator and his wife may accept private round trip air transportation between his home state and the site of a speaking engagement and commercial transportation back to Washington when the sponsoring corporation has a registered lobbyist and a political action committee and is, therefore, a prohibited source of gifts under Rule 43? Private air transportation is necessary because of the remoteness of the site of the speaking engagement.

Ruling:

The Rule 43 prohibition on accepting gifts from sources with an interest in legislation does not apply to accepting necessary expenses in connection with speaking engagements where the sponsor is providing the expenses. Under these circumstances, it is appropriate for the Senator to accept the travel.

Where the Senator's wife accompanies the Senator to the speaking engagement, and the predominant purpose of her attendance is not for social or personal purposes, then accepting travel for her would also be appropriate. Otherwise, accepting her travel expenses would constitute a gift subject to the restrictions of Rule 43.

What applies to members, officers and employees of the House of Representatives is contained in the Final Report of the Select Committee on Ethics, 95th Congress, Report No. 95-1837. NBAA's comments about transportation tax considerations for Senators would also apply to Congressmen when money changes hands for transportation services. Pertinent sections of the House report are excerpted below: (Emphasis is made by NBAA).

1. House Rule XLIII, clause 4, as amended on March 2, 1977, provides that a member, officer, or employee shall not accept gifts, directly or indirectly, aggregating over $100 in value in any calendar year from any person, organization or corporation having a direct interest in legislation before the Congress, or from a foreign national. *Specifically exempted from this limitation are:* 1) gifts with a value of $35 or less; 2) gifts from relatives; and 3) gifts of personal hospitality of an individual. The personal hospitality exemption is essentially limited to food, lodging and entertainment provided by an individual (not a corporation or organization) at the personal residence or on other property owned by that individual or his family. The personal hospitality exemption also covers travel on a *boat or airplane* owned by an individual unless such travel is substituting for commercial transportation. It should be emphasized that personal hospitality is exempted only if paid for by an individual, not a corporation or other form of organization.

2. *Definition of a Gift.* In Advisory Opinion #7, issued on May 9, 1977, the Select Committee adopted the basic legal definition of a gift for purposes of Rule XLIII, clause 4, as follows:

A payment, subscription, advance, forbearance, rendering or deposit of money, services, or anything of value, including food, lodging, *transportation*, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received by the donor.

3. *Definition of an Indirect Gift.* In Advisory Opinion #9, issued on May 11, 1977, the Select Committee determined that gifts to a spouse or dependent are indirect gifts to the Member or employee, unless such gifts are prompted by some consideration unrelated to the Member or employee.

4. *Direct Interest in Legislation.* In Advisory Opinion #10, issued on May 11, 1977, the Select Committee defined persons having a direct interest in legislation before the Congress to include the following:

(1)(a) Any person, organization, or corporation registered under the Federal Regulation of Lobbying Act of 1946, or any successor statute; and any person who is an officer or director of a registered lobbyist, or a person who has been employed or retained by a registered lobbyist for the purpose of influencing legislation before the Congress;

(b) Any person, organization or corporation which employs or retains a registered lobbyist;

(2) Any corporation, labor organization, or other organization which maintains a separate, segregated fund for political purposes (Political Action Committee as defined in the Federal Election Campaign Act of 1971; any subordinate or affiliated organization thereof; and the officers or directors of such organizations; and

(3) Any other individual or organization which the Member, officer, or employee knows has a distinct or special interest in influencing or affecting the federal legislative process which sets such individual or organization apart from the general public.

Any gifts aggregating over $100 from one source, or $250 in the case of food, lodging, *transportation,* and entertainment, would be disclosed in accordance with the financial disclosure requirements of the Ethics in Government Act (PL 95-521).

With respect to the question as to when legislation is consider to be "before the Congress", the Committee determined in Advisory Opinion #10 that this phrase should be read broadly to include on ongoing special interest in affecting the legislative process, rather than as confined to an interest in specific legislation pending before a subcommittee or committee of either House of Congress.

5. *Necessary Travel Expenses.* In Advisory Opinion #2, issued on April 6, 1977, and #8 issued on May 11, 1977, the Select Committee determined that necessary travel related expenses provided to a Member or employee in connection with (1) an event in which he substantially participates, or (2) a fact-finding event directly related to official duties are not considered to be gifts for purposes of the rule. The first exemption applied to *travel expenses* in connection with speaking engagements, panel discussions, seminars, or other events in which the Member or employee substantially participates. In such cases, *transportation and related expenses* are provided in consideration of personal services rendered, and therefore do not constitute a gift to the Member or employee. This exemption also applies to the expenses of the spouse (or another family member) of the Member or employee.

The second exemption applies to inspection tours, educational programs, and other fact-finding events, where the primary purpose of the trip is for the Member or employee to become better informed regarding subject matters directly related to official duties, and any services rendered by the Member or employee are only incidental in nature.

Both the exemptions described above apply only to necessary expenses *(transportation, food and lodging)* and not to entertainment.

6. The following is quoted directly from the Final Report of the Select Committee on Ethics, U.S. House of Representatives; HRept No. 95-1837, January 3, 1979:

House Rules on Acceptance and Disclosure of Travel-Related Expenses

The following summary has been prepared by the Select Committee on Ethics in response to questions concerning the application of House Rules to acceptance and disclosure of travel-related expenses (i.e., transportation, lodging, food and entertainment).

Disclosure (House Rule XLIV)

Exemptions

Certain travel-related expenses are exempt from disclosure because they are either disclosed elsewhere and/or do not involve potential conflicts of interest. A reporting individual need not list travel-related expenses which are:

(a) provided by federal state or local governments, or subdivisions thereof;

(b) provided by a foreign government or international governmental organization within a foreign country. Such expenses must be disclosed

elsewhere under the terms of the Foreign Gifts and Decorations Act (5 U.S.C. 7342).

(c) provided from campaign funds to make a political appearance on behalf of a federal officeholder or candidate for federal office.

Requirements

Disclosure is required for all travel-related expenses aggregating $250 or more in a calendar year from any "non-governmental source". Therefore, expenses exceeding $250 in value provided from such sources as trade associations, foundations, corporations, labor unions, educational institutions, or political organizations, should be disclosed as either a reimbursement or a gift.

(a) Reimbursements.—This category includes travel-related expenses provided for such activities as speaking engagements, conferences, and fact-finding events related to official duties. Such expenses would be listed as reimbursements whether they were actually reimbursed to the reporting individual or paid directly by the sponsoring organization.

(b) Gifts.—This category includes travel-related expenses provided for the personal benefit of the reporting individual (e.g., a vacation or personal side trip during fact-finding tours). However, exempted from disclosure is the "personal hospitality" of an individual provided in the residence or other property owned by that individual (e.g., use of a friend's summer home).

In disclosing travel expenses, exact dollar figures need not be reported. The reporting requirements under title I of the Ethics in Government Act require only the identity of the source and a brief description of reimbursements or gifts or travel expenses. Thus, the reporting individual should provide a description of the itinerary and the nature of the expenses provided to him.

ACCEPTANCE OF GIFTS (HOUSE RULE XLIII)

House Rule XLIII, clause 4 prohibits the acceptance of gifts aggregating $100 or more in value in a calendar year from any source with a direct interest in legislation before the Congress, or from a foreign national. Exempted are gifts from relatives, gifts of personal hospitality, and gifts valued at $35 or less.

Therefore, acceptance of such gifts as corporate jet trips back to the district, weekends at resort areas, or personal side trips during fact-finding tours which exceed $100 in value is prohibited if the source of such expenses has a direct interest in legislation. Note, however, that expenses provided for fact-finding tours, conferences, and other activities related to official duties are not considered to be gifts, but rather reimbursements which may be accepted subject to disclosure requirements.

CONCLUSION:

Under certain circumstances, public officials and candidates for Federal office are required by law to pay for air transportation provided to them. When they insist upon paying, the aircraft operator has little choice other than to trust their judgement that they are acting in accordance with the law. The aircraft operator is therefore bound to accept such payments.

Once payment has been accepted, the aircraft operator is further obligated to insure that the proper tax is paid. In all cases of accepting payment for air transportation provided, 8% of the amount received must be paid. Exemption from paying the 7¢ per gallon tax for that flight should be applied for.

In the case of an affiliated group making its aircraft available to a public official or candidate, once payment is accepted from any party outside of the affiliated group, the "exemption" from the 8% air transportation tax for *all* flights within the affiliated group is jeopardized.

PROPOSED AMENDMENT TO INTERNAL REVENUE CODE 1954

Change Section 4041 (1954 Code) (c) (4) as follows: (Changes indicated by italics)

"Definition of noncommercial aviation. For purposes of this chapter, the term 'noncommercial aviation' means any use of aircraft, other than use in a business of transporting persons or property for compensation or hire by air. *The test applied is whether the carriage by air is merely incidental to the taxpayer's other business or is, in itself, a major enterprise for profit. Incidental carriage of persons and property when such carriage does not constitute a major enterprise for profit is not a business of transporting persons or property for compensation or hire , and therefore does not change the noncommercial status of such use.* The term also includes...."

Senator BYRD. Thank you, gentlemen.

Senator Packwood.

Senator PACKWOOD. I have no questions.

Senator BYRD. Senator Dole.

Senator DOLE. I have no questions.

Senator BYRD. Thank you, gentlemen.

Mr. IGNATIUS. Thank you, sir.

Senator BYRD. The next panel, Mr. A. L. McMillan, director of finance, department of aviation, city of Houston; Mr. J. J. Corbett, vice president, government affairs, Airport Operators Council International, Inc., and Mr. David S. Stempler, chairman, Government Affairs, Airline Passengers Association, Inc.

Welcome, gentlemen, and proceed as you wish.

At this point, Senator Durenberger has questions which he would like to have answered for the record by Mr. Lubick, and Mr. Bond. I will insert his questions at this point in the record.

[The questions follow:]

RECOMMENDED QUESTIONS

Question. The Treasury Department has issued a Proposed Rule, on January 5, 1979 (which may have been finalized by now), which, in essence, redefined an airport, stating that the airport would no longer include airline headquarters facilities or computer facilities. The Senate Commerce Committee in their Report on the ADAP bill stated that this Rule has impacted airport development, which will be particularly felt by small cities and commuter airlines.

If the status quo on taxes and bonds for airports were maintained, are there a great number of airlines presently standing in line to utiiize this authority, or would the impact be minimal on The Treasury?

Question. The Proposed Rulemaking did not offer any explanation as to why a sudden redefinition was required and as to why such facilities, such as restaurants, retail stores and lodging accommodations, were more functionally related to the needs of passengers than airline headquarters and computer facilities. Would you please clarify this?

Question. Would you have any major objections if this Committee, working with the Senate Commerce Committee, enacted legislation which would maintain the status quo of airport industrial bonds prior to your Proposed Rule, and then exam-

ine the entire question of tax exempt bonds as applied to the nation's airports, including the possible redefinition proposed by Treasury?

STATEMENT OF A. L. McMILLAN, ASSISTANT DIRECTOR OF FINANCE, DEPARTMENT OF AVIATION, CITY OF HOUSTON

Mr. McMILLAN. Mr. Chairman, and members of the committee: My name is Alton L. McMillan, and I am the assistant director for finance for the aviation department of the city of Houston. I am accompanied by Sylvia de Leon from the law firm of Akin, Gump, Hauer & Feld, who serves as Washington counsel for the city. The city of Houston is very much honored to participate in this committee's consideration of S. 1649, the Airport and Airway Revenue Act of 1979.

Mr. Chairman, we feel that this bill, in conjunction with S. 1648, which would terminate Federal assistance for major capital improvement programs at the Nation's 72 largest airports, will have far-reaching effects on the future of air transportation in the United States. My testimony will offer some thoughts on this matter from a "nuts and bolts" point of view.

Development of a safe and efficient national air transportation system requires an orderly, well-developed plan for providing suitable, necessary, and timely airport facilities. The long leadtime required for planning and constructing major components of an airport system prevents quick responses to changing conditions, and quick reactions to new demands.

This mandates effective long-range planning for future needs. Because each airport is a part of an overall air transportation system, it is important that development at one airport is coordinated with development at other airports. The airport development aid program, ADAP, has been very effective in achieving coordinated development nationwide.

Last February, the Senate passed S. 1648 which would eliminate the 72 largest airports from future ADAP eligibility. Part of the justification for this action was a concurrent reduction in the air passenger ticket tax through S. 1649.

It has been said that this would make funds available to airlines for payments to large airports to support capital development projects, and that the airports could renegotiate their contracts with tenant airlines to obtain this support. Improvements or expansion of facilities thus would be dependent upon the ability of each airport to negotiate capital contributions from the airlines serving that airport.

In my considered opinion, this will not happen. There will be little or no incentive for airlines to agree to finance major airport improvements even if the ticket tax is reduced. Incumbent airlines will be reluctant to underwrite improvements which may benefit new entrants into the local market at the expense of the incumbents, especially if such improvements are not directly beneficial to the incumbents.

New entrants also will be reluctant to enter into binding capital commitments until they have become convinced of their own profitability in the new market after a suitable trial period.

Under current law, the airline is merely the conduit through which the ticket tax is passed to the Federal Government, into the

Airport and Airways Trust Fund, and distributed to airports. Under this conduit concept the airlines do not benefit in their profit and loss statements from these funds because this money never belongs to the airlines.

By comparison, if the airlines were to agree to larger landing fees or other capital contribution mechanisms, these increased payments would reduce the profitability of airline operations in the absence of corresponding increases in fares.

Given the current state of airline economics, with most carriers operating at a loss, a fare increase would be almost inevitable in order to support larger payments by the air carriers directly to the airports as a substitute for ADAP funds.

Any imagined decrease in cost to the passengers through a reduction in the ticket tax would be largely wiped out by increased fares. The passenger pays either way, either as a tax or as a fare increase, because there is truly no free lunch when it comes to funding the massive capital improvements required to meet the needs of the air transportation system.

My personal experience in some 15 years of negotiating with air carriers is that when times are good, and the profit and loss statement is in the black, there is a greater willingness to commit to long-range, large capital expenditures. By contrast, when times are bad, and the profit and loss statement is in the red, there is a marked reluctance to make such commitments.

Imagine what effect this sort of on-again/off-again approach would have on airport projects requiring the commitment of millions of dollars by more than one airline over an extended period of time.

Rapidly increasing costs of labor, equipment, and fuel are already squeezing airline profits. Coupled with scheduled major investments over the next decade in new aircraft, it is evident that there will be little room in airline budgets for underwriting significant new investments in airport terminal or runway facilities.

Mr. Chairman, let me now give you an idea of what all of this will mean to a city such as Houston.

Assuming defederalization and the refusal of the airlines to voluntarily increase their payments to airport operators for funding capital improvements, one of two things will happen. Either planned improvement projects will be delayed, scaled down or canceled, or airports will be forced to seek other sources of financing.

The next few paragraphs in my paper deal with some of these other sources, including internally generated cash, airport revenue bonds, and general obligation bonds and reach the conclusion that none of these sources are especially useful, or especially reliable as sources of funding.

We bring out the point that with airport revenue bonds, the cash flow that is governed by ordinances authorizing the bonds is such that we put more into financing the revenue bonds. To the extent that we do not have sufficient funds available to pay our operating expenses from internally generated cash, then there is a mandatory tax against the local citizens to pay the maintenance and operating expenses of the airport.

We think that what we are doing here under the proposed bill is merely to substitute an increase in local taxes for a reduction in a

Federal tax. In my view this sleight of hand will benefit neither the air transportation system nor the Nation's taxpayers.

I think we can all agree that some day ADAP must end. I submit for your consideration the thought that this day has not yet arrived. There is still much to be accomplished especially in the Sun Belt region of our Nation and, therefore, ADAP and the associated air passenger ticket tax should be continued for a while longer.

Thank you very much.

STATEMENT OF J. J. CORBETT, VICE PRESIDENT GOVERNMENT AFFAIRS, AIRPORT OPERATORS COUNCIL INTERNATIONAL, INC.

Mr. CORBETT. Thank you, Mr. Chairman.

I would like to submit my entire statement for the record.

Senator BYRD. It will be received.

Mr. CORBETT. I will briefly summarize it.

The Airport Operators Council is the association of the governmental bodies like Houston that own and operate the principal airports in the United States. For example, in Virginia we would represent Richmond, Norfolk and Newport News; Portland in Oregon; and Topeka and Wichita in the State of Kansas.

Our members are providers, Mr. Chairman, like the FAA. They provide facilities, as distinguished from some of the user groups, from whom you have heard testimony today, who actually pay the taxes. Our members receive grants from the trust fund, which is a very small part of the money that those communities generate.

Our recommendations on page 2 of our testimony are that we hope this committee will vote this Congress to extend the Aviation Trust Fund through 1990. However, for the reasons detailed in our statement, our membership does not believe this is an appropriate time to reduce the 8 percent ticket tax at all, or to increase or modify current taxes on general aviation as well.

In fact, our members report that there is virtually no passenger or public complaint about this excise tax. Rather, community opinion is strongly in favor of spending the tax receipts for safety, and not in reducing what is perceived as an acceptable Federal tax.

Second, we are sharply opposed to S. 1649 as being philosophically inconsistent with the responsibility of the public sector for assuring aviation safety and for redistributing funds that come from the passenger for an equivalent level of safety in all parts of the system, at large airports and very small airports.

Third, our governmental airport sponsors believe quite simply that the embarrassing aviation Trust Fund surplus of some $3.7 billion should be spent for the aviation safety and capacity program for which the Trust Fund was originally enacted. Likewise, the additional revenues from the continuation of these taxes and these tax levels through fiscal 1985 should also be promptly translated into more runways, more ILS's, and more safety equipment to benefit those users.

Four, even if the Senate and House authorizing committees are unable to reach agreement on the expenditure levels for the Trust Fund programs, as Senator Cannon suggested might happen, we hope the Senate Finance Committee will achieve at least a temporary, or perhaps a 9-month extension, of the existing aviation

excise taxes before this Congress adjourns sine die. It is fiscally important that none of these taxes lapse on October 1 as provided under current law.

The reason for our position, Mr. Chairman, is twofold. In our view the Aviation Trust Fund has worked darn well. In the last 10 years, since there has been a user tax support for this program, we have had $6 billion put into runways and concrete on airports. It is a four-fold increase over the prior decade before there were any dedicated tax revenues. That buys you and your constituents a much higher level of safety than we have had in the past.

We suggest on page 4 of our testimony that the major issue in this bill as represented by the philosophy that underlies S. 1649 is, should the aviation system be protected by public or private sector funding?

We suggest that if the tax is reduced by 6 percent, as S. 1649 suggests, from 8 percent to 2 percent, that difference of 6 percent will become a fare increase on the part of the airlines, so that money, some $7 billion over the next 5 years, will be transferred from the public sector into the private sector.

Once it is in the private sector, we, and your constituents have no guarantee that that money will be used for aviation safety, for aviation capacity. It could be used for a number of valid corporate purposes, valid purposes, but private purposes.

We suggest, Mr. Chairman, that the proper function of the committee is to keep the money on the public side, and to make sure that it is spent. The weakness in the trust fund program has not been in the tax levels. It has been in the failure of getting the funds spent for the purposes intended.

Thank you very much.

STATEMENT OF DAVID S. STEMPLER, CHAIRMAN, GOVERNMENT AFFAIRS, AIRLINE PASSENGERS ASSOCIATION, INC.

Mr. STEMPLER. Mr. Chairman, and members of the committee: I am David S. Stempler, chairman of the government affairs committee of the board of directors of the Airline Passengers Association.

I would request that my full statement be placed in the record, and I will summarize it.

Senator BYRD. So ordered.

Mr. STEMPLER. The Airline Passengers Association has over 75,000 frequent airline travelers as members, and it is therefore vitally concerned with the subject of today's hearings. We appreciate the opportunity to appear before the committee today.

I think that it is important for the committee to understand our position as airline passengers. We believe that it has been a great disservice to the airline passenger and the airfreight shipper, and the general aviation aircraft owner and operator to have an uncommitted surplus of over $3.8 billion in the trust fund when so many safety projects and airport projects need to be undertaken.

APA has long stood for the proposition that either expenditures from the trust fund be substantially increased for needed airport and airway safety and capacity projects, or the passenger ticket tax and other trust fund taxes should be reduced, so that after using

up the $3.8 billion surplus, and retaining a reasonable reserve, annual income will closely approximate annual expenditures.

I think that it is important for the committee to understand the mathematical equations associated with the goals of first reducing the taxes to reduce the surplus, and later equalizing income and expenditures.

In order to reduce the enormous surplus in the 5 years from fiscal year 1981 through 1985, the passenger ticket tax rate must be cut substantially below that rate that is eventually needed to sustain the fund on an annual basis after creating a reasonable reserve.

Based on the computer analyses prepared by Coopers & Lybrand for APA, which are attached as exhibits to this statement, APA has determined that if expenditure levels of S. 1648 in fiscal year 1985 figures are utilized, the sustaining tax rate after fiscal year 1985 required to have annual income equal annual expenditures, with a quarter of expenditures in reserve, would be approximately 3.5 to 4 percent.

However, to reduce the surplus in 5 years to that reserve level, and continuing to use S. 1648 expenditure levels, the passenger ticket tax rate needs to be cut to between 1 and 2 percent for the period fiscal year 1981 through 1985.

With respect to the specific bills under consideration, let me just quickly state that APA strongly supports Senate bills S. 1648 and S. 1649 as revised. Our position on some of the issues is as follows:

One, on taxes, APA continues to strongly and unequivocally support a reduction in the passenger ticket tax. We also support a conversion of the aircraft fuel tax to a percentage or ad valorem basis.

Two, the concept of defederalization or the removal of large and medium airports from the ADAP program was included in the Senate bill. We support that proposal.

Three, on the issue of tax reduction, some have argued that if the ticket tax is reduced by 6 percent or more, the airlines will eventually raise basic fares to vitiate the tax reduction.

First of all, airline fares must be viewed independently from the tax. Under the current system the 8 percent tax is there whether the fares go up or down. It is like your shadow, you cannot get rid of it.

Second, in this period of inflation and increasing fuel prices, airline fares probably will continue to rise. Thus if fares go up $100, it really is an increase of $108 to take into account the tax on the higher basic rate. The elimination of 6 percent of tax will eliminate this increment of the increase for the passenger.

To assist the committee in the understanding of the expenditures and tax issues, APA commissioned the international accounting firm of Coopers & Lybrand to develop a computer model to analyze the effects of different user tax rates on the expenditure levels of H.R. 6721 and the Senate bill.

The following table, which appears on page 11 of our statement, contains a list of the tax and expenditure variations which are included as exhibits to our statement. The table includes the projected surplus at the end of fiscal 1985, as well as the year at which

the surplus is expected to be eliminated. This latter figure is helpful in coming to the rate at which the surplus is decreasing.

Our conclusions, Mr. Chairman, from the perspective of the Airline Passengers Association, the Senate bill expenditure levels coupled with S. 1649 tax levels as revised is the preferred alternative. Not only does it provide all the benefits outlined in our statement, but it provides for the lowest tax rate, which is less than 2 percent during fiscal years 1981 and 1985, and the lowest sustaining tax rate of 3.5 to 4 percent for the period after 1986. In addition, the surplus is reduced in 5 years to a reasonable level.

Mr. Chairman, APA hopes that its testimony will be of assistance to the committee, and I thank you for the opportunity to testify. I will be happy to answer any questions.

Senator BYRD. Thank you.

You favor reducing the airline passenger tax from 8 percent to 2 percent.

Mr. STEMPLER. Yes, sir.

Senator BYRD. How do you respond to the statement made a little while ago that this would merely mean an increase in the air fare by the airlines?

Mr. STEMPLER. We tried to make the point in our statement that you really have to view the two totally separately. The tax is an add-on to whatever the basic airline fare is. If you have a high tax, it is higher add-on. If it is a low tax, you have a lower add-on.

Fares will move independently of what the taxes are going to do. The tax is a set figure.

Senator BYRD. Senator Packwood.

Senator PACKWOOD. Mr. Stempler, your statement is almost exactly in line with S. 1648 and S. 1649, and is obviously at odds with the other two witnesses on this panel.

Mr. STEMPLER. Yes.

Senator PACKWOOD. I note that you are representing the Airline Passenger Association. Are you confident that there will be no jeopardy of safety features if S. 1648 and S. 1649 are passed?

Mr. STEMPLER. We believe that there will be no jeopardy in safety. Let's take airports first, the FAA will continue to certificate airports, and it will continue to make requirements as to what particular features a particular airport must have.

The question is, in order to remain that way, to retain that certification, the airport would continue to need to fund that project one way or another, and we as airline passengers believe that we will do better when those negotiations for increases and improvements take place as a result of arms-length negotiations as opposed to a particular add-on fee.

We also must understand that if you take a particular passenger trip, let us say, between New York and Portland, Oreg., or points where improvements don't need to be made, they are still paying the tax whether the particular city-pairs that they are using need the funds.

When the increases in funding come from increases in landing taxes or terminal charges, then they will be keyed to the particular facilities that are needed at that particular airport.

Senator PACKWOOD. Mr. Corbett, let me ask why do you fear that safety is going to be jeopardized if these bills are passed.

Mr. CORBETT. Senator, I don't feel that safety is going to be jeopardized as much as that capacity will not be increased.

If I could bring you back to the 1968-69 period when the Senate Commerce Committee, with the support of the airlines, proposed the creation of the trust fund which we are now talking about, we had a situation where traffic was booming, where we had airport-airway safety problems based on just too many planes and too little concrete.

The airlines supported the establishment of the trust fund and an increase in the tax because they had to use all of their internally generated funds to pay for their new fleet of equipment, such as the 747. So the additional 3 percent, which is at issue, at least in part now, in S. 1649 was set aside by the Government to make sure that when internally available funds from the airlines were not available for capacity in the system, we will have a direct Federal mechanism to get those runways in the system, and the safety.

Senator PACKWOOD. By capacity, are you talking about what would be regarded as operation and maintenance?

Mr. CORBETT. No, by capacity I am talking about the extra runway in Chicago, on helping to finance Atlanta's development——

Senator PACKWOOD. I count those as operations.

Mr. CORBETT. To make sure that when the economic downtrend that we are having now is over, when we need more space, more runways, more lighting systems, the money will be there through the public sector in case the airlines just cannot afford to do it. That is the assurance that we think this committee and that Congress gave the taxpayers in 1970, and we think that it is just as valid today as it was 10 years ago.

Senator PACKWOOD. Of the expenditures made for operations and maintenance, what percentage do the airports now get from contracting with the airlines?

Mr. CORBETT. The very large airports, which are proposed to be defederalized under the Senate bill, probably get all of their operating costs covered by fees from the airlines. It is relatively stable.

The problem we have, Senator, and the problem we have with the Senate bill, is that the new items of capacity could not be funded through the trust fund mechanism anymore. They would have to be funded by airline contributions under defederalization.

Senator PACKWOOD. Do you think, that if Houston wanted to undertake a new runway that the airlines that serve Houston would leave Houston rather than pay for it?

Mr. CORBETT. I would like Mr. McMiller to respond to that.

I think we should tell you, since the deregulation of the airlines which came through the efforts of the Commerce Committee 2 years, it is very hard to get competing airlines to agree on any capital development. A runway extension which may benefit Braniff, might not benefit American Airlines.

So under the trust fund mechanism we have the ability to go to the Federal Government to get, maybe, 17 percent of the money that Houston has contributed back for a project that will serve all airlines, but which only some airlines want to finance.

Senator PACKWOOD. Let me address the question to Mr. McMillan.

Do you seriously think that one of the major airlines would leave Houston, if the airport wanted to build a new runway, and as the contract came up the airport said, "We are going to increase the cost of the contract because of the new runway"?

Mr. McMILLAN. Senator, I don't seriously believe that the major carriers, if that term is properly defined, will do that. But you mention a potential new runway in Houston, which coincidentally we are planning to build at a cost of about $100 to $125 million. The result of that construction in the mid-1980's will not be less than a doubling of the landing fees per thousand pounds of landed weight at Houston, perhaps a tripling depending on the arithmetic. I would say that at that point the marginal carriers, compared the to major carriers, would certainly draw the line, in my opinion, at incurring such additional landing fees.

It will also cause the major carriers to resist the development until such time as the economics of the airline industry are much improved over what they are today. This is where the ups and downs come in long-range planning, sir.

Senator PACKWOOD. If you are negotiating with the airlines now for roughly 90 percent of your costs, why on earth is it going to be difficult to reach an agreement on the other 10 percent?

Mr. McMILLAN. Sir, there is this difference under the existing ADAP Act, where 75 percent of this runway construction could be borne by ADAP funds, assuming that the phasing of construction would allow the devotion of that much money to it.

It is the difference between $25 million that the carriers now would have to pay, and $100 million that they would have to pay back in landing fees over a period of time. That order of magnitude is a rather frightening difference from the point of view of the carrier or the airport operator.

Senator PACKWOOD. I have no other questions, Mr. Chairman.

Senator BYRD. Thank you, gentlemen.

[The prepared statements of the preceding panel follow:]

STATEMENT OF A. L. MCMILLAN, ASSISTANT DIRECTOR FOR FINANCE, DEPARTMENT OF AVIATION, CITY OF HOUSTON

Mr. Chairman and Members of the Committee, my name is Alton L. McMillan and I am the Assistant Director for Finance for the Aviation Department of the City of Houston. I am accompanied by Sylvia de Leon from the law firm of Akin, Gump, Hauer & Feld who serves as Washington counsel for the City. The City of Houston is honored to participate in this Committee's consideration of S. 1649, the "Airport and Airway Revenue Act of 1979".

Mr. Chairman, we feel that this bill, in conjunction with S. 1648 which would terminate federal assistance for major capital improvement programs at the nation's 72 largest airports, will have far reaching effects on the future of air transportation in the United States. My testimony will offer some thoughts on this matter from a "nuts and bolts" point of view.

Development of a safe and efficient national air transportation system requires an orderly, well-developed plan for providing suitable, necessary and timely airport facilities. The long lead time required for planning and constructing major components of an airport system prevents quick responses to changing conditions and quick reactions to new demands. This mandates effective, long-range planning for future needs. Because each airport is a part of an overall air transportation system, it is important that development at one airport is coordinated with that at other airports. The Airport Development

Aid Program (ADAP) has been very effective in achieving coordinated development nationwide.

Last February the Senate passed S. 1648 which would eliminate the 72 largest airports from future ADAP eligibility. Part of the "justification" for this action was a concurrent reduction in the air passenger ticket tax through S. 1649. It has been said that this would make funds available to the airlines for payment to large airports to support capital development projects and that the airports could renegotiate their contracts with tenant airlines to obtain this support. Improvements or expansion of facilities thus would be dependent upon the ability of each airport to negotiate capital contributions from the airlines serving that airport.

In my considered opinion, this will not happen.

There will be little or no incentive for airlines to agree to finance major airport improvements even if the ticket tax is reduced. Incumbent airlines will be reluctant to underwrite improvements which may benefit new entrants into the local market at the expense of incumbents, especially if such improvements are not also directly beneficial to the incumbents. New entrants also will be reluctant to enter into binding capital commitments until they have become convinced of their own profitability in the new market after a suitable trial period.

Under current law, the airline is merely the conduit through which the ticket tax money is passed to the Federal Government into the Airport and Airway Trust Fund and distributed to airports.

Under this "conduit" concept, the airlines do not benefit in their Profit and Loss statements from these funds, because this money never belongs to the airlines.

By comparison, if the airlines were to agree to larger landing fees or other capital contribution mechanisms, these increased payments would reduce the profitability of airline operations in the absence of corresponding increases in fares. Given the current state of airline economics, with most carriers operating at a loss, a fare increase would be almost inevitable in order to support larger payments by the air carriers directly to the airports as a substitute for ADAP funds. Any imagined decrease in costs to the passenger through reduction in the ticket tax would be largely wiped out by increased fares. The passenger pays either way -- either as a tax or as a fare increase -- because there is truly no free lunch when it comes to funding the massive capital improvements required to meet the needs of the air transportation system.

My personal experience in some 15 years of negotiating with air carriers is that when times are good, and the Profit and Loss Statement is in the black, there is a greater willingness to commit to long-range, large capital expenditures. By contrast, when times are bad, and the Profit and Loss Statement is in the red, there is a marked reluctance to make such commitments. Imagine what this sort of on-again-off-again approach would have on essential airport projects requiring the commitment of millions of dollars by more than one airline over an extended period of time. Rapidly

increasing costs of labor, equipment and fuel are already squeezing airline profits. Coupled with scheduled major investments over the next decade in new aircraft, it is evident that there will be little room in airline budgets for underwriting significant new investments in airport terminal or runway facilities.

Mr. Chairman, let me now give you an idea of what all of this will mean to a city such as Houston.

Assuming "defederalization" and the refusal of the airlines to voluntarily increase their payments to the airport operator for funding capital improvements, one of two things will happen. Either planned improvement projects will be delayed, scaled down or cancelled, or airports will be forced to seek other sources of financing.

These other sources of financing are limited and generally, place a greater portion of the tax burden on local citizens, as opposed to air passengers. These include:

-- internally-generated cash (including revenues from parking and other airport concessions);

-- airport revenue bonds;

-- general obligation bonds.

There are serious problems associated with each of these sources. For example, the ordinances underlying Houston's airport revenue bonds provide for a pledge of gross airport revenues first to debt service. Funds remaining may be used for general airport operation and maintenance. Any deficiency for such expenses

however must be made up through local taxes. Therefore, should Houston commit a greater portion of airport revenues to debt service for capital projects which would no longer be eligible for ADAP assistance, local taxes could be required to meet unfunded maintenance and operations expenses. This would in effect, shift the tax burden for supporting essential airport facilities from air transportation users, where it largely is under the current system, to local taxpayers.

An alternative source of funds, airport revenue bonds, typically have a debt service coverage test that must be met before additional first lien parity bonds may be issued. In Houston's case, this test requires that annual airport revenues equal not less than 1.5 times the average annual debt service of both outstanding and proposed issues. This places an effective ceiling on our parity bonds. Although subordinate lien airport revenue bonds are not subject to the same absolute coverage test, they are debt serviced from the same revenue stream as the first lien bonds, and being of junior rank carry higher interest rates. I am advised by counsel that Texas law limits the interest rate which we can pay to 10 percent. In view of today's high interest levels, there is a very real risk that we could not issue significant amounts of subordinate lien bonds. Given these limitations, we have not found airport revenue bonds to be an unlimited source of funds.

Finally, general obligation bonds, by definition, pledge the faith and credit of the issuer (the City of Houston) and are directly supported by local taxes. With the growing resistance

of citizens nationwide to local property tax increases, as reflected in Proposition 13 in California, and in tax limitation or tax reduction moves taken elsewhere, general obligation bonds are the least likely, least favorable source of capital funds to substitute for the money generated from the air passenger ticket tax and used through ADAP to promote airport and airway development.

For these reasons, Mr. Chairman, it is my strong conviction that S. 1649 will not really cut taxes. It will merely substitute an increase in local taxes for a reduction in a Federal tax. In my view, this tax "sleight of hand" will benefit neither the air transportation system or the nation's taxpayers.

Until the full effect of airline deregulation on the air transportation system of this country is known it is premature to substantially alter current arrangements for financing capital projects at major airports. During this period of unprecedented price and route adjustment for the industry, there is simply no practical substitute for the 8 percent air passenger ticket tax to support continued ADAP assistance to all airports. Forced experimentation with alternative financing arrangements for airport improvements at this time is in no one's interest.

I think we can all agree that, some day, ADAP must end. I submit for your consideration the thought that this day has not yet arrived, that there is still much to be accomplished -- especially in the Sun Belt region of our nation -- and therefore, that ADAP and the associated air passenger ticket tax should be continued for a while longer.

Thank you very much.

AIRPORT OPERATORS COUNCIL INTERNATIONAL

TESTIMONY

of the

AIRPORT OPERATORS COUNCIL INTERNATIONAL

on

FEDERAL AVIATION USER TAXES

AND THE STATUS OF THE AIRPORT AND AIRWAY TRUST FUND

before the

Subcommittee on Taxation and Debt Management

Committee on Finance

United States Senate

Washington, D.C.

September 8, 1980

AOCI RECOMMENDATIONS

1. We hope this Committee will vote this Congress to extend the Aviation Trust Fund through 1990. However, for the reasons we will detail, our membership does not believe that this is an appropriate time to reduce the 8% passenger tax at all (or to increase or substantially modify current taxes on general aviation).

In fact, our members report that there is virtually no passenger or public complaint about this excise tax. Rather, community opinion is strongly in favor of spending the tax receipts for safety, not in reducing an "acceptable Federal tax."

2. We are sharply opposed to S. 1649 as being philosophically inconsistent with the responsibility of the public sector for assuring aviation safety and for redistributing passenger-generated funds for an equivalent level of safety throughout an interdependent airport and airway system.

3. Local governmental airport sponsors believe, quite simply, that the embarrassing Aviation Trust Fund surplus of some $3.7 billion should be spent for the aviation safety and capacity purposes for which the Trust Fund was originally created. Likewise, the additional revenues from the continuation of these taxes and tax levels through FY 1985 should also be promptly translated into more runways, more ILS's, and other safety equipment to benefit those users.

4. Even if the Senate and House authorizing Committees are unable to reach agreement on the expenditure levels for the Aviation Trust Fund programs in the remaining days of this Congress, we hope the Senate Finance Committee will achieve at least a temporary (nine-month) extension of the existing aviation excise taxes and levels before this Congress adjourns sine die. It is fiscally important that none of these taxes lapse on October 1 as provided under current law (P.L. 96-298, July 1, 1980).

68-894 O—80——8

Mr. Chairman and Members of the Subcommittee:

I am J. J. Corbett, Vice President - Federal Affairs, of the Airport Operators Council International (AOCI). The Airport Operators Council International is the association of the governmental bodies which own and operate the principal airports served by the scheduled airlines in the United States as well as in many countries abroad. Our U.S. member airports annually enplane more than 90% of the domestic and virtually all of the U.S. international scheduled airline passenger and cargo traffic. In addition, our local government members operate many reliever and other general aviation facilities which supplement the larger airports in their communities and regions. (A listing of our United States members is attached.)

Both these public airport sponsors and the FAA are providers of aviation facilities. While the Federal Government, through the FAA, is responsible for airways facilities, our members provide the associated public landing and terminal facilities that are open to aviation users. Thus our perspective is somewhat different from that of the aviation user groups, such as airlines, general aviation and airline passengers, who contribute to the development of safe airway and airport facilities through their Federal aviation excise taxes supporting the Airport and Airway Trust Fund. The grants-in-aid our members receive through the FAA's Airport Development Aid Program (ADAP) represent a partial return of the aviation user tax receipts being generated in those communities.

We are pleased for this opportunity to present the views of our United States members on the present status of the Airport and Airway Trust Fund established by this Committee some ten years ago (Title II, Airport and Airway Revenue Act of 1970, P.L. 91-258) and on various proposals pending before the Congress to modify the Federal excise

taxes and rates now imposed on users of the national airport and airway system. AOCI has reviewed S. 1649, proposed by Senator Cannon and others, Title II of H.R. 6721, the House Ways and Means Committee proposal soon to be voted upon by the House of Representatives, as well as the Administration's proposal (S. 1582).

Because the present 8% Federal domestic passenger ticket tax (passenger tax) generates some 85% of all Aviation Trust Fund revenue, our comments today will focus on whether that tax should be reduced immediately to 2% (proposed in S. 1649), kept at the present level through the next Congress and then reviewed to see if a reduction to 5% should be allowed (H.R. 6721), or kept at 8% at least through FY 1985, as proposed by the Carter Administration (S. 1582).

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1. We hope this Committee will vote this Congress to extend the Aviation Trust Fund through 1990. However, for the reasons we will detail, our membership does not believe that this is an appropriate time to reduce the 8% passenger tax at all (or to increase or substantially modify current taxes on general aviation).

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Aviation Trust Fund Has Worked Well

Since it was created in 1970, the Aviation Trust Fund has provided a dependable stream of user funding for airport and airway safety and capacity. More funds and assured funding for the system have resulted in higher levels of aviation safety than ever before possible while providing an increase in airport capacity to handle the doubling of passenger traffic that has occured in the 1970's.

During these past ten years, some $4 billion in user contributions were expended to upgrade airports and their runways, taxiways, and lighting systems; an additional $2.6 billion was spent for control towers, radars, and enroute control centers; $2 billion went toward the Government's maintenance of the airways system and $700 million was invested in aviation research and development. However, as noted before, some $3.7 billion still remains squirreled away, unobligated and unspent, in the Trust Fund.

ADAP Program Helpful

For airport communities, the Trust Fund has spurred $6 billion in airport development since 1970, with $4 billion coming through the ADAP program matched by $2 billion in local funds. This four-fold increase over the prior decade is mainly the result of the Trust Fund mechanism.

According to FAA data, half that development in the 1970s directly increased the safety level of all airports, large and small, by rehabilitating worn-out facilities, bringing airports up to FAA safety standards, and purchasing fire and rescue equipment, security fencing or runway grooving and other runway safety improvements. The remaining 50% increased the capacity of the airport system by upgrading airports to serve larger aircraft, increasing capacity to reduce expensive delays and building new airports.

S. 1649'S MAJOR ISSUE: PUBLIC OR PRIVATE SECTOR FUNDING?

S. 1649 challenges a number of premises upon which the Aviation Trust Fund concept has relied during the past decade. The first is that the Trust Fund is a good mechanism for generating funds by which government assures travellers a safe civil aviation system through its capital investment in airway and airport facilities in amounts and timing that are unrelated to the private sector's profit and loss cycles.

In contrast, proposing to reduce the passenger tax from 8% to 2%, S. 1649 would result in a transfer of $7 billion in 1981-1985 passenger-generated funds from the public sector (tax revenues into the Trust Fund) to the private sector (fare revenues to airline corporations).

This would happen because, under CAB regulations, the U.S. airlines could and likely would increase their fares when and by the same amount that the Federal Government lowers its tax on passengers. Thus, a passenger who had previously paid an $8 Federal tax on a $100 fare would, after S. 1649, pay about a $2 tax on a $106 fare for the same flight. The total cost of flying would not have increased but the public and private shares of the passenger's revenue would have markedly changed.

From the viewpoint of the local governments which own the airports, there is a tremendous difference between these two approaches. With passenger tax revenue flowing into the public Trust Fund, those funds could only be used to pay for the aviation safety and capacity programs specified by the Congress (including airport development under the ADAP program).

However, with that $7 billion in the private sector, airline management could expend that new revenue for any corporate purpose (return on investment, fuel costs, personnel salaries or aviation safety and capacity projects). Thus S. 1649 is simply a transfer of $7 billion from the public to the private sector over the next five years and an expansion of the purposes for which that money could be used beyond the safety and capacity items currently decided by Congress.

AOCI members believe that this taxing source should remain in the public sector and at the 8% level, at least at this time. In our view, the 8% Federal passenger tax is not excessive given the Federal Government's total expenditures for civil aviation (including operating and maintaining the airways system) and the airline traveller's ability to pay for enhanced safety and capacity. Furthermore, as will be discussed below, airport proprietors do not believe that the same amounts of passenger funds which now finance airport capital development through the Trust Fund would be made available for that purpose by airline managements.

S. 1649's massive tax reduction proposal also questions the Trust Fund premise that the parts of the nation's civil aviation system are and will continue to be financially interdependent. Currently, under the Airport and Airway Development Act of 1970 as amended (49 U.S.C. 1701), the Secretary of Transportation is enpowered, within the limits set by Congress, to transfer revenues generated in the major metropolitan areas to achieve the same level of ground and air safety at smaller airports which can't locally generate adequate funds from the airlines.

In contrast, S. 1649's revenue estimates are based upon (1) "defederalizing" or making ineligible for any ADAP grants the largest 72 airline airports in the nation, and (2) so draining the existing Trust Fund surplus that there won't be enough tax revenue still coming in from the major metropolitan areas to finance another five years of subsidized airport development at the smaller, financially marginal, community airports.

Thus, in addition to transferring $7 billion to the private sector, S. 1649 would also financially separate the major hubs of the airport system from their feeder airports and from any access to the Trust Fund.

Airport defederalization, as we can demonstrate, could harm the larger airports directly and smaller airports indirectly. Conversely, reducing the Federal passenger tax to 2% would eliminate the revenue base that smaller airports will need in 1985 when the ADAP program comes up for renewal. This would also adversely impact on major communities which feed passengers to smaller communities.

AIRPORT DEFEDERALIZATION: THE 1 ½% TAX ISSUE

"Airport defederalization" was originally conceived by Senator Cannon, as chairman of the Senate Commerce Committee, as a way of freeing local airport sponsors from the expensive and extensive "red tape" of Federal grant regulations while, at the same time, removing those local governments involuntarily from the Federal ADAP program. Now, however, "defederalization" means only "defunding" since the Federal bureaucrats will continue in perpetuity to regulate and red-tape the city, county and state governments which run airports.

At least there's no disagreement over the facts of defederalization -- just its implications. Under S. 1648, the authorization passed by the Senate last February 5, the largest 72 airports -- from Chicago's O'Hare through Albany's (NY) Airport (which enplanes less than 2000 passengers daily) -- would be made ineligible for ADAP funds. These 72 airports receive about $250 million annually from the ADAP program through a combination of statutory apportionments and discretionary grants.

That's it. $250 million a year, and steadily declining in recent years as a proportion of total ADAP grants. At a total cost to the Trust Fund of $250 million a year, airport defederalization of all 72 airports represents less than 1 ½% of the existing 8% Federal passenger ticket tax that is the primary source of Trust Fund receipts. Thus, airport defederalization would, at most, justify a reduction in the 8% domestic tax to 6 ½%, or from $8 to $6.50 on a $100 airline fare. To justify reducing the passenger tax below 6 ½%, the Senate proponents of S. 1649 use the other rationale - draining the Aviation Trust Fund surplus.

Consider the importance of these 72 communities to the aviation system and to Trust Fund revenues. The seventy-two metropolitan airport communities which would be defunded by the Senate bill enplane 85% of all airline passengers in the nation, including

about half of all commuter airline passengers. Fully 75% of all airline operations occur at these 72 airports. And 75% of the revenues from all the Federal aviation user taxes feeding the Trust Fund are generated in these communities.

S. 1649's revenue requirements assume that the defederalized communities can merely renegotiate their airline contracts and obtain the lost ADAP monies directly from the airlines. . . as the airlines increase their ticket prices. That's easier said than done.

Legal Problems with Higher Landing Fees

Under existing long-term landing fee contracts entered into with airlines, on the assumption of continuing ADAP, most airports are now legally prohibited from imposing new charges on the airlines to replace funds lost through defederalization. The only possible exception would be: (1) if a "majority" of the airlines serving an airport would agree on the projects to be funded, or (2) if all the airlines agree to renegotiate their existing contracts, some of which extend up to 30 years.

Yet, in these days of airline deregulation, it is increasingly more difficult -- if not impossible -- to get competing carriers serving an airport to agree on any airport development project. And for a carrier to voluntarily renegotiate higher fees and charges before the normal renegotiation deadline arrives is, in these days of economic hardship for the airlines, not likely.

And in times such as these, if the airlines should increase payments to defederalized airports, there will probably be less money for landing fees at smaller airports which, without sufficient landing fee proceeds, may not be able to generate the matching funds necessary to use their ADAP appropriations.

Further, if the defederalized airports lack the funds for facilities to meet growing traffic demands, then frequent commuter airline services to smaller communities will find it difficult, if not impossible, to secure landing slots at those major airports during the most advantageous hours for travel.

Equity to Taxpayers in Metropolitan Areas

Defederalization is also an important issue to the contributing taxpayers, the majority of whom use the 72 major airports which would be defunded. At those airports, they stand to lose the benefits of the $3.5 billion contributed over the years to the Aviation Trust Fund. In equity, these taxpayers should see some benefit at their home airports from that present Trust Fund surplus. But that won't happen at any airport that would be defederalized.

To add insult to injury, these metropolitan area passengers will, in essence, end up paying twice: First, they'll pay higher ticket prices when airlines add back the cost of whatever ADAP-replacement contributions they make to major airports. Then they'll pay again via the continued Federal ticket tax that will still be added on top of their ever-increasing air fares.

TRUST FUND DEPLETION - A THREAT TO SMALLER COMMUNITIES

If, as we've computed, defederalization of all 72 airports could only reduce the passenger tax rate 1 ½%, from 8% to about 6 ½%, what's S. 1649's justification for the further 4 ½% cut in the tax rate to 2%?

Such a reduction is mathematically possible only if the Trust Fund surplus is depleted over the next five years by S. 1648's proposed expenditures of $8.5 billion while taking in only $4.5 billion in Federal tax revenue during that same period.

The Aviation Trust Fund would be depleted too quickly and drastically, until it is mostly gone in 1985. At that time, AOCI member communities would be left adrift with inadequate remaining balance in the Trust Fund and the prospects of an uphill battle in 1985 to increase tax levels in order to maintain the ADAP program. If 72 larger airports are defederalized out of the program, a much smaller airport constituency will be available to wage that important battle.

AOCI does support reduction of the current, unconscionable Trust Fund surplus. But this should occur so as not to endanger the access of small communities to the cross-subsidy provided by heavy travel through major hub airports. And, with defederalization as proposed in S. 1648, we're concerned that there won't be enough financial strength in the Trust Fund or broad political support in Congress to pass an adequate post-1985 ADAP program.

The only airports left eligible would be those airports which represent just 15% of airline passengers and 25% of Trust Fund revenue sources.

AOCI WOULD REDUCE TRUST FUND SURPLUS BY PURCHASING MORE SYSTEM CAPACITY

Airport sponsors hope that this Committee, in rejecting S. 1649, will support expenditure of the existing Trust Fund surplus for those projects which the public sector needs and which the private sector supports. If the nation's airlines will now support the appropriation of that accumulated surplus for projects which will increase airport and airway system capacity, as well as enhance safety, the purposes of the Trust Fund will have been achieved and long-delayed projects can be commenced.

Our members don't doubt and FAA's data confirms that the Trust Fund could be wisely used for such purposes. The FAA's own National Airport System Plan (NASP) conservatively projects an airport development need of $12.7 billion over the next decade. Of that, $8.7 billion will be needed within the first five years, or $1.3 billion annually from the Trust Fund. That's twice the current ADAP level.

The NASP indicates what we all know, that smaller airports will continue to use their Trust Fund monies for safety and upgrading while larger airports need new capacity to handle more people and planes safely and expeditiously.

According to the FAA's latest calculations, 35 of the nation's busiest airports -- those which would be defederalized under the Senate approach, will reach their saturation points by 1990. By that date, up to another 165 airports may exceed their practical capacity with possible delays averaging 40 minutes per operation during peak hours.

It's time to spend the surplus.

Thank you.

SEPTEMBER 1980

AIRPORT OPERATORS COUNCIL INTERNATIONAL

ROSTER OF MEMBERS

WITHIN THE UNITED STATES AND ITS TERRITORIES

ALABAMA

Birmingham - Department of Aviation

ALASKA

Alaska - Department of Transportation & Public Facilities
Juneau - City and Borough

AMERICAN SAMOA

Pago Pago - Government of

ARIZONA

Phoenix - Aviation Department

CALIFORNIA

Bakersfield - Kern County Department of Airports
Burbank - Burbank/Glendale/Pasadena Airport Authority
Fresno - City of
Los Angeles - Department of Airports
Oakland - Board of Port Commissioners
Palm Springs - City of
Sacramento - County of
San Diego - Unified Port District
San Francisco - City and County of
San Jose - City of
Santa Ana - Orange County Airport

COLORADO

Colorado Springs - City of
Denver - City and County of
Pueblo - Memorial Airport

DISTRICT OF COLUMBIA

Washington - Metropolitan Washington Airports

FLORIDA

Daytona Beach - Regional Airport
Fort Lauderdale - Board of Broward County Commissioners
Ft. Myers - Lee County Airport
Jacksonville - Port Authority
Melbourne - Airport Authority
Miami - Dade County Aviation Department
Orlando - Greater Orlando Aviation Authority
Palm Beach - Board of County Commissioners
Pensacola - City of
Sarasota-Manatee - Airport Authority
Tampa - Hillsborough County Aviation Authority

GEORGIA

Albany - Albany-Dougherty County Airport
Atlanta - Aviation Department
Savannah - Airport Commission

GUAM

Guam - Government of

HAWAII

Honolulu - Department of Transportation

ILLINOIS

Chicago - Department of Aviation
East Alton - Civic Memorial Airport Authority
Moline - Rock Island County Metropolitan Airport Authority
Peoria - Greater Peoria Airport Authority
Rockford - Greater Rockford Airport Authority
Springfield - Airport Authority

INDIANA

Fort Wayne - Board of Aviation Commissioners
Indianapolis - Airport Authority
South Bend - St. Joseph County Airport Authority

IOWA

Cedar Rapids
Des Moines - Department of Aviation
Mason City - Municipal Airport Commission

KANSAS

Topeka - Metropolitan Airport Authority
Wichita - Airport Authority

KENTUCKY

Lexington - Blue Grass Airport
Louisville - Louisville and Jefferson County Air Board
Paducah - Airport Corporation

LOUISIANA

Baton Rouge - Greater Baton Rouge Airport District
Lafayette - Airport Commission
New Orleans - Aviation Board

MAINE

Bangor - City of
Portland - City of

MARIANA ISLANDS

Saipan - Department of Transportation
Saipan - International Airport

MARYLAND

Maryland - State Aviation Administration

MASSACHUSETTS

Boston - Massachusetts Port Authority

MICHIGAN

Detroit - Board of Wayne County Road Commissioners
Flint - City of
Freeland - Tri-City Airport Commission
Grand Rapids - Kent County Aeronautics Board
Kalamazoo - Municipal Airport
Lansing - Capital Region Airport Authority
Muskegon - County Airport

MINNESOTA

Minneapolis-St. Paul - Metropolitan Airports Commission

MISSISSIPPI

Gulfport - Gulfport-Biloxi Regional Airport Authority
Hattiesburg - Pine Belt Regional Airport Authority
Jackson - Municipal Airport Authority

MISSOURI

Columbia - City of
Jefferson City - Airport Commission

MISSOURI (Continued)

Kansas City - Aviation Department
St. Louis - Airport Authority
St. Louis County - Spirit of St. Louis Airport
Springfield - Municipal Airport Board

MONTANA

Great Falls - International Airport
Missoula - County Airport

NEBRASKA

Lincoln - Airport Authority
North Platte - Airport Authority
Omaha - Airport Authority

NEVADA

Las Vegas - Clark County Department of Aviation
Reno - Airport Authority of Washoe County

NEW HAMPSHIRE

Manchester - Airport Authority

NEW JERSEY

Trenton - Mercer County Airport

NEW MEXICO

Albuquerque - City of

NEW YORK

Binghamton - Broome County Department of Transportation
Buffalo - Niagara Frontier Transportation Authority
New York - Metropolitan Transportation Authority
New York - Port Authority of New York and New Jersey
Syracuse - Department of Aviation
White Plains - Westchester County Airport

NORTH CAROLINA

Charlotte - City of
Greensboro-High Point - Airport Authority
Raleigh - Raleigh-Durham Airport Authority

OHIO

Akron-Canton - Regional Airport
Cincinnati - Kenton County Airport Board

OHIO (continued)

Cleveland - City of
Columbus - Metropolitan Airport and Aviation Commission
Dayton - Department of Aviation
Toledo-Lucas County - Port Authority
Youngstown - City of

OKLAHOMA

Oklahoma City - Airport Trust
Tulsa - Airport Authority

OREGON

Portland - Port of

PENNSYLVANIA

Lehigh-Northampton - Airport Authority
New Cumberland - Bureau of Aviation
Philadelphia - Department of Commerce
Pittsburgh - Greater Pittsburgh International Airport

PUERTO RICO

San Juan - Puerto Rico Ports Authority

RHODE ISLAND

State of Rhode Island - Division of Airports

SOUTH CAROLINA

Charleston - County Aviation Authority
Columbia - Metropolitan Airport
Greenville-Spartanburg - Airport Commission

TENNESSEE

Chattanooga - Municipal Airport
Knoxville - Metropolitan Airport Authority
Memphis-Shelby County - Airport Authority
Nashville - Metropolitan Airport Authority

TEXAS

Austin - City of
Dallas - Department of Aviation
Dallas/Fort Worth - Regional Airport Board
El Paso - City of
Houston - City of
San Antonio - Department of Aviation

UTAH

Salt Lake City - Airport Authority

VERMONT

Burlington - Airport Commission

VIRGINIA

Newport News - Peninsula Airport Commission
Norfolk - Port and Industrial Authority
Richmond - Capital Region Airport Commission

VIRGIN ISLANDS

St. Thomas - Virgin Islands Port Authority

WASHINGTON

Seattle - Port of
Spokane - Airport Board

WISCONSIN

La Crosse - Municipal Airport
Milwaukee County - Department of Public Works

WYOMING

Casper - Natrona County International Airport

STATEMENT OF

DAVID S. STEMPLER

CHAIRMAN, GOVERNMENT AFFAIRS COMMITTEE OF THE

BOARD OF DIRECTORS

AIRLINE PASSENGERS ASSOCIATION, INC.

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY

COMMITTEE ON FINANCE

UNITED STATES SENATE

HEARINGS ON

LEGISLATIVE PROPOSALS DEALING WITH USER TAXES FUNDING

THE AIRPORT AND AIRWAY TRUST FUND

September 8, 1980

Suite 300 • 1919 Pennsylvania Ave. N.W., Washington, D.C. 20006 • 202-293-3815 • Telex 89-414

STATEMENT OF DAVID S. STEMPLER, CHAIRMAN, GOVERNMANT AFFAIRS COMMITTEE OF THE BOARD OF DIRECTORS AIRLINE PASSENGERS ASSOCIATION, INC., BEFORE THE COMMITTEE OF THE FINANCE, UNITED STATES SENATE, HEARINGS ON LEGISLATIVE PROPOSALS DEALING WITH USER TAXES FUNDING THE AIRPORT AND AIRWAY TRUST FUND, SEPTEMBER 8, 1980.

Mr. Chairman, Members and Staff of the Committee:

I am David S. Stempler, Chairman of the Government Affairs Committee of the Board of Directors of the Airline Passengers Association, Inc. ("APA"). The Airline Passengers Association, has over 75,000 frequent airline travelers as members and is therefore vitally concerned with the legislation for the reauthorization of the taxes that fund the Airport and Airway Development Act. We appreciate the opportunity to appear before the Committee on this critical issue which affects our primary responsibility to our members-- to provide for their safety, economy, comfort, and convenience.

INTRODUCTION

Mr. Chairman, the airline passenger and the industry as a whole are facing a number of problems relating to the impending lapse of the taxes that fund the Airport and Airway Trust Fund (the "Trust Fund"). First and foremost to our members, concerns the safety of air travel and what the Congress and Administration will do to improve it. Second, will airport capacity meet the needs of the public in this era of deregulation and predicted traffic growth for the 1980's. Next, can the government cut taxes in this inflationary period. And finally, how can we utilize the $3.8 Billion surplus which will exist in the Trust Fund at the end of FY 1980. The surplus is not solving any of these problems.

I think it is important for the Committee to understand our feelings as airline passengers. Our position has really not changed since 1970 when the Airport and Airway Development Act and Airport and Airway Revenue Act were enacted, and in 1976 when the program was reauthorized. We supported and continue to support user taxes, and for us as airline passengers, a tax on our airline tickets, to accomplish safety improvements and airport development. When the original bills were enacted, APA was concerned that Trust Fund monies might be spent for non-aviation purposes, and so we pressed for precise limitations on permissible uses. However, we, like many others, never foresaw that these Trust funds might not be expended at all, and held in abeyance to build up a mammouth surplus and act as a large credit on the deficit-ridden U.S. budget. The Airline Passengers Association believes that it has been a great disservice to the airline passenger, the airfreight shipper, and the general aviation aircraft owner and operator to have an uncommitted surplus of over $3.8 Billion in the Trust Fund, when so many safety projects and airport projects need to be undertaken.

APA'S BASIC POSITION ON THE TRUST FUND AND TAXES

APA has long stood for the proposition that: (1) either expenditures from the Trust Fund be substantially increased for needed airport and airway safety and capacity projects; or (2) the passenger ticket tax and other Trust Fund taxes should be reduced so that after using up the $3.8 Billion surplus and retaining a reasonable reserve, annual income more closely approximates annual expenditures.

It is important for the Committee to understand the mathematical equations associated with the goal of reducing taxes, and later equalizing income and expenditures. In order to reduce the enormous surplus in the five years from FY 1981-1985, the passenger ticket tax rate must be cut below that rate that is eventually needed to sustain the fund on an annual basis after creating a reasonable reserve, we call that the "sustaining tax rate". Based on the computer analyses prepared by Coopers & Lybrand for APA, discussed below, APA has determined that if expenditure levels of S 1648 and FY 1985 figures are utilized, the sustaining tax rate after FY 1985 required to have annual income equal annual expenditures, with a quarter of expenditures in reserve, would be approximately 3.5 to 4%. However, to get the surplus down in 5 years to the reserve level, and continuing to use S 1648 expenditure levels, the passenger ticket tax rate needs to be cut to 2% for FY 1981-1985.

APA believes that the surplus ought to be reduced quickly over the five year period from FY 1981-1985 and that when reauthorization of the Trust Fund and its taxes takes place in 1985, the tax rate should then be set at the higher sustaining level. In effect, you can't have it both ways. If we want to reduce the surplus quickly to make up for ten years of failure to expend funds for safety and capacity, we must cut the tax way down, and then readjust it upwards later to the tax rate that it should have been at for the last 10 years.

MAJOR BILLS UNDER CONSIDERATION

Mr. Chairman, I would now like to discuss the two Trust Fund

reauthorization bills that will affect your work on establishing tax rates, because they present varying expenditures levels and philosophies. They are: (1) the Senate Bills, S 1648 and S 1649; and (2) the House Bill, HR 6721.

APA strongly supports the Senate Bills because they provide for a:

- Large reduction of expenditure levels in the Airport Development Aid Program ("ADAP") by elimination of self-sufficient large and medium-hub airports.
- Reduction of the Passenger Ticket Tax from 8% to 2%.
- Increased expenditures for: Airports not eliminated from the ADAP program; Facilities and Equipment; and Research, Engineering and Development.
- Only a moderate and reasonable increase in Operations and Maintenance expenses of the FAA.

APA'S POSITION ON THE ISSUES

TAXES

APA strongly and unequivocally supports a reduction in the passenger ticket tax, as we have for a number of years. We support this position not only to stop the growth of the ever-growing surplus, but to eventually get income and expenditures into relative purity. We have opposed, and continue to oppose, efforts to utilize the Trust Fund or a portion of the user taxes for expenditures not related to improved aviation safety and airport capacity. We continue to oppose the FAA's attempt to divert substantial sums from the Trust Fund to cover the FAA's general overhead. This money was collected to buy safety equipment and improve airports, not to pay costs unrelated to Trust Fund expenditures. The Trust Fund should remain inviolate to such incursions.

APA supports a conversion of the aircraft fuel tax to a percentage or ad valorem basis. S. 1649 calls for a change of the current 7 cents per gallon levy on general aviation fuel, to a change of 6% of fuel purchases. The receipts from this tax, like the passenger ticket tax should increase with increases in the cost of the underlying product or service. This is equitable because receipts from the passenger ticket tax have been increasing as airline fares have increased, and fares have increased substantially as a result of increased fuel costs. We are not swayed from this position by claims of difficulty in computing the tax by fuel retailers. It is a simple calculation, rendering one dollar value per gallon that is added to the price of fuel at the pump.

TRUST FUND

APA supports an extension of the Trust Fund and the underlying taxes that fund it for a period of at least 5 years. The Trust Fund creates a readily available source of funds for airport development and safety improvements, when utilized properly. We continue to support the concept of user-financed, federal government development of airports and airways. It would be unwise to risk reliance on the General Treasury for capacity and safety improvements in our national air transportation system.

Difficulties have resulted in the past from requiring Trust Fund expenditures to be included in the normal budgetary processes. Expenditures for safety and airport development are treated as if the funds are coming from the General Fund of the Treasury and not from the special Airport and Airway Trust Fund, where funds have been collected and dedicated for those purposes. By changing the budget process, the problem of the Trust Fund surplus might not

occur again. APA will support legislation to change that process.

SURPLUS

As noted above, APA strongly opposes the continuation of an excessive surplus in the Trust Fund. A surplus should serve as a reserve to protect against a decrease in Trust Fund income, seasonal variations in cash flow, or the need for special expenditures for a critical project. APA recommends a maximum reserve equal to Trust Fund expenditures for approximately one quarter of a year. Tax and expenditure levels should be established to reach this reserve amount by the end of FY 1985. At the end of FY 1980 the uncommitted surplus will be approximately 140% of total annual expenditures, instead of the 25% reserve amount, making the surplus about 5 1/2 times too large.

AIRPORT DEVELOPMENT AND FACILITIES & EQUIPMENT EXPENDITURES

APA supports a substantial increase in ADAP and F&E expenditures especially for safety purposes. APA supports the completion of as many projects, as set forth below, for all airports, runways and facilities utilized by commuter and/or certificated air carriers:

- Approach and Landing Aid Equipment:
  - Instrument Landing Systems (ILS's)
  - Microwave Landing Systems (MLS's)
  - Visual Approach Slope Indicators (VASI's)
  - Approach lights with frangible fittings
  - Wind Shear Detection Equipment
- Runway and Airport Improvements:
  - Grooving
  - Overrun areas
  - Runway End Identifier Lights (REIL's)
  - More effective Crash, Fire, and Rescue Services
- Improved Air Traffic Control Facilities and Equipment:
  - Updated and more reliable Air Route Traffic Control Center Radar and Computers
  - More Terminal Area Radars
  - More Control Towers
  - More Ground Surveillance Radars

"DEFEDERALIZATION" OF LARGE AND MEDIUM HUB AIRPORTS

The concept of the removal of large and medium airports from the ADAP program was included only in the Senate Bill. APA supports this proposal. As now structured, and one way or another, the airline passenger and other users of the system, will eventually pay for airport and airway improvements -- whether through the Trust Fund or to the airport itself through increased landing fees or terminal lease charges.

If the large and medium airports are removed from the ADAP program, APA feels that the passenger will still pay lower fares. This is true even if landing fees and terminal charges are increased at those airports, because such increased charges will result from negotiations between the airlines and airport operators. Airlines will endeavor to keep such increases low, so that they can keep fares as low as possible. However, airports must continue to meet safety certification requirements as established by the FAA, and airlines have a stake in ensuring that the capacity needs of the airport are met. Therefore, safety and capacity improvements of those airports will be made. Increases will, however, be subject to the checks and balances of "arms-length" negotiations. These increased charges would most likely be factored into the rate base of the airline. This is more equitable to the passenger than an across-the-board ticket tax that is levied on all passengers, regardless of the funding needs of the airports they are utilizing.

Some have argued that if the ticket tax is reduced by 6%, the airlines will eventually raise basic fares to vitiate this tax reduction. First of all, airline fares must be viewed independently from the tax. Under the current system, the 8% tax is there whether

fares go up or down. It's like your shadow, you can't get rid of it. Secondly, in this period of inflation and increasing fuel prices, airline fares probably will continue to rise. Thus if fares go up $100, it really is an increase of $108 to take into account the tax on a higher basic rate. The elimination of 6% of tax will eliminate this increment of the increase for the passenger.

APA continues to oppose the imposition of any "head taxes", "passenger enplanement charges", "passenger facility charges", or any other individual passenger charge. Even if a bill allowed such charges but prohibited airports from using such funds for non-airport and non-safety projects, we would oppose it because of the enormous federal administration burden required to ensure that such prohibitions were not violated.

OPERATIONS AND MAINTENANCE

APA can support a modest increase in Operations and Maintenance expenditures for FAA, because of their increasing costs of flight checking and maintaining air navigation facilities. General Budget expenditures which go way beyond Trust Fund expenditures to support FAA costs are reasonable, because the American people receive a substantial benefit from a viable and safe air transportation system. The current level of O&M expenditures from the Trust Fund is a fair compromise for the FAA's recoupment of costs for activities related solely to expenditures from the Trust Fund.

DISCUSSION OF TRUST FUND PROJECTIONS AND COMPUTER MODEL

To assist the Committee in the understanding of the expenditures and tax issues, APA commissioned the international accounting firm

of Coopers & Lybrand to develop a computer model to analyze the effect of different user tax rates on the expenditure levels of H.R. 6721 and the Senate Bill. The attached computer projections were based an expenditure levels as proposed in the legislation, not as passed in the Senate for S 1648, or as marked up in the House Public Works and Transportation Committee.

In making the computer analyses, APA established the following guidelines:

1. All user taxes would be reduced or increased proportionally with the reduction or increase in the passenger ticket tax. (For example, a reduction in the passenger ticket tax from 8% to 4% would generate a 50% reduction in all user tax revenue projections).

2. Committed, yet unexpended funds at the end of FY 1980 would be considered to be expended equally over FY 1981-1985.

3. The year in which the surplus is eliminated represents that year in which the surplus is reduced to zero or below, under the assumption that the net cash flow for each year subsequent to FY 1985 is equivalent to that of FY 1985.

4. Fuel tax revenues were based on an ad valarem tax of 10%.

Under all alternatives, APA seeks the fulfillment of the following goals:

1. A reserve, equal to expenditures for one quarter, should remain in the Trust Fund to provide for timing differences in cash flow, income decrease, or special expenditures; and

2. The current surplus should be reduced during FY 1981-1985 to that point at which income generated from user taxes approximates expenditures, with that reserve.

Coopers & Lybrand prepared several variations based on reducing or increasing all the taxes at a set rate for the full five year period from FY 1981-1985. They also prepared several variations which would permit a more gradual reduction or increase of taxes over a period of time, changing the tax rates in equal steps each year. Utilizing the passenger ticket tax for example, (noting that

all tax rates would be reduced proportionately) the ticket tax the first year would be reduced to 6%, to 5% the second year, then 4%, then 3%, then 2% in FY 1985. The value of this approach is that there is not a great increase or decrease in any one year, but the effect over 5 years approximates one large reduction to the intermediate point. This graduated method was utilized in the reduction of telephone excise taxes.

The projections are only approximations. They are based on assumptions made by APA and are subject to changes, and uncertainties in economic, legislative, and other circumstances. As such, they should be used only as ranges and "orders of magnitude", rather than absolute dollar amounts.

The following Table contains a list of the tax and expenditures variations included as exhibits to this statement. The Table includes the projected surplus at the end of FY 1985, as well as the year in which the surplus is expected to be eliminated. This latter figure is helpful in determining the rate at which the surplus is decreasing.

TABLE 1.
SUMMARY OF ALTERNATIVE SCENARIOS FOR
THE AIRPORT AND AIRWAY TRUST FUND
PROJECTIONS (FY 1981-1985)

Exhibit	Passenger Ticket Tax Rate	Reduction or Increase Of All User Taxes	Surplus At End of FY 1985 $ in Billions	Approximate Year In Which Surplus Eliminated
• H.R. 6721 expenditure levels with current Airport and Airway Revenue Act of 1970 taxes:				
1	8%	--	$5.301	Never
• Senate Bill expenditures with proposed taxes in S. 1649:				
2	2%	--	$ .794	1986
• Exhibit 3 - Omitted				
• H.R. 6721 expenditure levels with current taxes reduced by different percentages (assuming a 10% fuel tax):				
4	6%	25% Reduction	$2.481	1992
5	5%	37.5% Reduction	$ .646	1986
6	4%	50% Reduction	-$1.158	1985
7	6-5-4-3-2%	Variable Reduction	-$1.240	1985
8	3-4-5-6-7%	Variable Increase	.704	1995
• Senate Bill tax variations based on proposed taxes in S. 1649 increased by various percentages:				
9	4%	100% Increase	$6.119	Never
10	3%	50% Increase	$3.456	2000
11	6-5-4-3-2%	Variable Reduction	$6.048	1995

ANALYSIS OF COMPUTER PROJECTIONS

The computer projections show the following proposals to be the most workable in terms of reducing the surplus to an appropriate level.

Senate Bill with S. 1649 taxes (Exhibit 2): This approach reduces the surplus in 5 years and leaves a reserve equal to about 34% of annual expenditures in FY 1985. An increase in taxes is required starting with FY 1986 to 3.5 - 4.0% to sustain the Trust Fund on a current basis.

H.R. 6721 expenditure levels with a 5% passenger ticket tax (Exhibit 5): This produces a reserve equal to about 21% of annual expenditures in FY 1985. There must also be an increase in taxes to about 7% starting with FY 1986 to sustain the tax rate on a current basis.

H.R. 6721 expenditure levels with an immediate drop in the passenger ticket tax to 3% in FY 1981, followed by 1% increases through FY 1985 for tax rates of 3-4-5-6-7% (Exhibit 8). This proposal leaves a reserve equal to about 23% of annual expenditures in FY 1985, which is extremely close to the 25% that we said was appropriate. It would not require an increase in taxes in FY 1986 because the last tax rate would be at the sustaining tax rate of 7%. Another advantage is that there would be a large and immediate tax reduction in FY 1981, and only small incremental increases until the sustaining tax rate is reached.

Comments on the other variations:

Exhibit 1 - H.R. 6721 with current taxes. This approach would create a vast surplus of $5.3 Billion at the end of FY 1985, which will keep increasing and never be eliminated.

Exhibit 4 - H.R. 6721 with all taxes reduced 25%. This leaves a $2.4 Billion surplus by the end of FY 1985, which does not reduce the surplus fast enough. It will eventually take 12 years to eliminate the surplus, which is far too long.

Exhibits 6 and 7 - H.R. 6721 with 50% reduction of all taxes and variable reductions. Both these proposals are unacceptable because they take the Trust Fund into deficit in FY 1985.

Exhibits 9, 10 and 11 - Senate Bill variations. All these variations are unacceptable because they each leave an excessive surplus at the end of FY 1985.

CONCLUSIONS

From the perspective of the Airline Passengers Association, the Senate Bill expenditure levels coupled with S. 1649 tax levels is the preferred alternative. Not only does it provide all of the benefits outlined before, but it provides for the lowest tax rate (2%) during FY 1981-1985, and the lowest sustaining tax rate (3.5-4.0%) for the period after FY 1986. In addition, the surplus is reduced in 5 years to a reasonable level.

APA's second favored alternative is H.R. 6721 expenditure levels with the 3-4-5-6-7% tax rates, because it provides for: fast reduction of the surplus; no increase in taxes to reach the sustaining tax level; and quick tax reduction in FY 1981. The third favored alternative is H.R. 6721 expenditure levels with a 5% passenger ticket tax for FY 1981-1985. This alternative provides a quick reduction of the surplus, but there is no major reduction in taxes and there exists a requirement for a tax increase in FY 1986 to reach the sustaining tax level.

Mr. Chairman, APA hopes that its testimony was of assistance to the Committee. I thank you for the opportunity to testify today. I will be happy to answer any questions that you may have.

Airline Passengers Association, Inc.

Exhibit 1 - H.R. 6721 EXPENDITURE LEVELS WITH CURRENT AIRPORT AND AIRWAY REVENUE ACT OF 1970 TAXES

PROJECTED STATUS OF AIRPORT AND AIRWAY TRUST FUND

($ in Thousands)

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
UNEXPENDED BAL.,START YR $	3,697,747 $	4,392,133 $	5,266,933 $	5,182,636 $	5,129,803 $	5,135,213 $	5,171,182
CASH INCOME DURING YEAR:							
PASSENGER TICKET TAX $	1,284,185 $	1,443,500 $	1,532,700 $	1,668,500 $	1,846,600 $	2,015,400 $	2,298,100
WAYBILL TAX $	81,321 $	95,900 $	112,800 $	132,500 $	152,700 $	173,400 $	198,600
FUEL TAX $	64,149 $	84,000 $	75,900 $	80,200 $	84,300 $	91,900 $	97,800
INT'L PASSENGER TAX $	71,738 $	79,900 $	83,700 $	87,000 $	91,200 $	98,200 $	102,900
AIRCRAFT USE TAX $	25,643 $	30,100 $	32,300 $	34,000 $	36,100 $	38,200 $	39,900
AIRCRAFT TIRE/TUBE TAX $	1,070 $	1,000 $	1,000 $	1,100 $	1,100 $	1,100 $	1,100
NEW AIRCRAFT/AVIONICS $	0 $	0 $	0 $	0 $	0 $	0 $	0
REFUND OF TAXES $	-1,864 $	-2,000 $	-2,400 $	-2,600 $	-2,900 $	-2,400 $	-2,600
SUBTOTAL USERS TAX $	1,526,260 $	1,734,400 $	1,836,000 $	2,001,700 $	2,210,600 $	2,443,900 $	2,736,400
INTRABUDGETRY TRANSACTN:							
FEDERAL PAYMENT FROM GENERAL FUND $	0 $	0 $	0 $	0 $	0 $	0 $	0
UNEXPENDED BALANCE OF GEN'L FUND APPROPRIAT $	0 $	0 $	0 $	0 $	0 $	0 $	0
INTEREST ON INVESTMENT $	282,265 $	376,000 $	464,410 $	477,524 $	483,233 $	446,305 $	423,765
TOTL ANNUAL INCOME $	1,808,525 $	2,110,400 $	2,300,410 $	2,479,224 $	2,693,833 $	2,890,205 $	3,160,165
CASH OUTGO DURING YEAR:							
FEDERAL AVIATION ADMIN							
OPERATIONS $	300,024 $	325,000 $	400,000 $	428,000 $	458,000 $	490,000 $	524,000
GRANTS-IN-AID AIRPRT $	554,454 $	620,000 $	875,000 $	936,000 $	1,002,000 $	1,072,000 $	1,147,000
FACILITIES & EQUIPMT $	187,932 $	218,000 $	525,000 $	562,000 $	601,000 $	643,000 $	688,000
RESEARCH-ENGINEERING AND DEVELOPMENT $	69,729 $	71,900 $	85,000 $	90,950 $	97,316 $	104,129 $	111,418
OTHER(INCL. NOISE ABATEMENT & TRAINING) $	0 $	0 $	150,250 $	165,250 $	180,250 $	195,250 $	210,250
PRIOR COMMITMENTS $	0 $	0 $	349,857 $	349,857 $	349,857 $	349,857 $	349,857
TOTAL ANNUAL OUTGO $	1,114,139 $	1,235,400 $	2,385,107 $	2,532,057 $	2,688,424 $	2,854,236 $	3,030,525
UNEXPENDED BALANC.END YR $	4,392,133 $	5,266,933 $	5,182,636 $	5,129,803 $	5,135,213 $	5,171,182 $	5,300,823

EXHIBIT 1

Aviation Passengers Association, Inc.

Exhibit 2 - SENATE BILL EXPENDITURES
WITH PROPOSED TAXES IN S. 1649

PROJECTED STATUS OF AIRPORT AND
AIRWAY TRUST FUND

($ in Thousands)

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
UNEXPENDED BAL.-START YR $	3,697,747 $	4,392,133 $	5,266,933 $	4,378,464 $	3,453,470 $	2,860,004 $	1,938,370
CASH INCOME DURING YEAR:							
PASSENGER TICKET TAX $	1,284,185 $	1,443,500 $	383,175 $	417,225 $	461,650 $	510,850 $	574,525
WAYBILL TAX $	81,321 $	95,900 $	112,800 $	132,500 $	152,750 $	173,800 $	198,600
FUEL TAX $	64,149 $	84,000 $	86,743 $	103,114 $	108,514 $	130,286 $	139,714
INT'L PASSENGER TAX $	71,738 $	79,900 $	83,700 $	87,000 $	91,700 $	98,200 $	102,900
AIRCRAFT USE TAX $	25,663 $	30,100 $	32,300 $	34,000 $	36,100 $	38,200 $	39,900
AIRCRAFT TIRE/TUBE TAX $	1,070 $	1,000 $	1,000 $	1,100 $	1,100 $	1,100 $	1,100
NEW AIRCRAFT/AVIONICS $	0 $	0 $	0 $	0 $	0 $	0 $	0
REFUND OF TAXES $	-1,866 $	-2,000 $	-2,000 $	-2,000 $	-2,000 $	-2,000 $	-2,000
SUBTOTAL USERS TAX $	1,526,260 $	1,734,400 $	697,718 $	772,939 $	849,764 $	930,436 $	1,054,739
INTRABUDGETRY TRANSACTN:							
FEDERAL PAYMENT FROM GENERAL FUND $	0 $	0 $	0 $	0 $	0 $	0 $	0
UNEXPENDED BALANCE OF GEN'L FUND APPROPRIAT $	0 $	0 $	0 $	0 $	0 $	0 $	0
INTEREST ON INVESTMENT $	282,765 $	376,000 $	428,670 $	371,923 $	306,427 $	207,787 $	110,562
TOTL ANNUAL INCOME $	1,808,525 $	2,110,400 $	1,126,388 $	1,144,863 $	1,156,191 $	1,138,223 $	1,165,301
CASH OUTGO DURING YEAR:							
FEDERAL AVIATION ADMIN							
OPERATIONS $	300,024 $	325,000 $	350,000 $	375,000 $	400,000 $	425,000 $	450,000
GRANTS-IN-AID AIRPRT $	556,454 $	620,000 $	825,000 $	600,000 $	550,000 $	600,000 $	630,000
FACILITIES & EQUIPNT $	187,932 $	218,700 $	400,000 $	450,000 $	550,000 $	600,000 $	756,000
RESEARCH,ENGINEERING AND DEVELOPMENT $	69,729 $	71,900 $	90,000 $	95,000 $	100,000 $	105,000 $	110,000
OTHER(INCL. NOISE ABATEMENT & TRAINING) $	0 $	0 $	0 $	0 $	0 $	0 $	0
PRIOR COMMITMENTS $	0 $	0 $	349,857 $	349,857 $	349,857 $	349,857 $	[illegible]
TOTAL ANNUAL OUTGO $	1,114,139 $	1,235,600 $	2,014,857 $	1,869,857 $	1,949,857 $	2,079,857 $	[illegible]
UNEXPENDED BALANC.END YR $	4,392,133 $	5,266,933 $	4,378,464 $	3,453,470 $	2,860,004 $	1,938,370 $	[illegible]

EXHIBIT 2

EXHIBIT 3
(OMITTED)

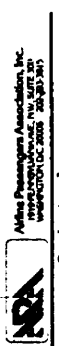

Exhibit 3 - Omitted

Airline Passengers Association, Inc.
[illegible] NW, SUITE 300
WASHINGTON, D.C. 20006 202-293-3915

Exhibit 4 - H.R. 6721 EXPENDITURE LEVELS WITH CURRENT TAXES REDUCED BY 25% (6% PASSENGER TICKET TAX) WITH A 10% FUEL TAX

PROJECTED STATUS OF AIRPORT AND AIRWAY TRUST FUND

($ in Thousands)

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
UNEXPENDED BAL.,START YR $	3,697,747 $	4,392,133 $	5,266,933 $	4,770,625 $	4,240,666 $	3,685,236 $	3,082,545
CASH INCOME DURING YEAR:							
PASSENGER TICKET TAX $	1,284,185 $	1,443,500 $	1,149,525 $	1,251,675 $	1,384,950 $	1,532,550 $	1,723,575
WAYBILL TAX $	81,321 $	95,900 $	84,600 $	99,375 $	114,525 $	130,350 $	148,950
FUEL TAX $	64,149 $	86,000 $	122,325 $	143,700 $	165,225 $	193,950 $	225,225
INT'L PASSENGER TAX $	71,738 $	79,900 $	62,775 $	65,250 $	68,775 $	73,650 $	77,175
AIRCRAFT USE TAX $	25,663 $	30,100 $	24,225 $	25,500 $	27,075 $	28,650 $	29,925
AIRCRAFT TIRE/TUBE TAX $	1,070 $	1,000 $	750 $	825 $	825 $	825 $	825
NEW AIRCRAFT/AVIONICS $	0 $	0 $	0 $	0 $	0 $	0 $	0
REFUND OF TAXES $	-1,866 $	-2,000 $	-1,500 $	-1,500 $	-1,500 $	-1,500 $	-1,500
SUBTOTAL USERS TAX $	1,526,260 $	1,734,400 $	1,442,700 $	1,584,825 $	1,759,875 $	1,958,475 $	2,204,175
INTRABUDGETRY TRANSACTN:							
FEDERAL PAYMENT FROM GENERAL FUND $	0 $	0 $	0 $	0 $	0 $	0 $	0
UNEXPENDED BALANCE OF GEN'L FUND APPROPRIAT $	0 $	0 $	0 $	0 $	0 $	0 $	0
INTEREST ON INVESTMENT $	282,265 $	376,000 $	446,099 $	417,273 $	373,110 $	293,070 $	225,151
TOTL ANNUAL INCOME $	1,808,525 $	2,110,400 $	1,888,799 $	2,002,098 $	2,132,985 $	2,251,545 $	2,429,326
CASH OUTGO DURING YEAR:							
FEDERAL AVIATION ADMIN OPERATIONS $	300,024 $	325,000 $	400,000 $	428,000 $	458,000 $	490,000 $	524,000
GRANTS-IN-AID AIRPRT $	556,454 $	620,000 $	875,000 $	936,000 $	1,002,000 $	1,072,000 $	1,147,000
FACILITIES & EQUIPMT $	187,932 $	218,700 $	525,000 $	562,000 $	601,000 $	643,000 $	688,000
RESEARCH,ENGINEERING AND DEVELOPMENT $	69,729 $	71,900 $	85,000 $	90,950 $	97,316 $	104,129 $	111,418
OTHER(INCL. NOISE ABATEMENT & TRAINING) $	0 $	0 $	150,250 $	165,250 $	180,250 $	195,250 $	210,250
PRIOR COMMITMENTS $	0 $	0 $	349,857 $	349,857 $	349,857 $	349,857 $	349,857
TOTAL ANNUAL OUTGO $	1,114,139 $	1,235,600 $	2,385,107 $	2,532,057 $	2,688,424 $	2,854,236 $	3,030,525
UNEXPENDED BALANCE,END YR $	4,392,133 $	5,266,933 $	4,770,625 $	4,240,666 $	3,685,236 $	3,082,545 $	2,481,346

EXHIBIT 4

Allied Passenger Association, Inc.

Exhibit 5 - H.R. 6721 EXPENDITURE LEVELS WITH CURRENT TAXES REDUCED 37.5% (5% PASSENGER TICKET TAX) WITH A 10% FUEL TAX

PROJECTED STATUS OF AIRPORT AND AIRWAY TRUST FUND

($ in Thousands)

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
UNEXPENDED BAL.,START YR	$ 3,697,747	$ 4,392,133	$ 5,266,933	$ 4,518,992	$ 3,687,635	$ 2,769,761	$ 1,743,007
CASH INCOME DURING YEAR:							
PASSENGER TICKET TAX	$ 1,284,185	$ 1,443,500	$ 957,938	$ 1,043,063	$ 1,154,125	$ 1,277,125	$ 1,434,313
WAYBILL TAX	$ 81,321	$ 95,900	$ 70,500	$ 82,813	$ 95,438	$ 108,625	$ 124,125
FUEL TAX	$ 64,149	$ 86,000	$ 101,937	$ 119,750	$ 137,688	$ 161,625	$ 187,687
INT'L PASSENGER TAX	$ 71,738	$ 79,900	$ 52,313	$ 54,375	$ 57,313	$ 61,375	$ 64,313
AIRCRAFT USE TAX	$ 25,643	$ 30,100	$ 20,188	$ 21,250	$ 22,563	$ 23,875	$ 24,938
AIRCRAFT TIRE/TUBE TAX	$ 1,070	$ 1,000	$ 625	$ 688	$ 688	$ 688	$ 688
NEW AIRCRAFT/AVIONICS	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
REFUND OF TAXES	$ -1,846	$ -2,000	$ -1,250	$ -1,250	$ -1,250	$ -1,250	$ -1,250
SUBTOTAL USERS TAX	$ 1,526,260	$ 1,734,400	$ 1,202,250	$ 1,320,687	$ 1,466,563	$ 1,632,062	$ 1,834,812
INTRABUDGETRY TRANSACTN:							
FEDERAL PAYMENT FROM GENERAL FUND	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
UNEXPENDED BALANCE OF GEN'L FUND APPROPRIAT	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
INTEREST ON INVESTMENT	$ 282,265	$ 376,000	$ 434,916	$ 380,013	$ 303,987	$ 195,420	$ 96,673
TOTL ANNUAL INCOME	$ 1,808,525	$ 2,110,400	$ 1,637,166	$ 1,700,700	$ 1,770,549	$ 1,827,482	$ 1,933,484
CASH OUTGO DURING YEAR:							
FEDERAL AVIATION ADMIN OPERATIONS	$ 300,024	$ 325,000	$ 400,000	$ 428,000	$ 458,000	$ 490,000	$ 524,000
GRANTS-IN-AID AIRPRT	$ 556,454	$ 620,000	$ 875,000	$ 936,000	$ 1,002,000	$ 1,072,000	$ 1,147,000
FACILITIES & EQUIPMT	$ 187,932	$ 218,700	$ 525,000	$ 562,000	$ 601,000	$ 643,000	$ 688,000
RESEARCH,ENGINEERING AND DEVELOPMENT	$ 69,729	$ 71,900	$ 85,000	$ 90,950	$ 97,316	$ 104,129	$ 111,418
OTHER(INCL. NOISE ABATEMENT & TRAINING)	$ 0	$ 0	$ 150,250	$ 165,250	$ 180,250	$ 195,250	$ 210,250
PRIOR COMMITMENTS	$ 0	$ 0	$ 349,857	$ 349,857	$ 349,857	$ 349,857	$ 349,857
TOTAL ANNUAL OUTGO	$ 1,114,139	$ 1,235,600	$ 2,385,107	$ 2,532,057	$ 2,688,424	$ 2,854,236	$ 3,030,525
UNEXPENDED BALANC,END YR	$ 4,392,133	$ 5,266,933	$ 4,518,992	$ 3,687,635	$ 2,769,761	$ 1,743,007	$ 645,969

EXHIBIT 5

Airline Passengers Association, Inc.

Exhibit 6 - H.R. 6721 EXPENDITURE LEVELS WITH CURRENT TAXES REDUCED 50% (4% PASSENGER TICKET TAX) WITH A 10% FUEL TAX

PROJECTED STATUS OF AIRPORT AND AIRWAY TRUST FUND

($ in Thousands)

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
UNEXPENDED BAL.,START YR $	3,697,747 $	4,392,133 $	5,266,933 $	4,267,359 $	3,134,604 $	1,854,286 $	403,469
CASH INCOME DURING YEAR:							
PASSENGER TICKET TAX $	1,284,185 $	1,443,500 $	766,350 $	834,450 $	923,300 $	1,021,700 $	1,149,050
WAYBILL TAX $	81,321 $	95,900 $	56,400 $	66,250 $	76,350 $	86,900 $	99,300
FUEL TAX $	64,149 $	86,000 $	81,550 $	95,800 $	110,150 $	129,300 $	150,150
INT'L PASSENGER TAX $	71,738 $	79,900 $	41,850 $	43,500 $	45,850 $	49,100 $	51,450
AIRCRAFT USE TAX $	25,663 $	30,100 $	16,150 $	17,000 $	18,050 $	19,100 $	19,950
AIRCRAFT TIRE/TUBE TAX $	1,070 $	1,000 $	500 $	550 $	550 $	550 $	550
NEW AIRCRAFT/AVIONICS $	0 $	0 $	0 $	0 $	0 $	0 $	0
REFUND OF TAXES $	-1,866 $	-2,000 $	-1,000 $	-1,000 $	-1,000 $	-1,000 $	-1,000
SUBTOTAL USERS TAX $	1,526,260 $	1,734,400 $	961,800 $	1,056,550 $	1,173,250 $	1,305,650 $	1,469,450
INTRABUDGETRY TRANSACTN:							
FEDERAL PAYMENT FROM GENERAL FUND $	0 $	0 $	0 $	0 $	0 $	0 $	0
UNEXPENDED BALANCE OF GEN'L FUND APPROPRIAT $	0 $	0 $	0 $	0 $	0 $	0 $	0
INTEREST ON INVESTMENT $	282,265 $	376,000 $	423,733 $	342,752 $	234,856 $	97,769 $	0
TOTL ANNUAL INCOME $	1,808,525 $	2,110,400 $	1,385,533 $	1,399,302 $	1,408,106 $	1,403,419 $	1,469,450
CASH OUTGO DURING YEAR:							
FEDERAL AVIATION ADMIN							
OPERATIONS $	300,024 $	325,000 $	400,000 $	428,000 $	458,000 $	490,000 $	524,000
GRANTS-IN-AID AIRPRT $	556,454 $	620,000 $	875,000 $	936,000 $	1,002,000 $	1,072,000 $	1,147,000
FACILITIES & EQUIPMT $	187,932 $	218,700 $	525,000 $	562,000 $	601,000 $	643,000 $	688,000
RESEARCH,ENGINEERING AND DEVELOPMENT $	69,729 $	71,900 $	85,000 $	90,950 $	97,316 $	104,129 $	111,418
OTHER(INCL. NOISE ABATEMENT & TRAINING) $	0 $	0 $	150,250 $	165,250 $	180,250 $	195,250 $	210,250
PRIOR COMMITMENTS $	0 $	0 $	349,857 $	349,857 $	349,857 $	349,857 $	349,857
TOTAL ANNUAL OUTGO $	1,114,139 $	1,235,600 $	2,385,107 $	2,532,057 $	2,688,424 $	2,854,236 $	3,030,525
UNEXPENDED BALANC,END YR $	4,392,133 $	5,266,933 $	4,267,359 $	3,134,604 $	1,854,286 $	403,469 $	-1,157,605

Exhibit 7 - H.R. 6721 EXPENDITURE LEVELS WITH CURRENT TAXES REDUCTED BY VARIABLE AMOUNTS (6-5-4-3-2% PASSENGER TICKET TAX) WITH A 10% FUEL TAX

PROJECTED STATUS OF AIRPORT AND AIRWAY TRUST FUND

($ in Thousands)

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
UNEXPENDED BAL.,START YR	$ 3,697,747	$ 4,392,133	$ 5,266,933	$ 4,770,625	$ 3,963,704	$ 2,765,304	$ 1,055,772
CASH INCOME DURING YEAR:							
PASSENGER TICKET TAX	$ 1,284,185	$ 1,443,500	$ 1,149,525	$ 1,043,063	$ 923,300	$ 766,275	$ 574,525
WAYBILL TAX	$ 81,321	$ 95,900	$ 84,600	$ 82,813	$ 76,350	$ 65,175	$ 49,650
FUEL TAX	$ 64,149	$ 86,000	$ 122,325	$ 119,750	$ 110,150	$ 96,975	$ 75,075
INT'L PASSENGER TAX	$ 71,738	$ 79,900	$ 62,775	$ 54,375	$ 45,850	$ 36,825	$ 25,725
AIRCRAFT USE TAX	$ 25,663	$ 30,100	$ 24,225	$ 21,250	$ 18,050	$ 14,325	$ 9,975
AIRCRAFT TIRE/TUBE TAX	$ 1,070	$ 1,000	$ 750	$ 688	$ 550	$ 413	$ 275
NEW AIRCRAFT/AVIONICS	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
REFUND OF TAXES	$ -1,866	$ -2,000	$ -1,500	$ -1,250	$ -1,000	$ -750	$ -500
SUBTOTAL USERS TAX	$ 1,526,260	$ 1,734,400	$ 1,442,700	$ 1,320,687	$ 1,173,250	$ 979,237	$ 734,725
INTRABUDGETRY TRANSACTN:							
FEDERAL PAYMENT FROM GENERAL FUND	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
UNEXPENDED BALANCE OF GEN'L FUND APPROPRIAT	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
INTEREST ON INVESTMENT	$ 282,265	$ 376,000	$ 446,099	$ 404,448	$ 316,773	$ 165,467	$ 0
TOTL ANNUAL INCOME	$ 1,808,525	$ 2,110,400	$ 1,888,799	$ 1,725,136	$ 1,490,023	$ 1,144,704	$ 734,725
CASH OUTGO DURING YEAR:							
FEDERAL AVIATION ADMIN OPERATIONS	$ 300,024	$ 325,000	$ 400,000	$ 428,000	$ 458,000	$ 490,000	$ 524,000
GRANTS-IN-AID AIRPRT	$ 556,454	$ 620,000	$ 875,000	$ 936,000	$ 1,002,000	$ 1,072,000	$ 1,147,000
FACILITIES & EQUIPMT	$ 187,932	$ 218,700	$ 525,000	$ 562,000	$ 601,000	$ 643,000	$ 688,000
RESEARCH,ENGINEERING AND DEVELOPMENT	$ 69,729	$ 71,900	$ 85,000	$ 90,950	$ 97,316	$ 104,129	$ 111,418
OTHER(INCL. NOISE ABATEMENT & TRAINING)	$ 0	$ 0	$ 150,250	$ 165,250	$ 180,250	$ 195,250	$ 210,250
PRIOR COMMITMENTS	$ 0	$ 0	$ 349,857	$ 349,857	$ 349,857	$ 349,857	$ 349,857
TOTAL ANNUAL OUTGO	$ 1,114,139	$ 1,235,600	$ 2,385,107	$ 2,532,057	$ 2,688,424	$ 2,854,236	$ 3,030,525
UNEXPENDED BALANC,END YR	$ 4,392,133	$ 5,266,933	$ 4,770,625	$ 3,963,704	$ 2,765,304	$ 1,055,772	$ -1,240,028

Airline Passengers Association, Inc.
[illegible]

Exhibit 8 - H.R. 6721 EXPENDITURE LEVELS WITH CURRENT TAXES INCREASED BY VARIABLE AMOUNTS (3-4-5-6-7% PASSENGER TICKET TAX) WITH A 10% FUEL TAX

PROJECTED STATUS OF AIRPORT AND AIRWAY TRUST FUND

($ in Thousands)

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
UNEXPENDED BAL.,START YR $	3,697,747 $	4,392,133 $	5,266,933 $	4,015,725 $	2,858,535 $	1,858,743 $	1,090,705
CASH INCOME DURING YEAR:							
PASSENGER TICKET TAX $	1,284,185 $	1,443,500 $	574,763 $	834,450 $	1,154,125 $	1,532,550 $	2,010,838
WAYBILL TAX $	81,321 $	95,900 $	42,300 $	66,250 $	95,438 $	130,350 $	173,775
FUEL TAX $	64,149 $	86,000 $	61,162 $	95,800 $	137,688 $	193,950 $	262,762
INT'L PASSENGER TAX $	71,738 $	79,900 $	31,388 $	43,500 $	57,313 $	73,650 $	90,038
AIRCRAFT USE TAX $	25,663 $	30,100 $	12,113 $	17,000 $	22,563 $	28,650 $	34,913
AIRCRAFT TIRE/TUBE TAX $	1,070 $	1,000 $	375 $	550 $	688 $	825 $	963
NEW AIRCRAFT/AVIONICS $	0 $	0 $	0 $	0 $	0 $	0 $	0
REFUND OF TAXES $	-1,866 $	-2,000 $	-750 $	-1,000 $	-1,250 $	-1,500 $	-1,750
SUBTOTAL USERS TAX $	1,526,260 $	1,734,400 $	721,350 $	1,056,550 $	1,466,563 $	1,958,475 $	2,571,537
INTRABUDGETRY TRANSACTN:							
FEDERAL PAYMENT FROM GENERAL FUND $	0 $	0 $	0 $	0 $	0 $	0 $	0
UNEXPENDED BALANCE OF GEN'L FUND APPROPRIAT $	0 $	0 $	0 $	0 $	0 $	0 $	0
INTEREST ON INVESTMENT $	282,265 $	376,000 $	412,549 $	318,317 $	222,069 $	127,722 $	72,640
TOTL ANNUAL INCOME $	1,808,525 $	2,110,400 $	1,133,899 $	1,374,867 $	1,688,632 $	2,086,197 $	2,644,177
CASH OUTGO DURING YEAR:							
FEDERAL AVIATION ADMIN OPERATIONS $	300,024 $	325,000 $	400,000 $	428,000 $	458,000 $	490,000 $	524,000
GRANTS-IN-AID AIRPRT $	556,454 $	620,000 $	875,000 $	936,000 $	1,002,000 $	1,072,000 $	1,147,000
FACILITIES & EQUIPMT $	187,932 $	218,700 $	525,000 $	562,000 $	601,000 $	643,000 $	688,000
RESEARCH,ENGINEERING AND DEVELOPMENT $	69,729 $	71,900 $	85,000 $	90,950 $	97,316 $	104,129 $	111,418
OTHER(INCL. NOISE ABATEMENT & TRAINING) $	0 $	0 $	150,250 $	165,250 $	180,250 $	195,250 $	210,250
PRIOR COMMITMENTS $	0 $	0 $	349,857 $	349,857 $	349,857 $	349,857 $	349,857
TOTAL ANNUAL OUTGO $	1,114,139 $	1,235,600 $	2,385,107 $	2,532,057 $	2,688,424 $	2,854,236 $	3,030,525
UNEXPENDED BALANCE,END YR $	4,392,133 $	5,266,933 $	4,015,725 $	2,858,535 $	1,858,743 $	1,090,705 $	704,357

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Exhibit D - SENATE BILL TAX VARIATIONS BASED ON PROPOSED TAXES IN S. 1649 INCREASED BY 100% (4% PASSENGER TICKET TAX)

PROJECTED STATUS OF AIRPORT AND AIRWAY TRUST FUND

($ in Thousands)

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
UNEXPENDED BAL.,START YR $	3,697,747 $	4,392,133 $	5,266,933 $	5,108,633 $	5,265,012 $	5,522,515 $	5,835,368
CASH INCOME DURING YEAR:							
PASSENGER TICKET TAX $	1,284,185 $	1,443,500 $	766,350 $	834,450 $	923,300 $	1,021,700 $	1,149,050
WAYBILL TAX $	81,321 $	95,900 $	225,600 $	265,000 $	305,400 $	347,500 $	397,200
FUEL TAX $	64,149 $	86,000 $	173,484 $	206,229 $	217,029 $	260,571 $	279,429
INT'L PASSENGER TAX $	71,738 $	79,900 $	167,400 $	174,000 $	183,400 $	196,400 $	205,800
AIRCRAFT USE TAX $	25,663 $	30,100 $	64,600 $	68,000 $	72,200 $	76,400 $	79,800
AIRCRAFT TIRE/TUBE TAX $	1,070 $	1,000 $	2,000 $	2,200 $	2,200 $	2,200 $	2,200
NEW AIRCRAFT/AVIONICS $	0 $	0 $	0 $	0 $	0 $	0 $	0
REFUND OF TAXES $	-1,866 $	-2,000 $	-4,000 $	-4,000 $	-4,000 $	-4,000 $	-4,000
SUBTOTAL USERS TAX $	1,526,260 $	1,734,400 $	1,395,436 $	1,545,879 $	1,699,529 $	1,900,871 $	2,109,479
INTRABUDGETRY TRANSACTN:							
FEDERAL PAYMENT FROM GENERAL FUND $	0 $	0 $	0 $	0 $	0 $	0 $	0
UNEXPENDED BALANCE OF GEN'L FUND APPROPRIAT $	0 $	0 $	0 $	0 $	0 $	0 $	0
INTEREST ON INVESTMENT $	282,265 $	376,000 $	461,121 $	480,358 $	507,831 $	491,838 $	483,741
TOTL ANNUAL INCOME $	1,808,525 $	2,110,400 $	1,856,557 $	2,026,236 $	2,207,359 $	2,392,710 $	2,593,219
CASH OUTGO DURING YEAR:							
FEDERAL AVIATION ADMIN OPERATIONS $	300,024 $	325,000 $	350,000 $	375,000 $	400,000 $	425,000 $	450,000
GRANTS-IN-AID AIRPRT $	556,454 $	620,000 $	825,000 $	600,000 $	550,000 $	600,000 $	650,000
FACILITIES & EQUIPMT $	187,932 $	218,700 $	400,000 $	450,000 $	550,000 $	600,000 $	750,000
RESEARCH,ENGINEERING AND DEVELOPMENT $	69,729 $	71,900 $	90,000 $	95,000 $	100,000 $	105,000 $	110,000
OTHER(INCL. NOISE ABATEMENT & TRAINING) $	0 $	0 $	0 $	0 $	0 $	0 $	0
PRIOR COMMITMENTS $	0 $	0 $	349,857 $	349,857 $	349,857 $	349,857 $	349,857
TOTAL ANNUAL OUTGO $	1,114,139 $	1,235,600 $	2,014,857 $	1,869,857 $	1,949,857 $	2,079,857 $	2,309,857
UNEXPENDED BALANCE,END YR $	4,392,133 $	5,266,933 $	5,108,633 $	5,265,012 $	5,522,515 $	5,835,368 $	6,118,730

EXHIBIT D

Airline Passengers Association, Inc.

Exhibit 10 - SENATE BILL VARIATIONS BASED ON PROPOSED TAXES IN S. 1649 INCREASED BY 50% (3% PASSENGER TICKET TAX)

PROJECTED STATUS OF AIRPORT AND AIRWAY TRUST FUND

($ in Thousands)

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
UNEXPENDED BAL.,START YR $	3,697,747 $	4,392,133 $	5,266,933 $	4,743,549 $	4,459,241 $	4,191,259 $	3,886,869
CASH INCOME DURING YEAR:							
PASSENGER TICKET TAX $	1,284,185 $	1,443,500 $	574,763 $	625,838 $	692,475 $	766,275 $	841,788
WAYBILL TAX $	81,321 $	95,900 $	169,700 $	198,750 $	229,050 $	260,700 $	297,900
FUEL TAX $	64,149 $	86,000 $	130,114 $	154,671 $	162,771 $	195,429 $	209,571
INT'L PASSENGER TAX $	71,738 $	79,900 $	125,550 $	130,500 $	137,350 $	147,300 $	154,350
AIRCRAFT USE TAX $	25,463 $	30,100 $	48,450 $	51,000 $	54,150 $	57,300 $	59,850
AIRCRAFT TIRE/TUBE TAX $	1,070 $	1,000 $	1,500 $	1,650 $	1,650 $	1,650 $	1,650
NEW AIRCRAFT/AVIONICS $	0 $	0 $	0 $	0 $	0 $	0 $	0
REFUND OF TAXES $	-1,866 $	-2,000 $	-3,000 $	-3,000 $	-3,000 $	-3,000 $	-3,000
SUBTOTAL USERS TAX $	1,526,260 $	1,734,400 $	1,046,577 $	1,159,409 $	1,374,646 $	1,425,654 $	1,582,109
INTRABUDGETRY TRANSACTN:							
FEDERAL PAYMENT FROM GENERAL FUND $	0 $	0 $	0 $	0 $	0 $	0 $	0
UNEXPENDED BALANCE OF GEN'L FUND APPROPRIAT $	0 $	0 $	0 $	0 $	0 $	0 $	0
INTEREST ON INVESTMENT $	282,265 $	376,000 $	444,396 $	426,141 $	467,229 $	349,813 $	297,151
TOTL ANNUAL INCOME $	1,808,525 $	2,110,400 $	1,491,473 $	1,585,549 $	1,841,875 $	1,775,467 $	1,879,260
CASH OUTGO DURING YEAR:							
FEDERAL AVIATION ADMIN OPERATIONS $	300,024 $	325,000 $	350,000 $	375,000 $	400,000 $	425,000 $	450,000
GRANTS-IN-AID AIRPRT $	556,454 $	620,000 $	825,000 $	600,000 $	550,000 $	600,000 $	650,000
FACILITIES & EQUIPMT $	187,932 $	218,700 $	400,000 $	450,000 $	550,000 $	600,000 $	750,000
RESEARCH,ENGINEERING AND DEVELOPMENT $	69,729 $	71,900 $	90,000 $	95,000 $	100,000 $	105,000 $	110,000
OTHER(INCL. NOISE ABATEMENT & TRAINING) $	0 $	0 $	0 $	0 $	0 $	0 $	0
PRIOR COMMITMENTS $	0 $	0 $	349,857 $	349,857 $	349,857 $	349,857 $	349,857
TOTAL ANNUAL OUTGO $	1,114,139 $	1,235,600 $	2,014,857 $	1,869,857 $	1,949,857 $	2,079,857 $	2,309,857
UNEXPENDED BALANC,END YR $	4,392,133 $	5,266,933 $	4,743,549 $	4,459,241 $	4,191,259 $	3,886,869 $	3,456,272

EXHIBIT 10.

Exhibit 11 - SENATE BILL TAX VARIATIONS BASED ON PROPOSED TAXES IN S. 1649 WITH VARIABLE REDUCTION (6-5-4-3-2% PASSENGER TICKET TAX)

PROJECTED STATUS OF AIRPORT AND AIRWAY TRSUT FUND

($ in Thousands)

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
UNEXPENDED BAL.,START YR $	3,697,747 $	4,392,133 $	5,266,933 $	5,838,802 $	6,471,320 $	6,848,009 $	6,784,128
CASH INCOME DURING YEAR:							
PASSENGER TICKET TAX $	1,284,185 $	1,443,500 $	1,149,525 $	1,043,063 $	923,300 $	766,275 $	574,525
WAYBILL TAX $	81,321 $	95,900 $	338,400 $	331,250 $	305,400 $	260,700 $	198,600
FUEL TAX $	64,149 $	86,000 $	260,229 $	257,786 $	217,029 $	195,429 $	139,714
INT'L PASSENGER TAX $	71,738 $	79,900 $	251,100 $	217,500 $	183,400 $	147,300 $	102,900
AIRCRAFT USE TAX $	25,663 $	30,100 $	96,900 $	85,000 $	72,200 $	57,300 $	39,900
AIRCRAFT TIRE/TUBE TAX $	1,070 $	1,000 $	3,000 $	2,750 $	2,200 $	1,650 $	1,100
NEW AIRCRAFT/AVIONICS $	0 $	0 $	0 $	0 $	0 $	0 $	0
REFUND OF TAXES $	-1,866 $	-2,000 $	-6,000 $	-5,000 $	-4,000 $	-3,000 $	-2,000
SUBTOTAL USERS TAX $	1,526,260 $	1,734,400 $	2,093,154 $	1,932,348 $	1,699,529 $	1,425,654 $	1,054,739
INTRABUDGETRY TRANSACTN:							
FEDERAL PAYMENT FROM GENERAL FUND $	0 $	0 $	0 $	0 $	0 $	0 $	0
UNEXPENDED BALANCE OF GEN'L FUND APPROPRIAT $	0 $	0 $	0 $	0 $	0 $	0 $	0
INTEREST ON INVESTMENT $	282,265 $	376,000 $	493,572 $	570,027 $	627,017 $	590,322 $	519,283
TOTL ANNUAL INCOME $	1,808,525 $	2,110,400 $	2,586,726 $	2,502,376 $	2,326,546 $	2,015,976 $	1,574,023
CASH OUTGO DURING YEAR:							
FEDERAL AVIATION ADMIN OPERATIONS $	300,024 $	325,000 $	350,000 $	375,000 $	400,000 $	425,000 $	450,000
GRANTS-IN-AID AIRPRT $	556,454 $	620,000 $	825,000 $	600,000 $	550,000 $	600,000 $	650,000
FACILITIES & EQUIPMT $	187,932 $	218,700 $	400,000 $	450,000 $	550,000 $	600,000 $	750,000
RESEARCH,ENGINEERING AND DEVELOPMENT $	69,729 $	71,900 $	90,000 $	95,000 $	100,000 $	105,000 $	110,000
OTHER(INCL. NOISE ABATEMENT & TRAINING) $	0 $	0 $	0 $	0 $	0 $	0 $	0
PRIOR COMMITMENTS $	0 $	0 $	349,857 $	349,857 $	349,857 $	349,857 $	349,857
TOTAL ANNUAL OUTGO $	1,114,139 $	1,235,600 $	2,014,857 $	1,869,857 $	1,949,857 $	2,079,857 $	2,309,857
UNEXPENDED BALANC,END YR $	4,392,133 $	5,266,933 $	5,838,802 $	6,471,320 $	6,848,009 $	6,784,128 $	6,048,294

Senator BYRD. The next panel, Mr. Robert A. Richardson, executive director, and Glen Gilbert, consultant, Helicopter Association of America; Mr. W. Lawrence Graves, director, Federal Affairs, Aircraft Owners & Pilots Association; and Mr. Delford M. Smith, chairman, Evergreen Helicopters, Inc., and Evergreen International Airlines.

Welcome gentlemen, and proceed as you wish.

STATEMENT OF ROBERT A. RICHARDSON, EXECUTIVE DIRECTOR, ACCOMPANIED BY GLEN GILBERT, CONSULTANT, HELICOPTER ASSOCIATION OF AMERICA

Mr. RICHARDSON. Thank you, Mr. Chairman, and members of the committee.

I have a written statement which I would like to have accepted for the record.

Senator BYRD. Your statement will be received.

Mr. RICHARDSON. Thank you.

My name is Robert A. Richardson, executive director of the Helicopter Association, and with me is Mr. Glen A. Gilbert, president of Glen A. Gilbert Associates, Inc., and consultant to the Helicopter Association.

The HAA is an international, independent, nonprofit organization. The regular members of HAA operate helicopters for hire, for corporate and private transport and/or for public service.

The operators are active in the field of agriculture, air taxi, energy exploration, fire control and support, law enforcement, emergency medical transportation, logging, offshore operations, aerial photography, traffic surveillance and reporting, and a host of other vital missions.

The helicopter industry is at a critical point in its development because of the lack of understanding within government on the national, state, and local levels of the capabilities of our advanced technology helicopters and the contribution that the helicopter can make to our national transportation system.

The growth of the helicopter industry and its contribution to the general public is limited today by the lack of public use heliports connected by discrete helicopter airways in convenient places to serve the traveling public.

The helicopter does not need the elaborate facilities of airports and is, in fact, hindered when forced into the traffic patterns of such massive and complex installations. In fact, in remote areas and in offshore operations, such as in support of oil production facilities, the helicopter basically must rely on its own onboard navigation capability due to the lack of Government-furnished aids.

The helicopter industry was born in the 1940's. At the time of the Airport and Airway Development Act of 1970, there were less than 3,000 civil helicopters in this country. Today, the Nation's fleet has increased to over 8,000. We are the fastest growth element of the aviation industry at a compound growth rate of 15 percent per annum, and we conservatively estimate that there will be more than 20,000 helicopters in the Nation's airspace during this decade.

This growth rate tends to emphasize reality. Helicopters are not toys. Helicopters are true working machines that serve not only

the Nation's people transportation requirements, but also the Nation's most basic needs—food supplies, energy development, forestry, construction, public safety, and many others.

A helicopter transportation system, unprecedented or unequaled in the world, has been exploding in the Gulf of Mexico. Each day over 7,000 people are moved to energy production sites in these versatile machines. A single Louisiana-based helicopter operator transports more people daily than the most active of all U.S. commuter airlines and owns more aircraft than almost any of the world's largest air carriers.

The Nation's public safety organizations recognize the tasks that can be accomplished by, and only by helicopters. Daily, laws are enforced, crime is suppressed, apprehensions are made with helicopters. Daily, lives are being saved and hospital emergency rooms are accepting trauma patients delivered by helicopters. Daily, fires are fought and people are evacuated by helicopters.

During the blizzard of 1979, the only aircraft taking off and landing at Baltimore-Washington International Airport were the helicopters.

At Three Mile Island, only helicopters were capable of furnishing the emergency support.

During the height of the tropical storm David, helicopters were pressed quickly into service for evacuation and rescue purposes.

As I am speaking here today, helicopters are performing a seeding and fertilizing effort covering 20,000 acres of devastated land in the Mount St. Helens area.

Here are some other examples of how helicopter transportation is providing unique benefits to our economy:

New York City tells us that for every corporate headquarters that is located in the city near the financial community 500,000 workers are employed. Sixty-eight corporations stay in town by flying to the 60th Street heliport alone.

Digital Equipment Corp., a large, fast growing computer manufacturer in Massachusetts, has dispersed their several plants to sites that afford living space for their workers, and that reduce their workers' commuting needs. RCA has the same system in New Jersey. Helicopter transportation permits them to maintain cost effective supervision and control, as well as technical support among these plants and their central offices.

The helicopter should be recognized as a productive, efficient and unique air transportation vehicle, ready to perform its share of the Nation's needs for transportation. The helicopter can provide short-haul rapid transportation directly between the centers of economic activity, as opposed to time-consuming and energy-consuming routings via fixed-wing airports.

This point-to-point transportation capability can provide much needed relief of congestion at fixed-wing airports and their access roads. In fact, the helicopter and other members of the vertical takeoff and landing family now being developed may be the only way we can prevent zero-growth air transportation resulting from conventional airport saturation. The helicopter can provide time-saving and energy-saving transportation service within urban areas.

But the helicopter industry has some severe problems, many of which, however, can be alleviated through the use of airport/airway user tax funds. Some of these are as follows:

HELIPORT

Among the Nation's 25 largest cities, only 11 have public-use heliports, and only four of these are recognized in the national airport system plan. There are no heliports equipped for all-weather operations. The only discrete helicopter airway in the United States runs along the Northeast corridor from Washington, D.C., to New York to Boston.

However, operators cannot land or depart at either downtown Washington or Boston because no public-use heliports are there. They must use conventional airports. Yet, a heliport capable of handling as much traffic as a medium-sized airport can be accommodated on a 3-acre site or on an elevated platform or rooftop, and can be equipped for all-weather operation, all at a cost probably on the order of 1 or 2 percent that of a new medium-sized jetport—if the real estate can be found.

Helicopter operators obviously need a system of all-weather heliports to serve all the regions of the United States where the demand for helicopter transportation is now fast growing. The action earlier this year by the Subcommittee on Aviation of the House Public Works and Transportation Committee to authorize in H.R. 6721 not less than $10 million for heliport construction during the next 5 years under ADAP certainly is a step in the right direction. We strongly urge that this provision remain in the final version of the Airport and Airway Improvement Act of 1980 when it is passed by the Congress.

AIRWAYS

Helicopter discrete narrow width all-weather airways are needed to connect the all-weather heliports, with suitable air traffic separation service.

Senator BYRD. You have gone considerably over your time. Do you have much more?

Mr. RICHARDSON. Not too much more, sir. I will try to summarize it.

Senator BYRD. Good.

Mr. RICHARDSON. The five Manhattan Island heliports are in use this year with 90,000 operations. It is forecast that at these heliports in New York next year, we will have 125,000 operations. Comparing that with LaGuardia which is a highly complex navigation airport, with multimillion-dollar facilities, the heliport investment is minor.

As far as navigation is concerned, the FAA's line of sight airplane navigation system requires helicopters to fly at altitudes which are frequently higher than is efficient for them in terms of fuel consumption.

To help solve the helicopter needs, just to briefly outline, the FAA has proposed at previous hearings in the Congress during the past year a dynamic 5-year heliport R. & D. program which we have summarized at the end of our written statement.

Now I would like to have Mr. Gilbert give you the points that we would like you to consider in terms of the aviation fuel tax, the ticket tax.

Senator BYRD. Just summarize that in 1 minute. That is all we need.

Mr. RICHARDSON. All right, sir.

Mr. GILBERT. Thank you, Mr. Chairman. We will do it in 1 minute.

We propose that the aviation fuel tax be reduced to 5 cents per gallon until such time as the unallocated balance of the airport and airway trust fund reaches a level of approximately $500 million. We feel that the current unallocated balance of the trust fund is excessive. A 5-cent-per-gallon fuel tax seems to be adequate for some time to come.

Over and above our proposal with regard to the fuel tax reduction, we would like to see some permanent fuel tax exemption for certain types of helicopter operations, which we have identified: Natural resource discovery, recovery, and support activities. The exemption language and the definition are shown on page 6 of our testimony.

Insofar as the helicopter industry is concerned, we support the provisions of S. 1649 relative to reducing the airline ticket tax, and also the question of decentralizing the larger and medium hubs as proposed in that act.

We would like to stress once more the following:

The FAA strongly urges that the Airport and Airway trust fund be removed from the Federal unified budget, and that these funds be made immediately available to draw against for aviation purposes as intended in the original Airport and Airways Development Act of 1970.

Further, we propose that these funds also be made available in the form of initiatives to encourage users to acquire new and advanced airborne navigation and air traffic control equipment, which will increase aviation safety and increase the capacity of the Nation's airspace for transportation.

Thank you, sir.

Senator BYRD. I think that helicopters play an important part in our transportation needs.

Mr. Graves.

STATEMENT OF W. LAWRENCE GRAVES, VICE PRESIDENT, FEDERAL LEGISLATIVE AFFAIRS, AIRCRAFT OWNERS & PILOTS ASSOCIATION

Mr. GRAVES. Mr. Chairman, I am Larry Graves, representing the Aircraft Owners & Pilots Association, and our 250,000 members across the country.

We strongly support S. 1648, the bill passed by the Senate last winter, and strongly endorse the views of Senator Cannon and Senator Packwood that the tax provision that accompanies S. 1648 should reflect and accompany that bill.

We do support the Ways and Means Committee's decisions with regard to the taxes on general aviation. The Ways and Means Committee decided to adopt 8.5-cent fuel tax in exchange for a

repeal of the user tax. We argued, and they agreed, that the user tax is an onerous burden and that the net revenue from the increase in the fuel tax and repeal of the user tax will be the same or better to the Federal Government, primarily because of the additional costs that are involved in collecting the user tax as opposed to the fuel tax.

Third, we urge you not to extend the taxes for the aviation trust fund without a program. We don't think there is any need to add to the surplus until we know what direction the expenditure program is going to take.

Next, I would also like to comment on two of the points made by the Administration this morning. They argued in favor of taking administrative costs for the FAA from the trust fund, and mentioned the highway trust fund, the social security trust fund and so on.

The truth is that no other administrative costs are paid for by the expenditure of other trust funds. The highway trust fund, the waterways trust fund, and the social security trust fund only pay for the benefits for which they are authorized.

I would note in conjunction with this issue that when the 1977 bill was approved by the Congress, a limitation was put on the maximum amount that the FAA could take out of the trust fund for its own uses. In every year since that time, the FAA has exceeded that maximum amount.

At the same time, a minimum level was placed on their spending for airway and airport development. They failed to reach even the minimum amount in every year since the authorization in 1976.

Fifth, the allegations of the Administration that general aviation does not pay its fair share of the costs of running the aviation system is totally false. An example can be seen at Dulles Airport where general aviation regularly lands on the taxiways out there. We don't need the runway length, width, depth, you name it, that is required for the larger aircraft.

In addition, we support the 11,000 airports around the country that are not eligible for Federal assistance of any kind.

Sixth, the committee should keep an eye on the administration of this program in determining the taxes that are going to be collected. About a month ago, the FAA asked the aviation department of the State of Virginia to supply it with a list of the approved but not funded projects for ADAP programs. These total about a little above $13 million.

The State aviation department wrote to the various airports that were involved in the State, updated the grants, and sent them back to the FAA. After 3 weeks of work they got them on paper. The FAA then said that it was sorry, it was embargoing any expenditures for ADAP until the second quarter of fiscal year 1981.

Their claim is that these airport improvements in Virginia and around the Nation would be inflationary. We think that it is just to enlarge further the surplus and reduce the apparent deficit of the Federal budget.

Finally, considering the tax levels in the House bill, the committee should keep in mind that the House has agreed to reduce their authorization levels by $300 million because of the reconciliation process. We would not like the Senate Finance Committee to be

funding a House-passed bill that is going to be $300 million less than is included in the bill.

Thank you.

Senator BYRD. Thank you.

Mr. Smith.

STATEMENT OF DELFORD M. SMITH, CHAIRMAN, EVERGREEN HELICOPTERS, INC.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, my name is Delford M. Smith. I am the chairman of the board of Evergreen Helicopters, Inc., of McMinnville, Oreg., and also current president of the Helicopter Association of America.

I would like to take this opportunity to briefly expand upon one item mentioned in the Helicopter Association's testimony that is of particular importance to Evergreen Helicopters and other companies engaged in tree farming and timber harvesting with helicopters.

Mr. Chairman, I have a few photographs that might help visualize our operation. With your permission I would like to pass them to your chair, please.

Senator BYRD. Very good.

Mr. SMITH. Evergreen uses its helicopters in all phases of tree farming, including: seeding, fertilization, spraying for disease, insect control, fire control, timber thinning and timber harvesting. The use of helicopters supplements conventional logging methods, allowing the harvesting and thinning of timber in otherwise inaccessible mountainous terrain.

Helicopter logging also permits harvesting of trees when conventional methods might harm the environment. It does not require extensive road building and it allows more forest land to be retained for cultivation. After the harvesting, the land is restored to its natural condition.

In our tree harvesting operations, we use helicopters to move logs from roadless forest areas to cleared staging areas where they can be loaded onto trucks. We construct these staging areas and temporary heliports ourselves.

While logging, we remove from our helicopters the VHF radios used for Federal aviation navigation communications and instead equip the helicopters and our logging crews with industrial-use shortwave radios.

We refuel the helicopters by transporting jet fuel in our own trucks to the temporary heliports. At no time during our helicopter logging operations do we use or rely upon any public or private airport or communications facility. In fact, the helicopters operate at a maximum altitude of only 500 feet and rarely venture more than a half-mile from the logging site.

The Airport and Airway Revenue Act of 1970 imposed a 7-cent per gallon tax on fuel used by noncommercial aviation as a means of allocating to general aviation its share of the costs for using the Federal airport and airway systems.

The legislative history indicates that Congress intended to impose this excise tax only on fuel used by those aircraft that actually used the system. To this end, Congress exempted from this

tax aviation fuel used in farming. The farming exemption was intended to take care of the farmer who was not utilizing government facilities by exempting him from paying the tax on aviation fuel used solely in his farming operations.

But unfortunately, the farming exemption in the 1970 act relied on the Internal Revenue Service's definition of farming. In 1970 there was no use of helicopters in tree farming. Helicopters began to be used in 1971. The IRS has refused to consider the cultivating and harvesting of timber as farming, even though trees are an agricultural crop fully as much as wheat, corn, oats, etc. The IRS applies the farming exemption to nurseries and Christmas tree farms, but not to timber harvesting.

Evergreen and other helicopter logging companies have repeatedly filed claims with the IRS seeking refunds of the excise taxes paid on aviation fuel used solely in timber farming, but the IRS has refused the refunds. The matter has also been unsuccessfully pursued in the courts. It appears that legislation is the only alternative.

We urge this committee to correct the current unfair situation by including in the new Airport and Airway Revenue Act a provision that would clearly exempt from the excise tax aviation fuel used in helicopter logging, an activity that makes no use of Federal airport and airway system.

We have no problem with paying our fair share of user taxes when we use the Federal system, which we do in many of our other helicopter operations, but we don't believe we should pay a user tax on fuel for helicopters that stay for months at a time in remote mountain areas far from any Federal facilities.

I would like to note that part of the savings through elimination of the fuel tax will inevitably be passed on to the Federal Government through higher bids for timber on Federal lands. Much of the timber we harvest is purchased by bid from the U.S. Forest Service of the Department of Agriculture.

Thank you for giving us the opportunity to present our views.

[The prepared statements of the following panel follow:]

STATEMENT OF THE HELICOPTER ASSOCIATION OF AMERICA BY ROBERT A. RICHARDSON, EXECUTIVE DIRECTOR, AND GLEN A. GILBERT, PRESIDENT, GLEN A. GILBERT & ASSOCIATES, INC., CONSULTANT, HELICOPTER ASSOCIATION OF AMERICA

Mr. Chairman and members of the subcommittee, my name is Robert A. Richardson, and I am Executive Director of the Helicopter Association of America. With me is Glen A. Gilbert, President of Glen A. Gilbert and Associates, Inc., and Consultant to the Helicopter Association of America.

The Helicopter Association of America (HAA) is an international, independent, non-profit organization. The Regular Members of HAA operate helicopters for hire, for corporate and private transport and/or for public service. The operators are active in the fields of agriculture, air taxi, energy exploration, fire control and support, law enforcement, emergency medical transportation, logging, offshore operations, aerial photography, traffic surveillance and reporting, and a host of other vital missions.

The helicopter industry is at a critical point in its development because of the lack of understanding within Government on the national, State and local levels of the capabilities of our advanced technology helicopters and the contribution that the helicopter can make to our national transportation system.

The growth of the helicopter industry and its contribution to the general public is limited today by the lack of "Public Use Heliports" connected by discrete helicopter airways in convenient places to serve the traveling public. The helicopter does not need the elaborate facilities of airports and is in fact hindered when forced into the traffic patterns at such massive and complex installations. In fact, in remote areas

and in offshore operations, such as in support of oil production facilities, the helicopter basically must rely on its own on-board navigation capability due to the lack of government furnished aids.

The helicopter industry was born in the 1940's. At the time of the Airport and Airway Development Act of 1970, there were less than 3,000 civil helicopters in this country. Today, the nation's fleet has increased to over 8,000. We are the fastest growth element of the aviation industry at a compound growth rate of 15 percent per annum, and we conservatively estimate that there will be more than 20,000 helicopters in the nation's airspace during this decade.

This growth rate tends to emphasize reality—helicopters are not toys—helicopters are true working machines that serve not only the nation's people transportation requirements but also the nation's most basic needs—food supply, energy development, forestry, construction, public safety and many others.

A helicopter transportation system, unprecedented or unequalled in the world, has been exploding in the Gulf of Mexico. Each day over 7,000 people are moved to energy production sites in these versatile machines. A single Louisiana based helicopter operator transports more people daily than the most active of all U.S. commuter airlines and owns more aircraft than almost any of the world's largest air carriers.

The nation's public safety organizations recognize the tasks that can be accomplished by—and only by—helicopters. Daily, laws are enforced, crime is suppressed, apprehensions are made with helicopters. Daily, lives are being saved and hospital emergency rooms are accepting trauma patients delivered by helicopters. Daily, fires are fought and people are evacuated by helicopters.

During the "Blizzard of '79" the only aircraft taking off and landing at the Baltimore-Washington International Airport were helicopters.

At Three Mile Island only helicopters were capable of furnishing emergency support.

During the height of Tropical Storm David helicopters were pressed quickly into service for evacuation and rescue purposes.

As I am speaking here today, helicopters are performing a seeding and fertilizing effort covering over 20,000 acres to devasted land in the Mount St. Helens area.

Here are some other examples of how helicopter transportation is providing unique benefits to our economy. New York City tells us that, for every corporate headquarters that is located in the city near the financial community, 500 urban workers are employed. Sixty-eight corporations stay in town by flying to 60th Street Heliport alone. Digital Equipment Corporation, a large, fast growing computer manufacturer in Massachusetts, has dispersed their several plants to sites that afford living space for their workers and that reduce their workers' commuting needs. RCA has the same system in New Jersey. Helicopter transportation permits them to maintain cost effective supervision and control as well as technical support among these plants and their central offices.

The helicopter should be recognized as a productive, efficient and unique air transportation vehicle, ready to perform its share of the nation's need for transportation. The helicopter can provide short haul rapid transportation directly between centers of economic activity as opposed to time-consuming and energy-consuming routings via fixed-wing airports. This point-to-point transportation capability can provide much needed relief of congestion at fixed-wing airports and their access roads. In fact, the helicopter and other members of the vertical take-off and landing family now being developed, may be the only way we can prevent zero-growth air transportation resulting from conventional airport saturation. The helicopter can provide time-saving and energy-saving transportation service within urban areas.

But the helicopter industry has some severe problems, many of which, however, can be alleviated through the use of airport/airway user tax funds. Some of these are as follows:

Heliports.—Among the nation's 25 largest cities, only 11 have public-user heliports, and only four of these are recognized in the National Airport System Plan. There are no heliports equipped for all weather operations. The only discrete helicopter airway in the United States runs along the Northeast Corridor from Washington, D.C. to New York to Boston. However, operators cannot land or depart at either downtown Washington or Boston because no public-use heliports are there. They must use the conventional airports. Yet, a heliport capable of handling as much traffic as a medium sized airport can be accommodated on a three acre site or on an elevated platform or roof top, and can be equipped for all weather operation, all at a cost probably in the order of one or two percent that of a new medium-size jetport—if the real estate could be found! Helicopter operators obviously need a system of all weather heliports to serve all the regions of the United States where the demand for helicopter transportation is now fast growing. The action earlier

this year by the Subcommittee on Aviation of the House Public Works and Transportation Committee to authorize in H.R. 6721 not less than $10 million for heliport construction during the next five years under ADAP certainly is a step in the right direction. We strongly urge that this provision remain in the final version of the Airport and Airway Improvement Act of 1980 when passed by the Congress.

Airways.—Helicopter discrete narrow width all weather airways are needed to connect the all weather heliports, with suitable air traffic separation service. For example, the five Manhattan Island heliports are all in uncontrolled airspace and can be used only in "good" weather. They are not served directly by any government aids or facilities. Last year there were more than 90,000 operations at these heliports, and New York City projects that they will reach 125,000 this year. This is one-fourth the number of fixed wing operations at LaGuardia, yet LaGuardia has highly complex navigation and air traffic facilities, furnished by the government, and uses a multi-million dollar airport.

Navigation.—The FAA's line-of-sight airplane navigation system helicopters use today requires them to fly at altitudes frequently higher than those most efficient for helicopter operations in terms of fuel consumption, mission time, and separation from fixed wing airplanes. In remote areas such as Alaska, where helicopter transportation is vital, and offshore, there is no appropriate navigation system at all. The helicopter industry needs a nationwide low altitude system that will permit them to provide their unique transportation services in congested, remote and offshore environments regardless of the weather. This is why the HAA is a vigorous supporter of the civil application of the NAVSTAR GPS Satellite Navigation System.

To help solve the helicopter needs just briefly outlined, the HAA has proposed at previous hearings in the Congress during the past year that a dynamic five year helicopter R&D program be initiated during fiscal year 1981, drawing on the nearly $5 billion unobligated surplus in the aviation trust fund—funds already paid in by the aviation users, including the helicopter industry, with very little—if any—return to that industry. We again bring this proposal forward at the hearings today before this distinguished subcommittee. (Details are shown in the Attachment to this statement.)

With the preceding remarks as background, I now will present the helicopter industry's position on user taxes relevant to the proposed new Airport and Airway Improvement Act of 1980.

AVIATION FUEL TAX

The Aviation Fuel Tax should be reduced to five cents per gallon until such time as the unallocated balance of the Airport and Airway Trust Fund reaches a level of approximately $500,000,000. At such time, an aviation fuel tax commensurate with the need to sustain a logical level of funding for the Trust Fund, but not to exceed seven cents per gallon, shall be impose. This position is established because:

The current unallocated balance of the Trust Fund is excessive.

A five-cents-per-gallon tax appears to be adequate for some time to come in light of the significant surplus in the Trust Fund.

An increase to seven cents per gallon (about 28.5 percent) should be reasonable to accommodate inflationary and other contingencies later on at the appropriate time.

In addition to and apart from these proposals, the HAA urges that a permanent fuel tax exemption be established as follows:

Exemption.—Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes or used in helicopter natural resource discovery/recovery support.

Definition.—Whereever the term helicopter natural resource discovery/recovery support is used in this Act, it shall be interpreted to include any and all uses of a helicopter to support natural resource discovery and/or recovery, including but not limited to the fields of petroleum and any other energy exploration and production, forestry and logging activity, and agricultural seeding, fertilizing and spraying.

Legislative history seems clear that the intent of Congress was that the airport/airway user tax would be applied to defray costs to the FAA of providing airport aid and airways facilities such as navigation aids, communication facilities and air traffic control services. Obviously, it would follow that only the users of such facilities and services should be charged this fuel user tax. There are a number of types of helicopter operations which fall into the category of non-users of airport/airways facilities funded by the airport/airways user tax. These include energy management transportation (both offshore and in remote areas), and forestry and agriculture transportation. The foregoing definition and exemption language is intended to cover this situation.

TICKET TAX

The HAA supports the provisions of S. 1649 relative to reducing the airline ticket tax to 2 percent and permitting the larger and medium hub airports to control their position on a local basis instead of on a federal basis, because:

The large and medium hub airports are professionally staffed, self-sufficient revenue generators.

This will result in savings of federal administrative costs and bureaucratic delays.

Local governments, along with the airlines, have a better idea of what needs are required in their locale.

Increased needs for smaller airports, public-use heliports, and other systems programs can be funded at higher than present levels with a combination of the proposal's reduced ticket tax, limitations on larger hubs, and utilizing the existing trust fund surplus.

FUNDING FAA'S ADMINISTRATION, OPERATIONS AND MAINTENANCE

The HAA supports the provisions of S. 1648 placing limitations on uses of Trust Fund monies for "other expenses" (see 7(d)).

Finally, Mr. Chairman, the HAA strongly urges that the airport/airway trust fund be removed from the Federal Unified Budget and that these funds be made immediately available to draw against for aviation purposes as intended in the original Airport and Airways Development Act of 1970. Further, we propose that these funds also be made available in the form of initiatives to encourage users to acquire new and advanced airborne navigation and air traffic control equipment which will increase aviation safety and increase the capacity of the airspace as a transportation medium.

Thank you.

[Attachment]

RESEARCH AND DEVELOPMENT FOR HELICOPTERS

A. Heliports/helicopter airways—total, $75,000,000

To develop all-weather public-use heliport design criteria in the following areas:

Planning criteria for site locations including, specifically, interface with other modes of public and private transportation.

Construction criteria for elevated, ground level, and floating sites in remote, offshore, and city center environments.

Heliport lighting, marketing, safety, refueling, firefighting and security design criteria for varying environments.

Noise level and noise abatement design criteria for various heliport environments ($3,000,000)

To develop specific site locations for primary and secondary all-weather public-use heliports for each of the nation's twenty-five largest cities and to prepare detailed heliport development plans for each site location. Development plans will include time phased plans for all development activities up to the operational opening of each site. ($3,000,000)

To develop specific site locations and to prepare detailed heliport development plans for all-weather, public-use, city-center heliports in at least ten cities not included in the nation's twenty-five largest cities. ($2,000,000)

To develop terminal guidance equipment and procedures for all-weather, public-use heliports. ($4,000,000)

To develop automatic heliport (including helipad and helistop) weather observation and broadcasting system equipment and procedures. ($5,000,000)

To develop IFR navigation equipment and operational procedures that are compatible with and designed for the capabilities and limitations of helicopter operations. ($6,000,000)

To develop communications systems that are not line-of-sight dependent and that will result in reliable communications between air traffic service facilities and helicopters operating in helicopter IFR airways. ($6,000,000)

To develop safe, economical and technically feasible air traffic control procedures, practices, and operational concepts designed to maximize helicopter performance characteristics. ($3,000,000)

To develop discrete helicopter airways design criteria using navigation, weather communication, and air traffic control equipment and procedures developed above. Include design criteria for enroute, approach, landing, and departure from established public-use heliports and airports. ($4,000,000)

To plan, construct, and demonstrate complete public-use, all-weather heliports using prototype equipment and procedures developed for terminal guidance, weather observation and broadcasting, IFR operations, communications systems, and air traffic control. Test and evaluate selected systems and elements of systems in order to derive standard equipment and procedures. Priority consideration should be given to city-center heliports in metropolitan areas such as New York, Washington, Boston, Chicago, Los Angeles and other selected suitable demonstration areas. ($21,000,000)

To plan, construct and demonstrate complete discrete IFR helicopter airways and to test and evaluate prototype equipment and procedures. Priority should be given to (1) Gulf of Mexico IFR helicopter airways and (2) to helicopter IFR airways serving Chicago-St. Louis-Pittsburgh-Cleveland-Minneapolis/St. Paul-Milwaukee-Cincinnati area. ($16,000,000)

To provide discretionary funds for further support of any of the programs outlined above ($2,000,000)

B. Helicopter noise reduction—total, $25,000,000

To reduce helicopter external noise. ($15,000,000)

To reduce helicopter internal noise. ($10,000,000)

C. Navigation—total, $25,000,000

To develop civil applications of Navstar/GPS

Grand total, $125,000,000

STATEMENT OF W. LAWRENCE GRAVES, VICE PRESIDENT, AIRCRAFT OWNERS AND PILOTS ASSOCIATION (AOPA), REGARDING MODIFICATION AND EXTENSION OF AVIATION EXCISE TAXES

SUMMARY OF MAJOR POINTS

1. AOPA supports the Ways and Means Committee general aviation tax package.
2. AOPA opposes S. 1649, the Commerce Committee tax proposal to support S. 1648, and S. 1582, the Administration's Trust Fund tax proposals.
3. AOPA recommends Aviation Trust Fund taxes *not* be extended without an AOPA program as has occurred in the past.
4. AOPA recommends that Trust Fund O&M money be embargoed in event the Administration carries out its threat to embargo ADAP and F&E funding from the Trust Fund for any specified period of time.
5. AOPA recommends prohibiting use of the Trust Fund to construct subways and highways.

STATEMENT

I am W. Lawrence Graves. AOPA represents over 250,000 individuals who own and fly general aviation aircraft for business and personal purposes from approximately 13,000 airports in the United States. Our members have a deep interest in the actions to be taken by the Committee on Finance regarding the excise tax proposals to support the Airport and Airway Trust Fund.

Ways and Means Committee Print 96-62 contains the Committee amendment to be introduced on the floor of the House as Title II of H.R. 6721, the Airport and Airway Improvement Act. AOPA fully supports the actions taken by the Ways and Means Committee on the general aviation taxes in H.R. 6721.

We are particularly gratified that the Committee agreed to exempt general aviation aircraft from the aircraft use tax and hold the fuel tax to 8½ cents per gallon. The use tax has been resented by our members, not so much because of the revenue involved, but because of the abusiveness of the Internal Revenue Service in collecting the tax. No notification of liability for the tax has been printed on aircraft registration forms and many well-meaning, tax-paying citizens have been intimidated by IRS for failure to pay a tax of as little as $25. Further, in support of this action, the Senate Budget Committee, in drafting its Second Concurrent Budget Resolution for Fiscal Year 1981, included the general aviation tax levels shortly to be added to H.R. 6721.

The prolonged manipulation of the Aviation Trust Fund is a disgrace. The Administration recently announced it would defer making grants from the Trust Fund in a move it described as "anti-inflationary." The real purpose is more of the budget-balancing charade played by the Administration when it uses the Trust Fund monies in political arithmetic designed to offset the Federal deficit.

All of this is played out against a backdrop of many airports with less than optimum safety, and with most major metropolitan areas suffering from an acute shortage of reliever airport capacity. Successive administrations seek vast sums from the Trust Fund for FAA's "operations and maintenance." In spite of reduced air travel, the Trust Fund achieved the dubious distinction of having more than a four billion dollar uncommitted surplus.

As you know the Administration recently announced that it would not expend ADAP and F&E money from the Trust Fund until the second quarter of fiscal year 1981. We believe operations funding from the Trust Fund should be embargoed for the same period of time.

We urge the Committee to prohibit the use of Trust Fund monies for the purpose of constructing off-airport highways and subways. This prohibition was adopted by the Ways and Means Committee and reflects the fact that both highways and subways have their own source of funds and do not need to be supported by the Aviation Tust Fund while safety needs would go unmet.

S. 1582, the legislation introduced by request of the Administration, has been judged by virtually all who have considered it as working against safety and imposing a crushing financial burden on general aviation. It has been introduced at a time when pilots are urged to equip their aircraft with the most advanced navigation and communications equipment, to enhance further the safety of an already excellent air traffic control system. The Administration proposal would discourage the purchase of such equipment by imposing stiff excise taxes.

AOPA also opposes the *ad valorem* fuel tax proposed by the Administration because it is regionally discriminatory, and would impose an administrative hardship on small fuel retailers. Primarily, revenues going into the Treasury would rise with higher fuel prices, thus giving the Federal government a vested interest in inflation along with high fuel prices. AOPA also objects to the recommendation of a ten-year tax authorization with only a five-year spending authorization.

S. 1649, the legislation introduced to support S. 1648, the Senate-passed Airport and Airway Improvement Act, also contains an *ad valorem* fuel tax for general aviation. It also would continue the tax for ten years even though S. 1648 proposes a five year authorization. AOPA therefore strongly opposes S. 1649.

In closing, we would like to state our unequivocal opposition to a simple extension of the existing program. The new legislation holds out some promise for general aviation, provided that the authorization for "operations and maintenance" can be reduced, and that the House refuses to amend Section 208(f) of the Airport and Airway Revenue Act, thereby preventing diversion of Trust Fund revenues to highways and subways. The program as it exists now generally has been detrimental to the welfare of general aviation. We would rather have no program at all than an extension of the existing ADAP program even though we would continue to have to pay a four cent per gallon fuel tax.

We would even more strenuously object to continuing the existing taxes without an ADAP authorization. To impose "user taxes" in the absence of a program would effectively constitute the imposition of general excise taxes. We urge the Committee to view the taxes as inseparable from the program.

In your own Commonwealth, Mr. Chairman, 11 of the 83 certificated airports have projects already approved but still pending from ADAP funds totaling $13.3 million. The remainder are tied up in badly-needed improvements at general aviation airports.

Those projects include instrument landing systems and lighting improvements, terminal additions, runway overruns and have languished for years. This is despite the fact that more than $5 billion has been accumulated in the Aviation Trust Fund, and the Administration threatens to embargo money already set aside and which is desperately needed for aviation safety in the Commonwealth.

Virginia authorities also estimate that safety improvements at airports in the Commonwealth will accrue to a total of $85 million within the next five years. That sum will be required at air carrier general aviation and commuter airports, and for work to start on badly-need reliever airports adjacent to metropolitan areas.

What's worse, Mr. Chairman, is that several weeks ago, the FAA, in a hurry-up message to Richmond, advised airport sponsors to reshape their grant requests to account for inflation, and to account for other spiraling costs, and to resubmit their requests as soon as possible.

State and local officials works overtime to comply. A few days later, they were told their grants could not be processed because funds were allocated for other purposes, or were to be embargoed by the administration as a hedge against inflation. In each of the cases, Mr. Chairman, localities and the Commonwealth already had their matching funds in hand, and literally asked only where to send their checks.

Virginia is but one of 50 states. Officials of the 49 others present similar accounts dispairing of the ADAP program as currently administered by the FAA. They tell of unmet critical safety needs; of local efforts to provide the necessary matching funds; of outdated federal standards which drive up the costs of airport development, and which make a mockery of the efforts of the Congress to meet the safety needs of aviation.

We urge you, Mr. Chairman and members of the subcommittee to look very closely at the Aviation Trust Fund and the levies which support it, particularly with the already huge—and evergrowing—surplus which exists today.

TESTIMONY OF DELFORD M. SMITH, CHAIRMAN OF EVERGREEN HELICOPTERS, INC.

Mr. Chairman, my name is Delford M. Smith. I am chairman of the board of Evergreen Helicopters, Inc., of McMinnville, Oregon, and also current president of the Helicopter Association of America.

I would like to take this opportunity to briefly expand upon one item mentioned in the Helicopter Association's testimony that is of particular importance to Evergreen Helicopters and other companies engaged in tree farming and timber harvesting with helicopters.

Evergreen uses its helicopters in all phases of tree farming, including: seeding, fertilization, spraying for disease, insect control, fire control, timber thinning and timber harvesting. The use of helicopters supplements conventional logging methods, allowing the harvesting and thinning of timber in otherwise inaccessible mountainous terrain. Helicopter logging also permits harvesting of trees when conventional methods might harm the environment. It does not require extensive road building and it allows more forest land to be retained for cultivation. After the harvesting, the land is restored to its natural condition.

In our tree harvesting operations, we use helicopters to move logs from roadless forest areas to cleared staging areas where they can be loaded onto trucks. We construct these staging areas and temporary helicopter parts ourselves. While logging, we remove from our helicopters the VHF radios used for federal aviation navigation communications and instead equip the helicopters and our logging crews with industrial-use, short-wave radios. We refuel the helicopters by transporting jet fuel in our own trucks to the temporary heliports. At no time during our helicopter logging operations do we use or rely upon any public or private airport or communications facility. In fact, the helicopters operate at a maximum altitude of only 500 feet and rarely venture more than a half mile from the logging site.

The Airport and Airway Revenue Act of 1970 imposed a seven-cent per gallon tax on fuel used by noncommercial aviation as a means of allocating to general aviation its share of the costs for using the federal airport and airway systems. The legislative history indicates that Congress intended to impose this excise tax only on fuel used by those aircraft that actually use the system. To this end, Congress exempted from this tax aviation fuel used in farming. The farming exemption was intended to take care of the farmer who was not utilizing government facilities by exempting him from paying the tax on aviation fuel used solely in his farming operations.

But unfortunately, the farming exemption in the 1970 act relied on the Internal Revenue Service's definition of farming. In 1970 there was no use of helicopters in tree farming—helicopters began being used in 1971. The IRS has refused to consider the cultivating and harvesting of timber as farming, even though trees are an agricultural crop fully as much as wheat, corn, oats, etc. The IRS applies the farming exemption to nurseries and Christmas tree farms, but not to timber harvesting.

Evergreen and other helicopter logging companies have repeatedly filed claims with the IRS seeking refund of the excise taxes paid on aviation fuel used solely in timber farming, but the IRS has refused the refunds. The matter has also been unsuccessfully pursued in the courts. It appears that legislation is the only alternative.

We urge this committee to correct the current unfair situation by including in the new Airport and Airway Revenue Act a provision that would clearly exempt from the excise tax aviation fuel used in helicopter logging—an activity that makes no use of the federal airport and airway system.

We have no problem with paying our fair share or user taxes when we use the federal system, which we do in many of our other helicopter operations, but we don't believe we should pay a user tax on fuel for helicopters that stay for months at a time in remote mountain areas far from any federal facilities.

I would also like to note that part of the savings through elimination of the fuel tax will inevitably be passed on to the federal government through higher bids for

timber on federal lands. Much of the timber we harvest is purchased by bid from the United States Forest Service of the Department of Agriculture.

Thank you for giving us this opportunity to present our views.

Senator BYRD. Mr. Smith, it seems to me you have a good point in regard to the aviation fuel tax. As I understand your testimony, you don't use these particular helicopters that you are speaking of in public facilities. You use them like a farmer would use a tractor only on his farm.

Mr. SMITH. Yes, sir.

Senator BYRD. You use these helicopters only for logging, only for the purpose which has been designated agriculture.

Mr. SMITH. Yes, sir.

Senator BYRD. Why does the Internal Revenue say that you are not exempt from that tax?

Senator PACKWOOD. There is no valid reason, Mr. Chairman.

Senator BYRD. Let me ask you this. How do you thin by helicopter?

Mr. SMITH. What is desired by the U.S. Forest Service and the timber industry is about 600 trees to the acre, and if they have a greater count in the reforestation where they have more trees, and there are too many of them to nourish properly, and grow properly, they desire to come in and thin.

Senator BYRD. What do you do? You pull them out by helicopter?

Mr. SMITH. Yes. You will take one for every two. There is one picture there that illustrates a thinning site.

Senator BYRD. Then the helicopter can pull the tree out?

Mr. SMITH. Yes, sir. They make a cut on the bottom, and then you vertically lift it up where there is no damage to any other standing timber.

Senator BYRD. There needs to be a cut, though?

Mr. SMITH. Yes, sir.

Senator BYRD. You do not pull it up by the roots.

Mr. SMITH. No, sir. There is a cut at the bottom.

Senator BYRD. Mr. Graves, you mention the ad valorem fuel tax. You say that it is regionally discriminatory. Would you amplify that?

Mr. GRAVES. Yes, sir. It is based on the price of fuel, and the price of fuel varies geographically. It is generally lower in the South and Southwest, and higher in the New England area. Since it is a percentage cost, it could have the impact of being 10 cents in Texas, and 15 cents in Massachusetts.

Senator BYRD. Thank you.

Senator Packwood.

Senator PACKWOOD. I have no questions. I might say that I have known Del Smith for a dozen years, and his company is a great example of the growth of the helicopter industry.

How many helicopters did you have in 1968 or 1969?

Mr. SMITH. Approximately 15, sir.

Senator PACKWOOD. How many does the company now have?

Mr. SMITH. 160.

Senator PACKWOOD. That is a good example of growth.

Thank you very much.

Senator BYRD. Thank you, gentlemen.

The committee stands in recess.

[Whereupon, at 10:45 a.m., the subcommittee recessed, subject to call of the Chair.]

[By direction of the chairman the following communications were made a part of the hearing record:]

THE POSTMASTER GENERAL
Washington, DC 20260

September 12, 1980

Dear Mr. Chairman:

This expresses the views of the Postal Service on the request made in the Department of the Treasury's September 8 testimony for an amendment to H.R. 6721 relating to the Postal Service. The amendment would overturn a December 28, 1979 memorandum of the Deputy Assistant Attorney General, Office of Legal Counsel (copy enclosed), holding that terminal handling charges for U.S. mail are not taxable under 26 U.S.C. 4271(a). We believe that memorandum is persuasive on both legal and policy grounds, and we strongly oppose the Treasury amendment.

The only justification offered by Treasury for the proposed amendment is the argument that the Postal Service and the mailing public receive an unfair preference in not being taxed on mail terminal handling charges, when freight shippers are taxed on a "single element" transportation charge which covers most freight terminal handling services as well as "line haul" transportation. This argument was a central part of the case Treasury made to Justice and was rejected on two separate counts.

First, as Justice found, a factual basis for the allegation of discrimination in favor of the Postal Service is unproven. Air freight tariffs provide for certain terminal handling services without charge. While the Internal Revenue Service has argued that this means that the "single element" rate which freight shippers pay is higher than it would otherwise be, the extent to which this may be true is not known. Moreover, mail is handled on the ground very differently from freight and the terminal handling charges for mail, item by item, are very different from whatever unstated "terminal handling charges" might be reflected in the single-element freight tariffs. Indeed, many terminal handling services for mail are similar to "assembly and distribution", which is one of the often separately charged services for freight which IRS has held not subject to tax. We agree with the Justice memorandum that it appears at least as valid to suggest that making the Postal Service pay tax on separately stated mail terminal handling charges "might create an unfair imposition on the Postal Service". (Page 10.) If freight shippers perceived that the industry's single-element tariff practices were subjecting the industry to tax discrimination, they could be expected to structure their tariffs differently.

Second, on a fundamental policy level, what Treasury is proposing conflicts with the conceptions upon which Congress has drawn in setting the limits of the tax. The tax applies to air transportation and closely air-related functions, and not to separately charged "accessorial" or secondary functions, as your Committee has explained. S. Rep. No. 706, 91st Cong., 2d Sess. 16-17 (1970). The mail terminal handling charges are accessorial, as Justice has found. The fact that the air freight industry has chosen not to compute separately certain charges which may also be accessorial, and therefore cannot show what they are for purposes of tax computation, is no reason to abandon the Committee's rationale and broaden the foundation of the tax. The types of services involved, such as loading the mail on the aircraft, primarily involve labor and related expenses which are not part of the airport and aircraft operation costs to which the Federal subsidies supported by the tax are permitted to extend. Even the terminal buildings, parking areas, and on-airport postal facilities where these services are performed cannot be subsidized from the tax. The long-time surplus position of the fund does not supply a reason for broadening the tax to cover services well removed from air transportation itself.

The proposed amendment would tax the postage-paying public an additional $2-1/2 million per year. For the reasons stated, the Postal Service believes that the amendment is unjustified and should not be approved.

Sincerely,

William F. Bolger

Honorable Harry F. Byrd, Jr.
Chairman, Subcommittee on Taxation
and Debt Management Generally
Committee on Finance
United States Senate
Washington, D.C. 20510

Enclosure

Department of Justice
Washington, D.C. 20530

28 DEC 1979

MEMORANDUM FOR HONORABLE ROBERT CARSWELL
DEPUTY SECRETARY OF THE TREASURY

Re: Tax dispute between the Internal Revenue Service and the Postal Service

The Attorney General has asked this Office to respond to your request for an opinion concerning the long-standing controversy between the Internal Revenue Service (IRS) and the United States Postal Service (Postal Service) about the proper method for computing amounts to be taxed under 26 U.S.C. § 4271(a). That provision imposes a 5% excise tax on amounts paid for the transportation of property by air:

> 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 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. 1/ [Emphasis added.]

You have referred the matter to this Department because the IRS and Postal Service, after years of discussion and administrative proceedings, are not in agreement, and in an opinion dated April 22, 1977, we held that the controversy is not justiciable. 2/

Essentially, the legal issue is whether the 5% tax applies to amounts paid by the Postal Service for terminal handling services, which relate to the ground handling of mail. The Postal Service

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1/ "Taxable transportation" as defined in 26 U.S.C. § 4272(a) is "transportation by air which begins and ends in the United States."

2/ See Executive Order No. 12146 (Legal Services). We have been aided by several memoranda of law prepared by the parties. The extended period of time from the date of your opinion request, November 6, 1978, to the date of this opinion is accounted for by the time involved in the preparation of the parties' memoranda, the last of which is dated October 25, 1979.

argues that terminal handling charges are not taxable, while the IRS takes the position that they are. 3/ See Rev. Rul. 74-512, 1974-2 C.B. 371. For reasons elaborated below, we conclude that the Postal Service is correct. 4/

I

Factual Background

Pursuant to 49 U.S.C. § 1375(d), air carriers are responsible for handling and transporting mail in accordance with regulations established by the Postmaster General under 49 U.S.C. § 1375(a). For their services, air carriers and commuter/air taxi operators are compensated by the Postal Service at rates prescribed by the Civil Aeronautics Board (CAB). CAB rate orders distinguish between "line-haul" and "terminal handling" charges paid by the Postal Service to air carriers. 5/

Line-haul charges paid by the Postal Service compensate air carriers for costs attributable to the flight operation of airplanes, such as those arising from overhead, depreciation and maintenance. Such charges are calculated by multiplying a line-haul rate by a figure representing the distance that a mail shipment is flown.

In contrast, terminal handling charges compensate air carriers for costs attributable to the handling of mail on the ground. Such charges are calculated by multiplying the terminal handling rate by a figure representing the weight of mail in a given shipment. Such charges cover expenses arising from the use of facilities, equipment and personnel in handling mail on the ground. They include the cost of leasing and maintaining ground facilities, acquiring and maintaining equipment used to handle mail on the ground, and meeting labor expenses associated with mail handling.

3/ We understand that the tax on terminal handling charges for the ten-year period from 1970, when the statute became effective, until 1980, when it is to expire unless renewed, will total roughly $20 million. We also understand that the Postal Service has undertaken to earmark funds to cover any tax liability pertaining to terminal handling charges.

4/ This is also the conclusion reached by the Tax Division of this Department, which we consulted. Attached is the Tax Division memorandum.

5/ Rates set by the CAB for the air transportation of mail are referred to as "multi-element" in nature because they distinguish between the two types of charges. Freight shippers other than the Postal Service, we understand, are charged by air carriers a "single element" rate based only on the number of aircraft miles required for transporting a given shipment. The single element rate does not distinguish between line-haul and terminal handling charges.

In further detail, terminal handling services normally include, for example, picking up mail for air transportation at the Postal Service's on-airport postal facilities. Mail may then be transported by an air carrier to its freight terminal, or it may be taken directly to an area for loading on a plane. Carriers also arrange for loading mail. Moreover, if handling at an intermediate point is necessary, carriers are generally responsible for unloading the mail, transporting it to their ground facilities, segregating it for onward dispatch, conveying it to the appropriate plane and loading it. At a destination point, carriers are responsible for unloading the plane, delivering mail to their ground facilities and finally transporting it to the Postal Service's on-airport postal facility.

The terminal handling functions described above are performed in certain circumstances not by carriers, but by Postal Service personnel. As elaborated in ¶ 6 of the agreed-upon Statement of Facts:

> For example, shipments identified as having especially high value are transported by the Postal Service, under Postal Service guard, directly to planeside and are picked up at planeside by the Postal Service at the destination airport. The only ground handling function performed by the carrier in such cases is the loading of the mail aboard the aircraft. At Newark and John F. Kennedy (New York) Airports, the Postal Service performs all ground handling functions for all large shipments of mail, except the loading and unloading of aircraft. The Postal Service may in future situations provide additional services similar to [highly valuable] mail or perform the functions for large shipments at other airports. 6/

Additionally, at many airports the terminal handling services ordinarily performed by air carriers may be carried out by third parties who contract with carriers to perform the services. The

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6/ Even when the Postal Service performs all terminal handling functions normally performed by air carriers except the loading and unloading of aircraft, the Postal Service pays a carrier the full terminal handling charges attributable to the mail enplaned.

third party itself "may or may not be an air carrier." Statement of Facts, ¶ 7. 7/

The Postal Service performs virtually all of the paperwork associated with the air transportation of mail. That includes the preparation of billing statements listing amounts it owes to air carriers. This practice contrasts with that involving shippers other than the Postal Service. Shippers in general receive bills -- termed "waybills" or "airbills" -- from air carriers listing charges owed for the air transportation of freight. With respect to the Postal Service, however, air carriers have no role in billing unless they object to the Postal Service's computations. 8/ Billing statements submitted by the Postal Service indicate the amount of tax to be paid under 26 U.S.C. § 4271(a). That tax is calculated by the Postal Service only on the basis of line-haul charges paid to air carriers. 9/

II

Discussion

In ascertaining whether the tax imposed by 26 U.S.C. § 4271(a) applies to terminal handling charges paid by the Postal Service, 10/

7/ Functions of terminal handling other than those already mentioned are performed regularly by the Postal Service. These include sorting mail by flight, and containerizing mail the transportation of which is to be assessed at special rates for containerized shipments. The Postal Service also tenders shipments of mail to air carriers. At its on-airport postal facility at a destination airport, the Postal Service accepts mail from carriers, and sorts it for further dispatch by air or ground transportation. Statement of Facts, 3 n.6 & ¶ 5.

8/ See Statement of Facts, ¶ 10.

9/ See Statement of Facts, ¶ 12.

10/ Congress clearly intended to subject governmental entities, including the Postal Service (or its predecessor, the Post Office), to the excise tax imposed by 26 U.S.C. § 4271. The House Committee report states:

> The exemptions for transportation furnished to State and local governments, the United States, and nonprofit educational organizations are terminated. Removing the exemption for transportation furnished to the United States subjects the Post Office to the 5 percent property tax on amounts it pays for the transportation of mail by air. It did not seem appropriate to continue special exemptions for these

[Footnote continues on next page]

we start with the statutory text. It provides, in pertinent part, that there be imposed "upon the amount paid within or without the United States for the taxable transportation [defined as 'transportation by air which begins and ends in the United States'] of property a tax equal to 5 percent of the amount so paid for such transportation."

The statute's language is not dispositive. On the one hand, it may be asserted that the phrase, "the amount paid," should be read to refer to a single, total amount, not to a portion of a total amount paid to air carriers. This would support the IRS's interpretation. But on the other hand, the amount in question is to be paid for the taxable transportation by air. The reference to transportation "by air" may suggest that taxable charges must be directly linked to the air transportation, as opposed to the ground handling, of mail. This would support the Postal Service's position. Since the statute's plain language is not susceptible to a single, unambiguous interpretation, we turn to the legislative history.

The tax of concern here derives from Pub.L. No. 91-258 (1970), title I of which is known as the Airport and Airway Development Act of 1970; title II is the Airport and Airway Revenue Act of 1970. The basic goal of both titles was to foster improvement and expansion of the nation's airport and airway system. See H.R. Rep. No. 601, 91st Cong., 1st Sess. 1 (1969). Title II was designed to raise revenues needed to carry out the program of airport and airway improvement contemplated by title I, which included, among other aspects, federal financing of certain development projects. Title II imposes a number of "user charges," which raise revenue in direct proportion to the use of the airway system and place the primary financial burden on those who benefit directly from the system's services. One major user charge imposed by title II, 26 U.S.C. § 4271(a), is the tax on property transported by air.

Relevant committee reports and much of the floor debate refer to the 5% tax in general terms as a "waybill" tax on air freight. See, e.g., H.R. Rep. No. 601, 91st Cong., 1st Sess. 39; S. Rep. No. 706, 91st Cong., 2d Sess. 2 (1970). Such references evidently contemplate the tax's application to charges on waybills presented by air carriers to ordinary freight shippers. These references do not comprehend the

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[Footnote continued from preceding page]

governmental and educational organizations since this tax is now generally viewed as a user charge. In this situation, there would appear to be no reason why these governmental and educational organizations should not pay for their share of the use of the airway facilities.

H.R. Rep. No. 601, 91st Cong., 1st Sess. 46 (1969). See also S. Rep. No. 706, 91st Cong., 2d Sess. 18 n.5 (1970).

situation of the Postal Service, which prepares its own billing statements and does not receive waybills in the normal course of business. 11/

The principal discussion in the legislative history of the scope of the tax is in the Senate Finance Committee report. See S. Rep. No. 706, 91st Cong., 2d Sess. 16-17. The report distinguishes taxable charges from "accessorial," non-taxable charges. The critical language is as follows:

> 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 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 [illegible] into account . . . .

11/ The IRS suggests that the different billing arrangement between the Postal Service and air carriers should be regarded as of "no real consequence" since the legislative history indicates that the tax is to be levied on the "amount paid for the transportation." Position of the Internal Revenue Service, November 6, 1978, at 5. This begs the question whether the "amount paid for the transportation"--the total amount paid to air carriers--is an amount paid for taxable transportation by air within the meaning of the statute, which is the issue here.

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.

Although the foregoing passage was written with reference to the shipment of ordinary freight, it nevertheless provides general rules-of-thumb for judging whether charges paid by the Postal Service are non-taxable. Charges are to be considered "accessorial" and non-taxable so long as certain conditions are met. First, the charges must be for services that are not such as can only be provided by the airline. In effect, if an airline alone can provide them, then the services are to be presumed to be taxable. Second, the charges must be separately stated. Presumably this second criterion is a rule of convenience; it assures a reasonably determinate distinction between taxable and non-taxable charges. The application of these two tests is illustrated by the example of a freight forwarder. A freight forwarder might perform such functions as picking up a shipment at a shipper's place of business, transporting it to the forwarder's warehouse, containerizing a shipment, arranging for its transportation by air by a carrier, completing relevant paperwork and taking the shipment to a carrier's freight terminal. If a freight forwarder performs such services, they may be said not to be ones that only an air carrier could provide. In general, if charges for

such services also are separately stated, they would meet the requirements of non-taxability. 12/

We consider that, on balance, the charges paid by the Postal Service for terminal handling services satisfy the criteria of non-taxability identified in the Senate report. First, although they are not separately stated in the sense that billing statements prepared by the Postal Service individually list terminal handling charges as distinct from line-haul charges, they are in fact separated out by the Postal Service when it calculates the tax owing to air carriers. The billing statements prepared by the Postal Service indicate an amount of tax only with respect to line-haul charges. The practical purpose of distinguishing taxable and non-taxable charges is thus served by the Postal Service's separate treatment of the two types of charges in its billing operation.

Second, the terminal handling services normally performed by air carriers, for which they are compensated whether or not they perform all such services in a given case, are in some cases performed by the Postal Service itself. Such functions are clearly not of a type that can only be performed by an air carrier. Also, as to loading and unloading aircraft, which apparently the Postal Service does not do, such functions may be performed by third parties that are not air carriers. See Statement of Facts, ¶ 7. Thus, on the record before us, there is no basis for saying that such services can only be performed by an air carrier.

12/ We have considered the issue, not raised by the parties, whether the rules-of-thumb enunciated in the Senate report should not be seen as an authoritative expression of legislative intent. We note that the Conference report confirms that the bill as enacted "follows the substance of" the Senate amendment regarding the 5% tax on amounts paid for the transportation of property by air. See H.R. Rep. No. 1074, 91st Cong., 2d Sess. 50 (1970). Also, the Senate Committee report expands on similar, but more abbreviated, comments in the report of the House Committee on Interstate and Foreign Commerce, H.R. Rep. No. 601, 91st Cong., 1st Sess. 45 (1969) ("In the case of freight forwarders, express companies, and similar persons (where the forwarder, etc., does not itself fly the property), the tax is imposed upon and measured by the amount paid by the forwarder, etc., to the air carrier."). Accordingly, the Senate Committee report's discussion is borne out by other indications of legislative intent in the legislative history.

In response, the IRS argues that, as a matter of consistency, the Postal Service's terminal handling services should be viewed as taxable since, it says, they are taxable as to regular shippers. See Rev. Rul. 74-512. Also, the IRS maintains that terminal handling services do not meet the criteria in the Senate report. It contends that the test of "separately stated" accessorial services requires that the services be broken down in detail by specific functions, not lumped together in a broad category like that of terminal handling services. 13/ Further, the IRS urges that the key question is not whether a party other than the air carrier can, as a matter of capacity, perform a certain service, but rather is whether any party other than the air carrier can, as a matter of legal responsibility, perform the service. Because under federal regulations air carriers are legally responsible for certain services such as loading and unloading aircraft, 14/ the IRS maintains that only carriers can perform such functions in the sense intended in the Senate report.

The problem with the IRS effort to reach a result here based on the tax treatment of ordinary freight shippers is two-fold. First, there is no indication in the record that ordinary shippers pay "multi-element" rates for the air transportation of property. As a threshhold matter, ordinary shippers would be unable to meet the test of having separately stated charges for terminal handling services to the extent that a distinction between line-haul and separately stated terminal handling charges is not made with respect to them. 15/

13/ The IRS does not argue that the charges, to be separately stated, have to be separately totalled on the billing statements prepared by the Postal Service. This presumably is not argued because if that were all the Postal Service had to do to meet the test of having "separately stated" charges, it could be easily accomplished since the Postal Service has to calculate the total of line-haul as opposed to terminal handling charges in any event in order to calculate the tax owing on the former type of charges. We concur with the implicit view that it would be unreasonably formalistic -- in practical terms, purposeless -- to require such an explicit breakdown in the present circumstances in which a breakdown already occurs and is reflected directly in the Postal Service's calculations.

14/ See, e.g., 14 CFR § 121.538 (security program for aircraft); 14 CFR § 121.665 (load manifest forms); 14 CFR §§ 121.691 & 121.693 (ditto); 14 CFR § 139.59 (safe operation of ground vehicles).

15/ Also, there is no indication that the types of terminal handling services for which the Postal Service pays a separately calculated sum are ever performed by ordinary shippers to the extent that they are performed by the Postal Service.

In addition, although the IRS concludes that exempting terminal handling services paid by the Postal Service from taxation would result in a preference for the Postal Service as opposed to other shippers, that conclusion is subject to serious question. A central premise of the IRS argument is that many if not all of the terminal handling services for which the Postal Service pays a separate charge are performed by air carriers for regular freight shippers at no additional charge. See Resolution No. 210.75 of Trade Practice Manual, appended to the stipulated Statement of Facts. The IRS argues that this means that the basic taxable rate charged to regular shippers is higher than it otherwise would be since it has to take account of no-additional-charge terminal handling services. See Position of the Internal Revenue Service, 9-10 (Nov. 6, 1978). On that basis, the IRS concludes that to exempt from taxation the terminal handling charges paid by the Postal Service would give it an undue preference. However, as a general matter, it appears equally valid to suggest that to make the Postal Service pay the tax on terminal handling charges, which are not paid separately by regular shippers, might create an unfair imposition on the Postal Service. We do not say that this is necessarily the correct factual conclusion. However, the record before us is an inadequate basis on which to draw the opposite conclusion. 16/ More importantly, we consider that the relevant inquiry is whether the criteria in the Senate report apply in the case of the Postal Service's payment of terminal handling charges. We are not faced with the issue of other shippers. It bears stressing that nothing in this opinion should be regarded as reaching a conclusion with respect to them.

Turning, then, to the IRS contention that, in order to be "separately stated," specific terminal handling services must be identified in detail in terms of specific functions performed, we find no support for that view in the statute or legislative history. Nor has any been cited by the IRS. See Reply of the Internal Revenue Service, 1-2 (Feb. 14, 1979). Further, the contention would appear to be at odds with the logic of the examples in the Senate report. Example 1, for instance, states that when an airline charges a freight forwarder a sum to containerize his merchandise and arrange for its shipment by air, only the amount paid by the forwarder to the airline is subject to tax. It is noteworthy that, in this example, two different sums--the amount owing to the airline and that owing to the forwarder--are not broken down in detail in terms of specific functions performed by each party. This indicates that Congress did not have in mind that, to be "separately stated," charges have to be broken down in detail in terms of specific services performed.

16/ The Attorney General and as his designee the Office of Legal Counsel do not make findings of fact but instead issue opinions on the law given the facts stated in an opinion request. See, e.g., 19 Op. A.G. 465 (1889); 14 Op. A.G. 36 (1872); 12 Op. A.G. 206 (1867); 1 Op. A.G. 346 (1820).

With respect to the IRS argument that the proper test is whether terminal handling functions are ones for which the air carrier has legal responsibility, not whether they are ones that can only be performed by the carrier as a matter of capacity, we again find no direct support in the statute or legislative history. In plain language, the Senate report, in asking whether "such service can only be provided by the airline . . .", does not speak of legal responsibility. Moreover, the emphasis on the example of a freight forwarder as illustrative of the principle of non-taxability undercuts the IRS argument. For it seems undeniable that a shipper's use of a freight forwarder, whose services would not be taxable, would not by itself relieve an air carrier of the legal responsibility imposed by the federal regulations cited by the IRS. This indicates that legal responsibility, and the principle of non-taxability under this statute, are analytically distinct. 17/

Having concluded that terminal handling charges paid by the Postal Service meet the tests of being separately stated and of not being such that only the air carrier can perform them, we must consider whether they may not be considered "accessorial," or secondary, to the air transportation of mail. This term, not used in the statute, is not defined in the legislative history. The Postal Service argues that the term is not inapplicable because terminal handling functions are generally associated with discrete portions of an airport--such as freight terminal buildings and parking lots--

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17/ The IRS argues that the "legal responsibility" test is implicit in language of the Senate Committee report, which provides that "[a]mounts 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 . . . if such service can only be provided by the airline and if the charge for the service is applicable to all those using it." The first part of this sentence refers to services provided either by an air carrier directly, or by an independent contractor; the second part says that if such a service "can only be provided by" the carrier, and if it is separately stated, then it is not taxable. The IRS contends that this language contemplates a situation in which one other than an air carrier performs a service, but the service still "can only be provided by" the carrier, and thus is taxable. This possibility is said to undermine the Postal Service's position that a test of capacity is to be applied, and is said to support the IRS's test of legal responsibility. We do not consider such an implication to be necessary or clear. Nothing in the passage says that ultimate legal responsibility on the part of the air carrier renders a given service one that only the carrier can perform. When the Postal Service performs terminal handling functions, presumably the legal duties of air carriers under federal regulations are not dissipated by that fact alone.

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other than the airfields, taxiways and the like, and only the latter sort of facilities are to be federally funded pursuant to title I of the Act. This limitation on funding is explained in the Conference Report, H.R. Rep. No. 1074, 91st Cong., 2d Sess. 42 (1970):

> The House bill continued unchanged the practice under existing law of prohibiting Federal financial aid for airport terminal buildings except those housing facilities or activities directly related to the safety of persons at the airport.
>
> Section 210(b) of the Senate amendment contained provisions similar to those of the House bill except that it also contained additional language permitting Federal financial assistance to terminal buildings directly related to the handling of passengers or their baggage at the airport. With respect to these additional terminal facilities, the Secretary could not furnish Federal financial assistance unless he found that no reasonable financial alternative existed. His finding was required to be based upon consideration of the feasibility and extent of other sources of financial participation, the financial condition of the airport sponsor, and any other factors relevant to such determination.
>
> Section 20(b) of the conference agreement follows the House version.

Accordingly, the Postal Service contends that the Act reflects a policy of limiting federal involvement with certain terminal facilities, and those limitations correspond roughly to a distinction between purely air-related operations giving rise to line-haul charges, and non-air-related operations giving rise to terminal handling charges. This correspondence does buttress the Post Service's position that Congress did not intend the federal tax to apply to the latter type of charges.

In response, the IRS contends that the 1970 Act's definition of "airport development," 49 U.S.C. § 1711(3), is quite broad, as it includes the acquisition of land on which airports are to be built, and thus it undermines the Postal Service's observation about the limited nature of federal funding of development projects. The problem with this argument is that while the definition is a broad one, the statute is explicit in identifying certain project costs as disallowable with respect to federal funding. See 49 U.S.C. § 1720(b). The definitional section is thus subject to subsequent limiting provisions, as emphasized by the Postal Service.

The IRS further maintains that in 1976 the Act was amended to make clear that terminal facilities would not be disallowable project costs. However, the 1976 amendments establish, inter alia, that allowable costs ". . .. would be limited to nonrevenue producing public use areas at the airport which are directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport." H.R. Conf. Rep. No. 1292, 94th Cong., 2d Sess. 32 (1976); see § 12 of the Airport and Airway Development Act Amendments of 1976, Pub.L. No. 94-353, title I, § 12, 90 Stat. 871, 879. The amendments thus did not eliminate the central limitation on federal funding of terminal facilities, and do not undermine the Postal Service's main argument. 18/

In sum, in light of the applicable legislative history, we conclude that charges paid by the Postal Service for terminal handling services are not taxable under 26 U.S.C. § 4271(a).

Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

18/ See also 49 U.S.C.A. § 1720(c) (1979 Supp.). The IRS seeks to rely on language in the Senate Committee report, S. Rep. No. 706, 91st Cong., 2d Sess. 16-17 (1970) stating that when an air carrier jointly provides services with an entity that it not responsible for the air transportation of mail (Air Express is the example given), then the amounts paid for the air transportation of mail include both what is directly paid the air carrier and certain expenses of the other entity (Air Express) that are "properly attributable" to the taxable transportation. The example provided is of cooperative advertising expenses, part of which benefit the air carrier and should be attributed as amounts paid for air transportation. This language is distinguishable here because the special circumstances of a joint provision of services, such as between a carrier and Air Express, do not obtain in this case.

APPENDIX

STATEMENT BY THE TAX DIVISION

DEPARTMENT OF JUSTICE

INTRODUCTION

The controversy presented herein concerns whether the tax imposed by I.R.C. §4271 on the taxable transportation of property applies to the full multi-element rate (comprised of a line-haul charge and a terminal handling charge) which the United States Postal Service (hereinafter "Postal Service") pays for the transportation of mail by air or only to the portion of that rate attributable to the line-haul charge.

I.R.C. §4271(a) provides:

> 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 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.

"Taxable transportation" is defined in I.R.C. §4272(a) as "transportation by air which begins and ends in the United States."

The Internal Revenue Service contends that the 5 percent tax applies to the full multi-element rate, relying on Rev. Rul. 74-512, 1974-2 Cum. Bull. 371. This ruling holds that terminal handling charges included in the multi-element rate are subject to this tax, as the terminal handling services are an essential part of the transportation of property by air. As a result, the Commissioner of the Internal Revenue Service seeks payment of this tax on the charges paid by the Postal Service to air carriers for terminal handling service commencing with the calendar quarter ended September 30, 1970, up to the present, and for all future quarters up to the quarter ending June 30, 1980. 1/ The Postal Service takes the position that the

1/ I.R.C. §4271 was added by Sec. 204 of Public Law 91-258, May 21, 1970, effective with respect to transportation beginning after June 30, 1970. Pursuant to subsection (d) of §4271, the tax imposed by §4271(a) shall not apply to transportation beginning after June 30, 1980.

terminal handling charges are not taxable inasmuch as they fall within an exception applicable to separately stated charges for accessorial services which are capable of being performed by a party other than the air carrier providing the transportation. This exception is clearly enunciated in the legislative history of the statute. See S. Rpt. No. 91-706, 91st Cong., 2d Sess., p. 16 (1970) and discussion, infra, p. 9-10.

STATEMENT OF FACTS

Approximately 96 percent of the air transportation of mail is handled by the tendering of such mail by the Postal Service to scheduled air carriers and commuter/air taxi operators for transportation, pursuant to 49 U.S.C. §1375(d). 2/ The Civil Aeronautics Board (CAB) is directed by statute to establish the rates of payment for this transportation. 49 U.S.C. §1376(a).

The multi-element rate established by the CAB is comprised of two elements: a line haul (distance related) charge and a terminal handling (non-distance related) charge. The line-haul element, which is stated in terms of the weight of mail enplaned multiplied by the distance it is transported, compensates the air carriers for costs attributable to flight operations of aircraft, such as aircraft operating expenses, including associated overhead, depreciation, and maintenance costs. 3/ The terminal handling element, stated in terms of the mail enplaned, compensates the carriers for costs attributable to the processing of mail on the ground, and is comprised of both expense functions and operational functions. The expense category includes compensation for costs associated with the expense of equipment and facilities used to handle mail on the ground, the rental cost of ground facilities leased by the air carrier, and labor costs for ground handling of mail. 4/

2/ Statement of Facts, ¶2.

3/ There is no dispute as to the imposition of the 5 percent tax on line-haul charges, the Postal Service having conceded liability for these payments. See Statement of Facts, ¶3.

4/ Statement of Facts, ¶3(b). The IRS, in its position paper, as it does in Rev. Rul. 74-512, supra, ignores these expense functions as components of the terminal handling element, citing only operational functions associated with terminal handling as part of that charge. See discussion, infra, p. 3.

The operational functions inherent in terminal handling encompass services generally performed by the air carrier relating to the handling of mail on the ground, such as the acceptance of mail by the carrier from the Postal Service at an on-airport postal facility, the transportation of that mail by the carrier to its ground facilities, packaging and sorting of the mail by flight, the loading and unloading of mail on and off the aircraft, and the transportation of the mail at the destination point by the carrier from its ground facilities to the on-airport postal facility. 5/ These services are generally performed by the air carrier which transports the mail; however, at many airports air carriers contract for such services to be performed by a third party, which may or may not be an air carrier. 6/

The Postal Service also performs ground handling functions: it sorts mail by flight and tenders it to the air carrier; at its destination at an on-airport postal facility, mail is accepted from the air carrier and sorted for further dispatch (by air or ground transportation); the Postal Service computes the amounts owed to the carriers for mail transportation and prepares virtually all of the paperwork involved in air transportation of mail, including execution of dispatch records, reports of irregular mail handling, certification of drayage, reports of damage to mail or postal equipment, labelling of "loose sack" mail and placarding of containers which have been loaded by the Postal Service. 7/

5/ If handling at an intermediate point is required, the mail is unloaded, transported to the carrier's ground facilities, segregated for onward dispatch, transported to the plane, and there loaded on to the aircraft. Statement of Facts, ¶4.

6/ Statement of Facts, ¶7.

7/ Id., ¶5. Approximately 80 percent of the mail is tendered by the Postal Service in "loose sack" form, the other 20 percent is placed by the Postal Service in containers owned by the air carrier. In both cases, the rate is divided into line haul and terminal handling elements; however, the rates for the transportation of containerized mail are lower than the "loose sack" rates. See Statement of Facts, n. 6.

Although terminal handling services other than those enumerated directly above, are generally performed by the air carrier, several of these functions are sometimes performed by the Postal Service, depending upon the particular airport involved 8/ and the value of the specific mail shipment. 9/ For example, shipments designated to be of high value are transported to the Postal Service, then taken under guard directly to planeside, and are picked up at planeside by the Postal Service upon destination. The only ground handling function performed by the carrier in such cases is the loading and unloading of the mail onto and off the aircraft. Yet, under the CAB's mail rate orders, the Postal Service must pay the full terminal handling charge regardless of the extent to which these functions are performed by Postal Service personnel. 10/

Unlike other shippers, the Postal Service is not billed by the air carriers. Rather, it tenders its own billing statement to each air carrier in which it states the compensation due it for the period covered by the executed form, and submits a check for the indicated amount. The carriers, thus, do not perform the billing function, unless they take exception to the Postal Service's computations, which may be done by filing written exceptions. 11/

The billing statements furnished by the Postal Service to the air carriers do not separately itemize the line-haul and terminal handling charges. A single sum is stated, based on a computerized calculation which aggregates the line-haul and terminal handling charges. The Postal Service simultaneously by computer calculates the 5 percent excise tax imposed by 26 U.S.C. §4271 on the line-haul charges only, and remits that amount to the Internal Revenue Service. 12/

8/ At Newark and John F. Kennedy Airports, the Postal Service performs all ground handling functions for all large shipments of mail, except the loading and unloading of mail onto the aircraft. See Statement of Facts, ¶6.

9/ Id.

10/ Id. The terminal handling charge covers the costs incurred by the carrier at both the origin and destination airport. Id. at ¶8.

11/ Id., ¶10.

12/ Id., ¶12.

DISCUSSION

Congress recognized that the dramatic past and projected growth in the use of the airport and airway system of the United States mandated the generation of increased revenues to provide facilities to meet ever-increasing demands placed on that system.13/ To provide for these revenues, it enacted Public Law 91-258,14/ which is comprised of two titles. Title I, the Airport and Airways Development Act of 1970, was enacted for the purpose of financing expenditures to improve the Nation's airports and airways. In order to raise the revenue necessary to implement the provisions of Title I, Title II of Public Law 91-258, the Airport and Airway Revenue Act of 1970, was adopted. Title II amended the Internal Revenue Code by providing for an increase in the gasoline tax on noncommercial aviation,15/ by increasing the passenger ticket tax for domestic travel from five percent to eight percent,16/ by establishing a new tax of $3.00 on international air passenger travel,17/ by imposing a new tax of 5 percent on the transportation of property by air,18/ and by levying a new annual aircraft registration tax of $25 plus an amount dependent upon the weight and method of propulsion of the aircraft.19/

13/ See H.R. Rep. No. 91-601, 91st Cong., 1st Sess., p. 36 (1969).

14/ 84 Stat. 219 (May 21, 1970).

15/ I.R.C. §4041.

16/ I.R.C. §4261(a).

17/ I.R.C. §4261(c).

18/ I.R.C. §4271.

19/ I.R.C. §4491.

The House Commerce Committee summarized the intent of Title II, as follows:20/

> As part of the program designed to finance the needed expansion and improvement of the Nation's airport and airway system, the administration presented to the Congress proposals to increase certain aviation user taxes and to impose other new aviation user taxes. These were recommended on the basis that they were needed to provide the additional revenues to finance the expected increased demand for use of the civil aviation system. Moreover, it was believed that the civil users of the system should pay an increasing portion of the total Federal Government outlays for the air transportation system.

This dispute involves the determination of the proper base to be applied in computing the 5 percent tax on the amount paid for the transportation of property by air imposed by Section 4271(a) of the Internal Revenue Code.21/

20/ H.R. Rep. No. 91-601, 91st Cong., 1st Sess., p. 35 (1969).

21/ As stated infra, n. 3, there is no doubt that the Postal Service, along with other federal agencies and state and local governments, are liable, at least in part, for the tax imposed by I.R.C. §4271(a). In discussing elimination of pre-existing exemptions on the taxation of transportation of persons by air, one of which included transportation furnished to the United States (at the discretion of the Secretary of the Treasury) and to state and local governments, the House Ways and Means Committee eliminated most of the exemptions as either obsolete or as unnecessary complications of existing law. The Committee's report, as adopted by the Commerce Committee stated:

> The exemptions for transportation furnished to state and local governments, the United States, and nonprofit educational organizations are terminated. Removing the exemption for transportation furnished to the United States, subjects

The Internal Revenue Service urges that the tax on the transportation of mail by air is equal to 5 percent of the amount that the Postal Service must pay to the air carrier. It bases its argument on the plain meaning of the statute and the statute's legislative history, noting particularly that the Committee reports repeatedly refer to the 5 percent tax as a "waybill" tax, that all shippers other than the Postal Service are presented with waybills by the carriers for transportation of freight, and that the tax imposed on the transportation of property is computed as 5 percent of the total amount reflected on the waybill. Thus, it concludes that no distinction should be drawn between the Postal Service and other shippers merely because the billing arrangement between the Postal Service and other carriers differs.22/

21/ (Cont'd.)

> the Post Office to the 5 percent property tax on amounts it pays for the transportation of mail by air. It did not seem appropriate to continue special exemptions for these governmental and educational organizations since this tax is now generally viewed as a user charge. In this situation there would appear to be no reason why these governmental and educational organizations should not pay for their share of the use of the airway facilities. Moreover, should these exemptions be retained where now applicable it would be difficult to see why other equally meritorious nonprofit organizations should not also be granted exemption. Id. at 46.

See also the Report of the Senate Finance Committee, S. Rpt. No. 91-707, p. 18, which affirms the inappropriateness of continuing special exemptions for governmental agencies, and recognizes that removal of the exemption for transportation furnished to the United States would subject the Post Office to the new 5 percent tax on amounts it pays for the transportation of mail by air. Id., n. 5.

22/ As stated supra, p. 4, the Postal Service computes its own bill and presents it to the air carrier while other shippers are presented with waybills by the carriers.

It argues further that the amount of the waybill reflects the extent of the use one makes of airport and airway facilities. Thus, it is that amount which should be applied for the purpose of imposing a tax on the transportation of property. In so urging, the Internal Revenue Service relies on the indisputable aim of Congress in passing this legislation, that the tax for both passengers and freight be equitably related to use of the airways and airport facilities.

As stated in the House Commerce Committee Report, in discussing the three reasons for the decision to derive the bulk of additional commercial aviation revenue from the passenger and freight ticket taxes:

> Third, a ticket tax is geared to charge an equitable tax related to the distance traveled and the cost per mile of air operation, since ticket prices for short flights are more per mile than long-line flights and the tax is proportional to the price of the ticket. Ticket taxes on passengers and shippers are therefore an efficient and equitable user charge imposed directly on the ultimate passenger and freight users of the commercial sector of the aviation system.23/

From this it concludes that Congress did not intend that the tax levied upon the users of airport and airway facilities by Section 4271 be measured only by the portion of the cost to the shipper which is directly attributable to the number of miles that a shipment of property, including mail, is flown. Rather, the tax must take into account those constant factors, unlike distance, which determine the amount to be paid to an air carrier by the shipper. It draws a comparison to the non-distance related services which are

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23/ H.R. Rpt. No. 91-601, 91st Cong., 2d Sess., p. 39 (1969); See also S. Rpt. No. 91-706, 91st Cong., 2d sess., p. 6 (1970).

included in standard freight rates without additional charge, such as the loading and unloading of aircraft, to those terminal handling functions computed in the rate which the Postal Service must pay for the transporation of mail by air,24/ finding that the similarity in these services does not support the position of the Postal Service that a tax should be computed only on the line-haul (distance related) element of the total rate.

The Postal Service, however, relies on language found in the Senate Finance Committee Report, which expanded upon a similar proposal by the House Commerce Committee, to carve out an exception to the tax on the transportation of property for accessorial services which are capable of being performed by a party other than the air carrier.

The Senate Finance Committee stated:25/

> 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. (Emphasis supplied).

* * *

24/ The non-distance related services included in standard freight rates without additional charge are enumerated in the Air Traffic Conference Trade Practice Manual of Standard Freight Practice, Appendix B, Resolution No. 210.75 (effective July 1, 1974). However, this agreement does not apply to mail tendered by the Postal Service for transportation.

25/ S. Rpt. No. 91-706, 91st Cong., 2d Sess., p. 16 (1970).

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.

* * *

The Postal Service relies on this language to support its conclusion that the terminal handling charge for mail falls within the exemption for separately stated charges for accessorial services. Initially, it argues that the terminal handling charge is separately stated. It acknowledges that there is no overt breakdown of the multi-element rate into line-haul and terminal handling charges, but emphasizes that the multi-element rate involves separate development of line-haul and terminal handling charges, the result being that the Postal Service's computer calculates the tax on the line-haul charge only before aggregating the line-haul and terminal handling charges for purposes of payment to the air carrier.

The Internal Revenue Service takes issue with this position, arguing that because the terminal handling charge is computed on the weight of mail enplaned and not upon the particular services performed by the various parties, the charge is not separately stated by function and thus does not provide the requisite breakdown to enable the Postal Service to fall within this exception.

The next and major argument urged by the Postal Service is that the terminal handling services are capable of being performed by a party other than the air carrier, as is evidenced by the fact that at some airports, the Postal Service or an independent contractor of the carrier performs all of the terminal handling functions other than the loading or unloading of mail aboard the aircraft.26/ Finally, the Postal Service submits that terminal handling services are accessorial services which are exempt from this tax, citing for support Rev. Rul. 71-398, 1971-2 Cum. Bull. 373. It analogizes its services to those "Assembly and Distribution Services" held in the ruling to be accessorial and capable of being performed by a party other than the air carrier, and thus exempt from tax.

We conclude, on balance, that the tax imposed by I.R.C. §4271 on the taxable transportation of property applies only to the line-haul charge and that the terminal handling charge is exempt from taxation under the exception applicable to accessorial services which can be performed by someone other than the air carrier.

Initially, an examination of the threshold question of whether the charges are separately stated is warranted. As discussed, supra, p. 4, the Postal Service separately calculates the line-haul and terminal charges by computer, and totals up these amounts to derive the multi-element rate. It simultaneously computes the 5 percent tax on the line-haul charges only, and remits that amount to the Internal Revenue Service. The Internal Revenue Service, however, urges that this is insufficient, asserting that the exception applies to charges which are functionally separated and identified and not lumped in with the weight of mail enplaned calculation. Yet, there is nothing in the legislative history of the statute to support this conclusion.

26/ Statement of Facts, ¶ 6 and 7.

In illustrating application of this tax through examples, the Senate Finance Committee in Example 1, supra, p. 10, gave a clear indication that Congress did not intend a precise breakdown of services by function in order to meet the requirement of separately stated services. In that example, the airline, Z, charged $90 to transport A's shipment by air. This $90 charge could be stated in terms of the line-haul element, compensating the carrier for costs attributable to flight operations of the carrier and certain "no additional charge" services provided by an airline as part of its freight services. See Air Traffic Conference Resolution 210.75.27/ It clearly is subject to imposition of tax pursuant to §4271. Yet, the $50 balance paid by A to F, the freight forwarder, is not subject to tax although the services F provided included containerization of the merchandise, arranging for its shipment by air with Z airline, and apparently pickup and delivery to Z airline in New York and pickup and delivery in Los Angeles. The charges are not separately broken down by specific functions in either this example or example 2, equally applicable here. It is apparent that these functions are in the nature of terminal handling services, the sum of which can be distinguished from the charges imposed by the carrier for the transportation of the property without any resultant imposition of tax on that amount.

The second test for taxability under §4271 is whether these terminal handling services may be performed by a party other than the air carrier. The Internal Revenue Service seeks to impose its own criterion to this test, that being not who has the capability to perform the services in question but who has the duty and responsibility for such services, urging that the word "only" in the quoted phrase "if such services can only be provided by the airline" must mandate this result.

27/ Admittedly, those services provided "at no additional charge" by the carrier are taxable because they are not separately stated. Yet, the resolution recognizes that there are services beyond the eleven "no additional charge" services enumerated therein for which a separately stated charge may be imposed by the carrier on air waybills.

Yet, here again, we see nothing in the legislative history to support the conclusion that the air carrier has responsibility for these functions. The language of the Senate Finance report states, in part:28/

> * * * (I)f 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 * * *.

There is no test of responsibility; the test clearly appears to be that of capability. It is apparent that the Postal Service is capable of performing all of the terminal handling functions generally done by the air carrier or subcontractor, other than the loading and unloading of the aircraft, as is evidenced by the Statement of Facts, ¶6. This paragraph indicates that at Newark and JFK Airports, the Postal Service performs all ground handling functions for large shipments of mail, except the loading and unloading of aircraft. Despite this fact, it still must pay the full terminal handling charge imposed by the CAB's mail rate orders.

The conclusion that the Postal Service is capable of performing these functions is further illustrated by the fact that in certain instances, for example, where the shipments are identified as having especially high value, the Postal Service handles those functions generally delegated to the air carriers. In these situations, it will transport the shipment directly to planeside under Postal Service guard and pick it up at planeside at the destination airport, again only leaving to the carrier the function of loading and unloading the aircraft. Thus, these services are not services which can only be provided

28/ S. Rpt. No. 91-706, supra, p. 16.

by the carrier nor is there anything in the record to indicate that these services are the responsibility of the carrier.29/ Moreover, the fact that in a given situation the carrier actually performs a specific function is not determinative. The determinative factor is whether the function could be performed by a third party.

The final issue to be resolved is whether these terminal handling services are accessorial. Regrettably, the word "accessorial" is nowhere defined in the legislative history. Yet, there are several sources to which we may refer for guidance for a definition of the word "accessory." Webster's Third New International Dictionary (1961) defines accessory as something of "secondary or subordinate importance." The United States Customs Court, in discussing the determination of whether an item was an accessory or integral part of a machine, stated: "If its use is casual, auxiliary or optional it is an accessory. If however, it is used as an essential part, and if the machine is 'capable of performing its ordinary and proper functions without it,' it will be considered, at least for tariff purposes, as an integral part of the machine." Schwarz v. United States, 284 F. Supp. 792, 797 (U.S. Cust. Ct. 1968). "Accessory uses" have also been defined as "necessary to serve the primary uses." L'Enfant Plaza No., Inc. v. District of Columbia Redev. L. AG., 345 F. Supp. 508 (D.C. 1972).

29/ In its opening position paper (p. 10), the IRS attempts to establish that even if the services covered by the terminal handling charge are accessorial, the charge for them would nevertheless be taxable since the services paid for are of a type that can only be performed by air carriers. It cites several F.A.A. regulations for support for this premise. We simply cannot draw the implication which the IRS wishes to draw, that the regulations make the carrier responsible for ground handling of cargo, which in turn, makes ground handling an operation which can only be performed by the carrier and is, therefore taxable under §4271. The IRS fails to realize that the test is not whether the carrier may have ultimate responsibility for a function, but whether the function can be performed by someone other than the carrier.

Determination of the accessorial nature of these services may be had by close examination of the statute and its legislative history. The tax imposed by §4271 is a tax on the transportation of property by air. The key words in that statute are those underlined.30/ This tax is, as evidenced by the exception to the tax for accessorial services, meant to be imposed as a user charge for the use of the airport and airway facilities. Congress did not intend the tax to support development of all facilities at airports, but rather only those which relate to the operation of the aircraft. Line-haul charges for mail clearly relate to airfield operations; terminal handling charges do not. These are by their very nature performed primarily in freight terminal buildings, postal facilities, and roadways and parking lots on the grounds of the airport.

In testimony before the House and Senate Commerce Committees and the House Ways and Means Committee, Secretary of Transportation Volpe testified that the Administration had considered suggestions that federal funds be provided for the financing of airport terminal facilities and parking areas, but that, on balance, it had been considered unwise to expand the traditional area of federal responsibility.31/

30/ This is evidenced by reviewing IRC §4262, which defines taxable transportation relating to the tax imposed by §4261 on the transportation of persons. In §203(b) of P.L. 91-258, supra, that section was amended in three separate subsections to substitute the words "transportation by air" for transportation."

31/ Hearings on H.R. 12374 and H.R. 12780 before the House Committee on Interstate and Foreign Commerce, Ser. 91-22, 91st Cong., 1st Sess. 59-61, 124, 138(b) (1969) (hereinafter "House Commerce Committee Hearings"); Hearings on Airport/Airway Development before the Subcommittee on Aviation of the Senate Committee on Commerce, Ser. 91-13, 3-4 (1969) (hereinafter "Senate Commerce Committee Hearings"); Hearings on Administration's Proposal on Aviation User Charges before the House Committee on Ways and Means, 91st Cong., 1st Sess. 4, 35, 46-47 (1969) (hereinafter "House Ways and Means Committee Hearings").

In response to a question from Congressman Byrnes of the House Ways and Means Committee, Secretary Volpe designated the area of federal responsibility as "the airfield portion of the airport, the runways, taxiways and so forth, but not terminal buildings and parking lots."32/ Therefore, at least part of the charges which comprise the terminal handling rate were not designed to be included in the amounts upon which the tax on transportation of property by air is imposed.

Moreover, Rev. Rul. 71-398, supra, indicates that there are numerous accessorial services which by their nature could be performed by a party other than the air carrier. The Postal Service relies particularly on the fourth service enumerated in the ruling, Assembly or Distribution Service, analogizing it to the terminal handling of mail. The description of this service, which the IRS ruled was accessorial and could be performed by a party other than the air carrier, and therefore not taxable, reads:

> (4) "Assembly or Distribution Service," are two distinct services. In providing the assembly service the carrier will accept two or more parts of a shipment from one or more shippers at a point of origin and will provide special assembling of such parts for shipment. At a destination point, the carrier will provide distribution service that involves separating parts of a shipper's shipment and delivery of such parts to different consignees.

The terminal handling of outbound mail may be analogized to the assembly service, in that it involves acceptance, consolidation, and often containerization of separate shipments of mail received from the Postal Service and from inbound connecting flights. Akin to the distribution function, the terminal handling of inbound mail involves removal of mail from containers, separation of mail by destination and delivery to the proper destination, either the local postal facility or on outbound connecting flight.

32/ House Ways and Means Committee Hearings, n. 15, supra, 46.

On the basis of the foregoing analysis, we conclude that Congress intended, as the Internal Revenue Service recognizes in Revenue Ruling 71-398, that the tax imposed by §4271 is to be applied to some non-distance related charges but not to others. The tax unquestionably does not apply to separately-stated charges which could also be provided by a party other than the air carrier and, thus, does not apply to terminal handling charges which are accessorial in nature.

STATEMENT OF THE
AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.
CONCERNING AIRPORT AND AIRWAY DEVELOPMENT
SUBMITTED FOR RECORD TO
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY
COMMITTEE ON FINANCE
UNITED STATES SENATE

September 1980

On behalf of the nation's major manufacturers of aircraft, aircraft engines and related components and equipment, the Aerospace Industries Association appreciates this opportunity to comment for the record on H. R. 6721, "The Airport and Airway Improvement Act of 1980." Obviously, development and maintenance of a modern, coordinated and efficient airport and airway system is essential to the aerospace manufacturing industry, as well as the country as a whole.

It was to support such a system that Congress created the Airport and Airways Trust Fund in 1970. However, much of the money in this fund has never been spent. It currently contains a surplus of $3.5 billion in uncommitted funds. To that extent air carriers, their passengers and their shippers have been shortchanged. We simply do not have as safe and efficient an airport and airways system as could be provided by currently available technology. Congestion at major airports (as explored in the attached study) results in wasted fuel, increased costs and wasted time for passengers. The Aerospace Industries Association feels strongly that the time has come to reverse the policy of past years and tackle these problems head-on.

Therefore we support the funding levels contained in H. R. 6721 ($5.032 billion for airport grants through 1985 and $3.019 billion for facilities and equipment through 1985) as an important first step.

However, that mandate does not go far enough. The R, E&D authorizations should be at least $300 million per year for FY 1982-1985. Obviously, such a figure is considerably in excess of the Senate authorization of $90 million and the $85 million authorized by the House. But the need is there and clearly militates against use of Trust Fund monies for Operations and Maintenance. Should Congress nevertheless insist on some Trust Fund funding of O&M that funding should not exceed the Senate authorization of $2 billion (through FY 1985). Furthermore, no O&M funds should be released until all ADAP, F&E and R, E&D funds authorized are committed; O&M funds should also be used only for maintaining the system. We would also oppose use of Trust Fund monies for general transportation planning.

Because the Trust Fund contains such a massive surplus -- and will remain in a state of surplus regardless of any of the proposed authorizations and revenue proposals -- we oppose any revenue proposal which would raise the costs paid by the users of the aviation system. Because airline passengers pay such an inordinate share at present, we support reduction of the 8-percent passenger ticket tax -- perhaps to 5 percent -- so long as the reduction would not degrade resources necessary for ADAP, F&E, R, E&D activities.

Further, since it is evident that taxes paid on airplane weight and on fuel used bear little or no relationship to the burden the airplane puts on the system, we support the House proposal to eliminate the registration fee

and weight-determined use tax for jet-power airplanes. In addition, we feel that jet fuel used by aircraft manufacturers for test and crew training purposes should not be taxed.

In closing, we would like to comment on two peripheral issues associated with H. R. 6721. First, we note that the bill would establish a task force to study problems regarding airport access, including study of the current schedule committee system as compared with several proposed slot allocation schemes. While we would not object to such a study of these matters, we would have serious objections to adoption of any alternative allocation scheme which would inhibit the growth of commercial aviation. The existing schedule committee system has worked well and should be changed only with the greatest care and study.

Second, we are concerned that the funding for reliever airports might not be sufficient under the proposed bill. Development of reliever airports, including privately owned, public-use airports and heliports, is essential to relieve congestion and delays at major airports (see Congestion" study which accompanies this statement). Therefore, we support the maximum funding practicable for reliever airports and would recommend an increase over the proposed $225 million (over five years), with a commensurate increase in overall ADAP authorizations. Further, to expedite the reliever airport program, we would urge the Secretary of Transportation to make maximum use of his discretionary funds to develop and construct reliever facilities.

AIRPORT and AIRWAY CONGESTION

A Serious Threat to Safety and The Growth of Air Transportation

A Project of the
Civil Aviation Advisory Group
Aerospace Industries Association of America, Inc.

Virginia C. Lopez, Editor

A Publication of
THE AEROSPACE RESEARCH CENTER
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July 1980

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SUMMARY AND CONCLUSIONS

The problems resulting from the rapidly growing congestion at airports and in the airways are a major concern to the traveling and shipping public, general aviation, Congress, the Federal Aviation Administration, the airlines, airport management, and aircraft and engine manufacturers.

The principal detriments resulting from congestion are:

- Threat to safety in the air.
- Increased airline operating costs due to delays which waste fuel and crew time and disrupt normal operations.
- Constriction of the future growth of air transportation.
- Inconvenience, and loss of much valuable time, to the traveler and shipper.

Congestion problems are increasing rapidly and, in spite of a multitude of warnings, plans and programs to take corrective action have been entirely inadequate. The major congestion problems and their potential solutions are reviewed briefly beginning on page 12 of this report.

The FAA has reported that aircraft congestion in the air around airports cost the air carriers approximately $200 million per year during the early 1970s. The impact of delays is highlighted by a comparison of the estimated cost of delays for just *three* major U.S. airlines in 1977. Costs for the airlines in that year were $273 million versus the average annual net profits of $175 million for *all* U.S. scheduled airlines during the past ten years. One large U.S. airline reported that its delay costs in 1977 were 8.45 times its delay costs in 1967.

One of the primary sources of funds for development and construction of airport and airway system improvements in the United States has been the Airport and Airway Trust Fund. Much of the available funding from this program, however, has not been allocated and spent to relieve congestion, due in part to excessive red tape and lack of an effective national plan.

The Trust Fund was established by the Airport and Airway Development Act of 1970. That Act, as amended through 1976, will expire on September 30, 1980. Several bills have been introduced to continue the airport and airways program. The Administration's measure (H.R. 3745) calls for diverting a major portion of the Airport and Airway Trust's funds to pay for the operations of the Air Traffic Control system. A bill proposed by Senator Howard W. Cannon (S. 1648), which has passed the Senate, contains a controversial provision which would remove the largest 72 airports from grant-in-aid funding. The House measure (H.R. 6721) essentially continues the existing program, but at higher funding levels. Both bills call for increased funding for facilities and equipment.

CONCLUSIONS

1. We are running out of time in which to solve the airport and airway congestion problems which result in delays, excessive costs, and waste of fuel. Occasional periods of low aviation growth must not be allowed to reduce the sense of urgency behind the need to solve the long-range congestion problems.

2. It is clear from current and serious airport and airway congestion problems and from forecast increases in traffic, that any new airport and airway legislation must provide adequate funds to solve the congestion problems as quickly as possible. Legislation must also require a better implementation plan than currently exists.

   Although money has been available from the Airport and Airway Trust Fund to meet a substantial part of the needs, not all available funds were applied; they were, instead, set aside as a surplus.

3. Arbitrary restraints on use of the Trust Fund should be removed. The Administration should request full authorized funding levels for Trust Fund programs and Congress should appropriate these funds in the complete amounts. Funding has not kept pace with inflation, nor have programs been funded to the levels authorized by the current act (ref. 13).

4. The current large, uncommitted Trust Fund balance ($3.5 billion forecast at the end of FY 1980), plus new funding, must be spent to improve the airports and airways and to relieve congestion.

   The integrity and the original intent of the Airport and Airways Trust Fund should be maintained. The user tax,

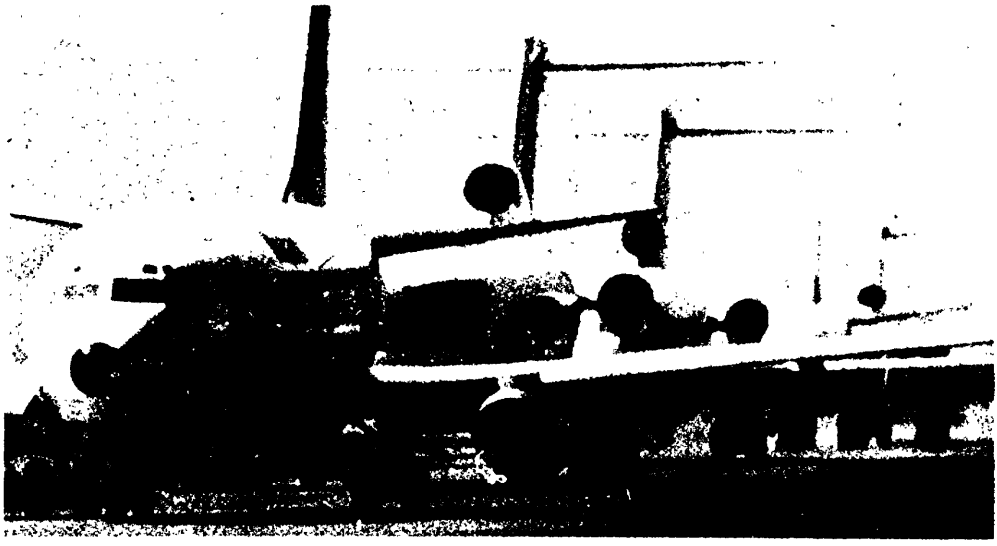


photo. Los Angeles Department of Airports

the basic source of revenue for aviation needs, should continue to be collected only for airport safety and capacity development and for funding airways and air navigation hardware (F&E) and for research and development (R&D). Appropriate tax levels should be set to meet these needs. Funding of any operational & maintenance (O&M) expenses from the Trust Fund should only be made after these other needs are met (ref. 13).

5. Provisions of the Airport and Airway Development Act of 1970 include the requirement for a National Airport System Plan. A viable, comprehensive plan has not been established.

6. The Grants-in-Aid Program, funded from the Trust Fund, has not kept pace with airport development and improvement requirements. Means must be found to *expedite:*

   - the identification of needed Airport Development Aid Program (ADAP) projects and review of eligibility criteria.
   - the processing—through elimination of red tape—of ADAP agreements and approvals by the affected local governments and the FAA.
   - the allocation of funding to approved ADAP projects.

7. The ADAP and planning grant programs should be expanded to cover privately owned public-use airports which serve as reliever airports.

8. Air Traffic Control (ATC) system developments have not been made fast enough to meet safety and congestion alleviation requirements. It is difficult to find specific, meaningful plans, timetables and funding programs for completing R&D and for implementation of the various components and stages of the continually developing system.

   There is some concern as to whether the ATC system development program is headed in the right direction.

9. New legislation should require that the Federal Aviation Administration (FAA) program for airport and airway development be revised to properly implement the intent of the current Airport and Airway Development Act in an expeditious manner.

   A thoroughly developed *Master Plan must be established* for the airports and for the ATC system—a plan with a rational set of solutions to congestion problems, complete with time schedule, assignment of responsibilities, funding plan, and *a program for execution.*

   Strong leadership and a clear organizational structure are required to implement the Master Plan.

10. Consideration should be given to the establishment of a blue ribbon commission to review the entire subject of airport and airway congestion and delays, and to establish a comprehensive action plan.

AVIATION GROWTH TRENDS

Current airport and airway congestion problems are a result of the continuing high rate of growth in commercial and general aviation, combined with inadequate expansion of airport and airway systems capacity. Airline traffic growth has been particularly strong since 1976.

Total U.S. passenger traffic on international and domestic scheduled flights has increased as shown below and in Figure 1 (ref. 1).

Year	Percent Increase Over Previous Year In Revenue Passenger Miles	Percent Increase Over Previous Year In Passengers Carried
1976	6.6	4.9
1977	10.7	10.6
1978	16.6	13.9
1979 E	17.0	19.1

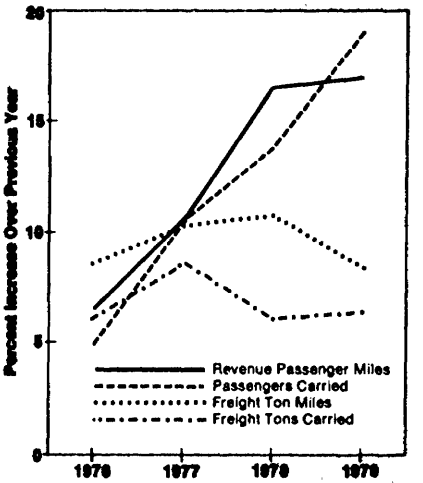
E Estimate

There has been a similar growth in air cargo traffic, both domestic and international, at U.S. airports (ref. 1).

Year	Percent Increase In Freight Ton Miles	Percent Increase In Freight Tons Carried
1976	8.5	6.1
1977	10.3	8.5
1978	10.7	6.1
1979(E)	8.5	6.4

E Estimate

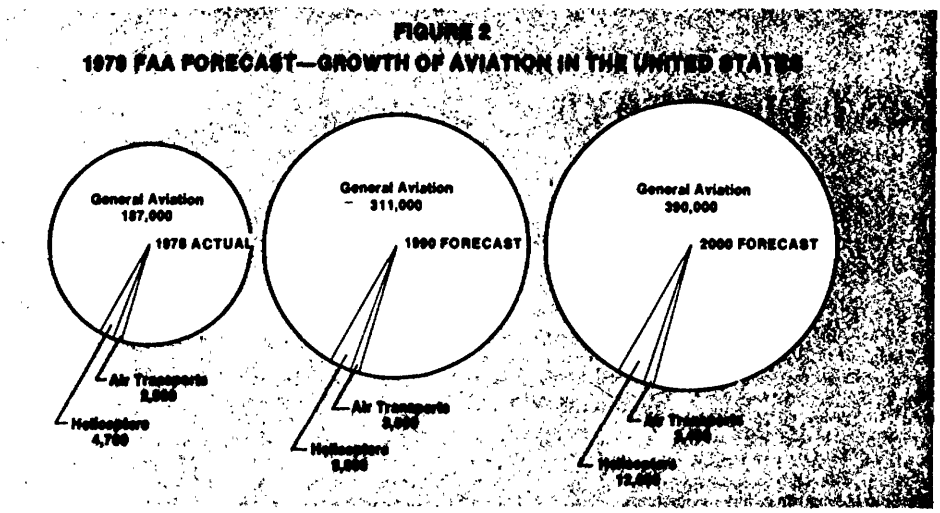
FIGURE 1
PASSENGER AND AIR CARGO TRAFFIC AT U.S. AIRPORTS* 1976-1979



*On international and domestic scheduled flights.

TABLE 1—1979 FAA FORECAST INDICES OF AVIATION GROWTH

	1978 (actual)	1990 (forecast)	2000 (forecast)
Number of Aircraft			
General Aviation	187,000	311,000	390,000
Helicopter	4,700	8,000	12,000
Air Transport	2,500	3,000	3,400
IFR Aircraft Handled by FAA Air Traffic Control Centers	28,100,000	45,600,000	60,100,000
Terminal Operations with Control Service	66,700,000	100,000,000	122,000,000

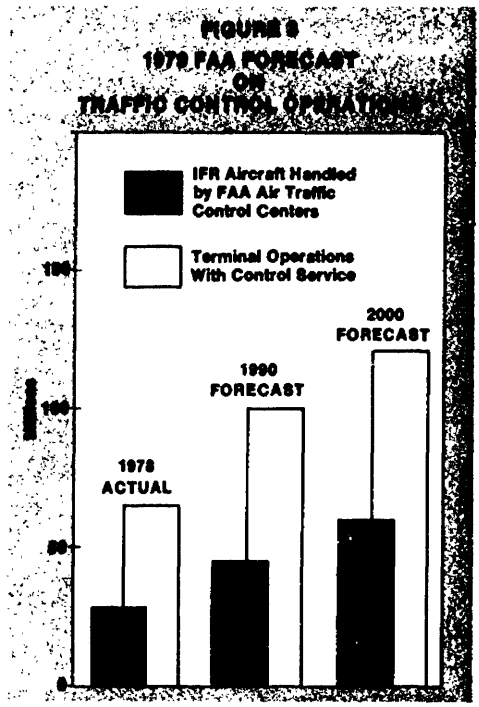


Some of the growth in the number of passengers carried by airlines will continue to be absorbed by a trend to large capacity aircraft. Nonetheless, in the United States, the Air Cargo Deregulation Act of 1977, the Airline Deregulation Act of 1978, and recent Civil Aeronautics Board (CAB) actions have begun to compound the problem as more flights by existing and new carriers are scheduled into medium and large hub airports. Most of the congestion at these airports occurs at peak hours.

A March, 1979 FAA report included the forecast for the growth of aviation in the United States which is shown in Table 1 and Figures 2 and 3 (ref. 2).

These several measures of growth in traffic and aircraft operations are indicative of the ever-increasing, heavy load which will be placed on airports and on the airways system. The FAA forecasts no increase in military IFR traffic over current levels.

Total International Civil Aviation Organization (ICAO) world passenger and air freight growth has also been strong in the last few years. Revenue passenger miles in 1978 increased 14.9 percent over 1977 and 13.5 percent more passengers were enplaned. Preliminary data for 1979 show international revenue passenger miles up 12.5 percent. International cargo traffic figures also show strong percentage increases for each of the last four years (ref. 3). Trends in international aviation growth will, of course, affect traffic at U.S. airports.



COST OF DELAYS

Stated very simply, delays cause massive inconvenience to the public. In December 1977, for example, air carrier delays totaled 22,898 hours. A total of 4,875 aircraft were delayed for over 30 minutes with 769 of these delays occuring on December 20, 1977 (ref. 7).

To the passenger, the cost of delays—due to extra hours in the air, missed connections, up to one hour to obtain baggage, difficulty in locating auto parking space and missed business meetings—is immense.

From the airlines' standpoint, airport-airside congestion has significantly increased operating expenses for fuel, crew, and maintenance. The FAA has reported that during the early 1970s, airport congestion cost the air carriers approximately $200 million per year (ref. 5).

photo: Los Angeles Department of Airports

After safety, delay remains the airlines' number one operating concern. A comprehensive study of reported delays incurred during 1977 by three airlines—American, Eastern and United—at 32* of the 438 airports served by Air Transport Association (ATA) member airlines, showed these airlines had extra costs amounting to $273 million at an estimated loss to the traveling public of $212 million** (see Figure 4).

Of particular concern is the fact that these delays wasted 237 million gallons of fuel, a resource that had at times been in such short supply that airlines had to eliminate some flights (ref. 8). The delays in 1977 for all U.S. airlines equate to fuel losses of more than 350 million gallons. Fuel losses attributable to delays in 1979 were 106 million gallons for Eastern Airlines alone (ref. 15).

The impact of the cost of delays is highlighted when the 1977 losses of American, Eastern and United--$273 million—are compared to their combined net income for that same year of $219 million. The cost of delays might also be compared for emphasis to the average annual net profit of $175 million for the U.S. scheduled airlines during the past ten years (ref. 7).

There is clear evidence that the overall costs of delays are increasing. Eastern Airlines' delay costs in 1977 were 8.45 times their 1967 delay costs; during the same time period Eastern's revenues increased by a factor of only 3.01 (ref. 5).

Aircraft delays of 30 minutes or more at 34 selected airports in the U.S. increased progressively from 31,682 in 1975 to 61,598 in 1979. Total airport operations at these airports also increased but in nowhere near the same proportion (ref. 17).

Extrapolation of the airline delay data to the entire certificated route air carrier fleet would put annual delay costs on the order of $1 billion a year (ref. 15).

*These airports account for 55 percent of all U.S. domestic scheduled operations.

**Based on the FAA figures of $12.50 per hour as a standard value for one passenger's time.

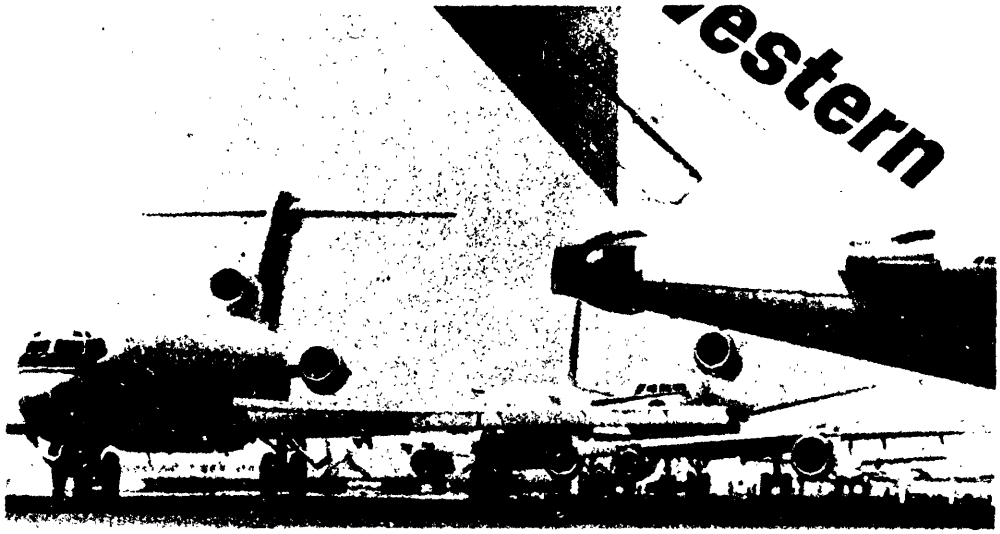
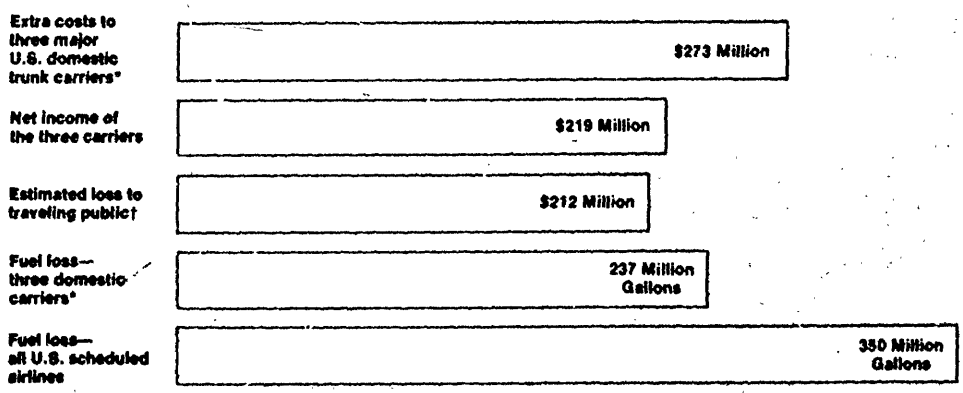


FIGURE 4
COST OF AIRLINE DELAYS*
1977



*Based on a study of reported delays by American, Eastern and United Airlines at 32 of 438 airports served by Air Transport Association of America member airlines. These airports account for 55 percent of all U.S. domestic scheduled operations.

†Based on the FAA figure of $12.50 per hour as a standard value for one passenger's time.

CONGESTION PROBLEMS —AND SOLUTIONS

Airport and airway congestion problems involve:

- Landside at Airports (defined as the landside of everything up to the passenger departure gates).
- Airside at Airports (airfield and terminal airspace).
- Enroute Air Traffic Control.

Landside at Airports

The principal landside congestion problems at airports are:

- Ground Access
  - —Inadequate roadways for auto, bus and truck traffic, on and around the airports.
  - —Inadequate public transportation.
- Insufficient parking on or near the airport.
- Inadequate terminal buildings for handling the quantity of passengers and cargo.
- Inadequate ticketing facilities.
- Inadequate baggage claim facilities.

Many airports, including the medium and large hubs, have rapidly increased access problems. At many of the medium and large hubs, the landside delay problem is created by all of the above deficiencies. The congestion in and around the airport terminals, caused by access inadequacies, wastes ground transportation fuel and erodes the overall efficiency of the air transportation system.

Los Angeles International is a good example of an airport with ground access and parking congestion problems; La Guardia is an example of one with terminal building and apron/gate congestion (ref. 5).

Airside at Airports (Airfield & Terminal Airspace)

The most critical airside congestion problems at the medium and large hubs exist on the airfield and terminal airspace, with lesser problems occurring in transition airspace. These congestion problems are very expensive to the airlines, to passengers, and to shippers. They waste fuel and can, ultimately, affect aviation safety.

photo. Los Angeles Department of Airports

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Causes of peak hour congestion and saturation that relate to Air Traffic Control include:

- Inability to achieve uniform and closer safe spacing between succeeding aircraft, regardless of weather, so that available runways can be fed continuously to maximum capacity.
- Inability of the existing number of runways to handle the demand.
- Limiting effect of wake vortices on reduction of spacing between aircraft.
- Limiting effect of noise restrictions which force aircraft to fly patterns that are wasteful of airspace and fuel.
- Inability of many airplanes to use non-ILS (Instrument Landing System) runways under instrument weather conditions.

Chicago O'Hare is one major airport where runway congestion is a limiting factor.

Weather, of course, is also a contributing factor to congestion problems.

The number of instrument operations at airports with FAA Air Traffic Control service are expected to increase from 28 million in 1978 to 45 million in 1990 according to an FAA projection. Such growth could produce intolerable delays. Saturation has already been reached at peak hours at some major hub airports such as Chicago, Atlanta, J. F. Kennedy, La Guardia, Washington National, San Francisco, and Los Angeles; and the FAA forecasts increased delays at several additional major airports.

The following shows examples of IFR (Instrument Flight Rule) demand versus IFR capacity for five large hub airports (ref. 16):

IFR PEAK HOUR DEMAND-CAPACITY 1978

	Demand	Capacity
Atlanta	137	107
Denver	82	63
J.F. Kennedy	88	53
La Guardia	77	60
San Francisco	72	53

The same FAA report which included these data notes that airport analyses indicate delays now reach one hour or more per aircraft operation in IFR peaks at these airports.

Any improvements which are made to reduce airside congestion at hub airports could increase the landside congestion problem; the efficient development of an airport system requires planning to balance the airside and landside capacity.

Other causes of congestion applicable to airports of any size can include:

- Insufficient gate positions.
- Inadequate snow and ice removal equipment.
- Insufficient landing and terminal area traffic control aids and equipment.
- Lack of airport surface traffic control system equipment (for ground and air vehicles).

Enroute Air Traffic Control

According to Walter A. Jensen, Vice President, Operations and Engineering, Air Transport Association of America (ref. 4), the enroute traffic control system in its present stage of development handles, with but few exceptions, the current volume of traffic without excessive delays. Jensen notes, however, that there is room for improvement in a number of areas, such as:

- Enroute system is manpower-intensive. Automation, although helpful in recordkeeping functions, is not being used to its full potential to assist controllers in conflict prediction, flow control, and decision-making.
- Enroute system is wasteful of fuel. It forces aircraft to use less than optimum altitudes and sometimes to use other than optimum speeds.
- Overload, at times, in the communications part of the system.

Insofar as automation is concerned, expansion of the capacity of the current enroute system will be more costly in terms of manpower than a more fully automated system.

If the FAA projections for growth in the number of aircraft handled by air route traffic control centers (page 9) are realized, some of the higher density sectors will be strained to the point of excessive enroute delays. Aircraft operations at less fuel-efficient altitudes will be further increased (ref. 4).

SOLUTIONS

Landside at Airports

Most of the solutions to landside airport problems are fairly obvious but the problems of implementing them are sometimes difficult. Implementation involves not only the problems of financing but usually also involves combinations of political problems and government regulations—federal, state, and local.

The FAA was required by the Airport and Airway Development Act of 1970 (as amended) to prepare a 10-year National Airport System Plan (NASP) for the development of public airports in the United States; the FAA's program, however, has not solved the nation's airport congestion problems.

The airport-landside congestion problems are different at each airport and the solutions may include one or more of the following:

- Add terminal buildings and/or expand existing terminal buildings.
- Add or expand ground vehicle parking facilities.
- Improve access roadways to the airports for ground vehicles; improve roadways and traffic efficiency on the airports.
- Install fixed guideway access systems to airports (subways, monorail, rail).
- Add or improve gate positions, baggage handling facilities and ticketing facilities and procedures.

photo: Los Angeles Department of Airports

- Purchase and/or modify neighboring real estate ("land banking") to prevent airport closure due to environmental or safety reasons, or restricted operations due to curfews (ref. 4).
- Develop approaches to control unreasonable environmental restrictions.

Airside at Airports (Airfield and Terminal Airspace)

Solutions to airside congestion are heavily dependent on the financial support from the Airport and Airways Trust Fund for grands-in-aid for airports, the FAA Airway Facilities and Equipment Program, and FAA Research and Development.

The solutions to congestion (depending on the particular problems of a given airport or community) are to:

- Expand existing air carrier airports.
- Add new air carrier airports to relieve currently congested airports.
- Add new general aviation reliever airports to divert flights from congested air carrier airports.
- Expand existing general aviation airports.
- Add or improve approach and landing aids at airports where needed, including Category I, II, and III capability. Existing public and private airports should be upgraded to serve a reliever function.
- Increase R&D substantially to:
  - —Develop some form of collision avoidance system (CAS) and integrate with CDTI (Cockpit Display Traffic Information).
  - —Develop automated means to provide closer spacing between aircraft on final approach* (ref. 4).
  - —Develop ground and airborne solutions to the wake vortex problem to allow closer spacing of aircraft (ref. 4).
  - —Develop wind shear detection systems.
  - —Develop 4-D navigation area.
  - —Develop the Microwave Landing System (MLS).
  - —Develop and install improved weather forecasting equipment at airports.
  - —Develop and install improved airport surface traffic control system (for air and ground vehicles).
- Implement regulations to prevent mixing instrument and visual traffic—an efficiency and safety problem (ref. 4).
- Add high speed turn-offs and procedures for their use.
- Add runways to existing airports.
- Lengthen and/or strengthen existing runways and taxiways (to allow use of larger capacity aircraft and to expand capacity of reliever airports).
- Use more high capacity aircraft to reduce the number of flights (where traffic density permits).

Use of systems such as the 4-D and the MLS with autoland signal quality could increase the Instrument Flight Rules (IFR) traffic volume to nearer the Visual Flight Rules (VFR) traffic volume by providing uniform and closer aircraft spacing.

Enroute Air Traffic Control

Improvements to the enroute system are dependent on the FAA's Airway Facilities, and Research and Development programs, as funded by the Airport and Airway Trust Fund. Recommendations for improvements to reduce congestion and improve safety, recommended by the Air Transport Association and others, include:

- Exploit the FAA's program of enroute automation to the fullest; far better utilization of airspace will be necessary in high density areas (ref. 4).
- Develop air-to-ground and ground-to-air data link; none exists as yet.
- Develop airborne separation assurance as a backup to ground based control (ref. 4).
- Expand the capacity of the upper enroute airspace by use of 1,000 ft. vertical spacing of aircraft above 29,000 ft. (ref. 4). (Currently 2,000 ft. separation above 29,000 ft.; 1,000 ft. below 29,000 ft.)
- Conduct research and development of a "pilot-based" Air Traffic Control system (ref. 2 and 6).
- Expand the use of the Area Navigation System.

*FAA is currently working on this problem.

FUNDING THE SOLUTIONS

The major congestion problems existing today are strong evidence that insufficient planning and funding have been applied to solve the problems.

Initial airport construction and development funds, particularly for the medium and large hubs, came primarily from local sources and private enterprise.

The Airport and Airway Trust Fund is the primary source of funding for the Air Traffic Control system and provides a major source of funding (the Airport Development Aid Program) for improvements to airports.

The Airport and Airway Trust Fund

The current federal support of airport and airway programs is governed by the Airport and Airway Development Act of 1970 and the Airport and Airway Revenue Act of 1970. The last amendments to this legislation were made in 1976; the legislation expires September 30, 1980.

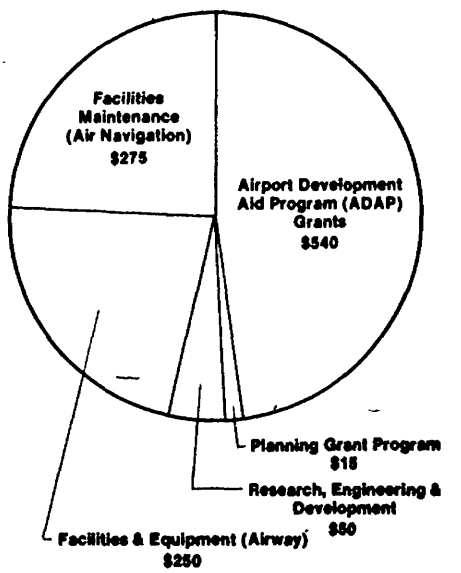
The Airport and Airway Revenue Act established a trust fund financed by user taxes. The current legislation provides that the following programs receive monies from the fund (see also Figure 5):

	Example FY 1978 Authorized Funding Levels ($ In Millions)
Grants-In-Aid Program (Airports)	
• Airport Development Aid Program (ADAP)	540
• Planning Grant Program (PGP)	15
Facilities & Equipment (Airway)	250
Research, Engineering and Development	50
Facilities Maintenance (Air Navigation)	50

Existing legislation limits use of ADAP funds to publicly owned airports, but some proposed new legislation would permit application of ADAP funds to privately owned airports which will continue to operate as public-use airports for the economic life of government-owned facilities. Under current legislation, private airport development and improvement must be funded by the private sector.

The current ADAP program can provide substantial funding grants to support public airport programs (from 50 to 90 percent of project cost, depending on the nature of the project). The rest of the funding for public airport development comes from local governments and sponsoring agencies.

FIGURE 5
FY 1978
AUTHORIZED FUNDING LEVELS
from
AIRPORT AND AIRWAY TRUST FUND
($ in Millions)



The funding under ADAP of public space in terminal buildings is a recent progressive step.

Funding for improvements in access roadways and public transportation *to* airports to relieve congestion must be provided by local governments. The complexity and problem of funding such programs, of course, varies greatly between communities. Access roads *on* the airport are eligible for ADAP funding.

Current legislation effective after 1976 permits the FAA to use trust funds for flight check and maintenance of the air navigation facilities—about $300 million was so allocated for FY 1979.

Actual ADAP expenditures obligated or allocated from 1970 through March 1979 total $3.17 billion (ref. 9). Although this is a sizable expenditure, the nation is still faced with current and rapidly increasing congestion problems. It is ludicrous that there is a *$3.5 billion uncommitted balance* projected for the Airport and Airways Trust Fund at the beginning of FY 1981; much, or all of this should have been spent to alleviate and prevent congestion.

Effectiveness of the Federal Program

The Grants-In-Aid Program, as pointed out in previous sections of this report, has not kept pace with airport development and improvement requirements.

A number of years ago, the FAA adopted a long range plan for development of an Upgraded Third Generation Air Traffic Control System (UG3RD). It is difficult to find specific, meaningful plans, timetables and funding programs for development and implementation of the various components of the ATC system, or for the complete system. ATC developments have not been made fast enough to meet safety and congestion alleviation requirements. There is some concern as to whether the ATC system program is headed in the right direction.

The FAA has held several reviews with industry on the National Aviation System Plan (which includes the ATC), but the impact seems to have been negligible from the standpoint of maintaining a program to keep pace with growth.

The March 1979 FAA report, *New Engineering & Development Initiatives*, contains the results of an evaluation of National Airspace System policy and technological issues by the users and the aviation industry. The FAA is continuing to evaluate and use some of the guidance from this report as evidenced in their Consultive Planning Conference of January 29-30, 1980.

Proposed Legislation

The Airport and Airway Development Act, which established the trust fund, will expire on September 30, 1980 and several bills have been introduced to continue the airport and airways program.

The Administration has proposed a bill (H.R. 3745) which would shift the bulk of trust funds used away from grants-in-aid to operations, but this proposal is receiving no serious consideration.

The Senate version (S. 1648), sponsored by Senator Howard W. Cannon, would phase out the allocation of grant-in-aid funds to the larger airports and let those airports deal directly with the airlines to secure funding for development. A companion Senate bill (S. 1649) would reduce the passenger tax from 8 percent to 2 percent and increase the general aviation fuel tax.

The current House bill (H.R. 6721) does not exclude the larger airports from funding as does the Senate bill.

A comparison of funding, called for by the House and Senate measures, as of April 15, 1980, is shown in Table 2.

TABLE 2
A COMPARISON OF FUNDING PROPOSALS IN THE HOUSE AND SENATE*
(Authorizations in Millions)

	FY 81	FY 82	FY 83	FY 84	FY 85
Grants-in-Aid (ADAP)					
House	$875	$936	$1,002	$1,072	$1,147
Senate	825	600	550	600	650
Facilities & Equipment					
House	525	562	601	643	688
Senate	400	450	550	600	750
Research & Development					
House	85	—	—	—	—
Senate	90	95	100	105	110
Operations & Maintenance					
House	400	428	458	490	524
Senate	350	375	400	425	450

*As of April 15, 1980.

The Senate ADAP funds drop in FY 82 and FY 83 as first large airports and then medium size airports are phased out of the program. The House bill would require annual authorizations for R&D; all other accounts increase 7 percent annually. The House measure also contains a provision which would penalize the Administration if it continued to underspend in the facilities and equipment area, a practice which Congress has denounced. This penalty would reduce operations by $2 for each $1 shortfall in facilities and equipment. Senator Cannon has stated that he will not support any conference report that does not defederalize the large airports (remove them from ADAP).

What New Legislation Must Provide For

New airport and airway legislation must require the development of a comprehensive, meaningful airport and airway improvement program with emphasis on reducing congestion and maintaining safety. Solutions to congestion problems proposed earlier in this report must be included in the program. The program must be complete with specific objectives, schedules, and funding requirements.

New legislation must include a requirement for development of a plan to speed up the process of approval of ADAP programs, and the application of funds. It should address the need for Research, Engineering and Development funding, which has been inadequate to solve the Air Traffic Control congestion problems. Moreover, funding for facilities and equipment has been inadequate in view of the size of the problems.

Congress must provide—and FAA must allocate—research, engineering and development funds for meaningful and timely improvements to the Air Traffic Control system. Realistic research, development and implementation schedules must be established. Adherence to such schedules must be a top priority in terms of future FAA operational goals.

New legislation must also include provisions for ADAP funding for existing and new privately-owned public use airports which serve as reliever airports.

Legislation should give consideration to inclusion in the ADAP program of selected airport ground access projects that are off the airport. However, limitations must be specified to hold expenditures to reasonable levels and on-the-airport projects must take priority.

Legislation should include requirements for increased allocation of R&D funds to the FAA in order to solve traffic control problems expeditiously.

Although Congress can legislate the requirement for the development of plans and establishment of a comprehensive airport and airway development program, the effectiveness of such a program depends on the amount and quality of effort applied by the producer of the program. Consideration should be given to establishment of a blue ribbon committee to ensure the United States has a high quality, effective airport and airway program by continually monitoring the progress of its development and implementation. The committee should include substantial participation from the aviation industry.

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*National Air Transportation Association, American Association of Airport Executives, General Aviation Manufacturers Association, National Business Aircraft Association, Commuter Air Carriers Association, Air Operators Council International, Air Transport Association of America, and Aircraft Owners and Pilots Association.

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

W. A. BULLEY, President
Secretary
Washington Department of Transportation

FRANCIS B. FRANCOIS
Executive Director

STATEMENT FOR THE
SENATE COMMITTEE ON FINANCE
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY

EXTENSION OF THE AIRPORT AND AIRWAY TRUST FUND AND
AVIATION-RELATED TAXES

by

FRANCIS FRANCOIS
Executive Director

September 8, 1980

Founded in 1914, AASHTO represents 52 member departments concerned with highways and transportation including the departments of all 50 states, the District of Columbia and Puerto Rico, to foster the development, operation and maintenance of an integrated national transportation system. The active members of AASHTO are the duly constituted heads and other chief directing officials of the 52 member highway and transportation agencies.

Mr. Chairman and members of the Senate Subcommittee on Taxation and Debt Management Generally, Committee on Finance, the American Association of State Highway and Transportation Officials is very much concerned about the nation's aviation system and the future of the Airport Development Aid Program (ADAP) and the Aviation Trust Fund. We appreciate this opportunity to provide our views for the record on the subject.

For the record, the American Association of State Highway and Transportation Officials (AASHTO) is an association whose membership includes the departments of transportation and highways of the fifty States, the District of Columbia and Puerto Rico. The policies presented in this statement were approved by our Standing Committee on Aviation, and subsequently approved by our Policy Committee, which requires an affirmative vote of at least two-thirds of the chief administrative officers of these departments.

We would first like to take this opportunity to note our deep concern over the possibility that the Airport and Airway Act of 1970, as amended, may be permitted to expire on September 30, 1980. The States believe that it is extremely important that the act be continued, since airport development is essential to the vitality of the economy of our nation and its transportation system. As you know, this act is the only source of federal aid for airport development. We therefore urge the timely passage this session of legislation continuing the Aviation Trust Fund and taxes.

AASHTO supports the continuation of the Airport and Airway Trust Fund in the years following fiscal year 1980. The States believe strongly in the continuation and strengthening of a program to develop and maintain the nation's system of airports and airways. While much of the other facets of our transportation system are for the most part already in place, the air transport system continues to need further development.

AASHTO believes that the level of Airport Development Aid Program funding should be increased for the post-1980 program. Current needs and those projected for the future are such that increased funding will be necessary to preserve the existing system and provide the level of safety in air travel which the public deserves. We feel that these two areas, safety and system preservation, should be emphasized early in the continuing program, with capacity expansions receiving increased attention later in the program when the primary concerns are substantially met. Funding should be based on system needs, taking into consideration the financial needs of airports and communities.

The level of ADAP funding increases should reflect the need to utilize the current Trust Fund surplus. Given the current level of inflation, particularly as it applies to construction costs, which have inflated much more rapidly than the overall cost of living, the buildup and continuation of surplus Trust Funds is undesireable. As you know, the continued holding of funds in inflationary periods can rapidly reduce their value in terms of constant dollars. For the record, we would mention that we support an increase in FAA Operations and Maintenance funds appropriated from the Trust Fund, up to but not exceeding the level of funding for the airport system capital improvement program.

AASHTO does not support a reduction in the taxes collected for the Trust Fund. The goals of the Trust Fund are of such importance and significance that consideration should not be given to a reduction in revenues until substantially more progress toward meeting these goals has been made. At the same time, we believe that levies on General Aviation could remain at their present rates and provide a balance between allocable costs and revenue sources.

In summary:

-AASHTO supports continuation of the Airport and Airway Trust Fund.

-AASHTO believes that the present level of ADAP funding should be increased to meet current and projected needs, with additional annual increases to counteract inflation of construction costs.

-The Aviation Trust Fund surplus should be utilized in an expedient manner to avoid further reductions of its usefulness by inflation.

-Reduction of Aviation Trust Fund revenues should not be considered until substantially more progress is made toward meeting its goals.

-Levies on General Aviation could remain at current levels.

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