

ORIGINAL

1 EXECUTIVE COMMITTEE MEETING: TO MARK-UP AVIATION EXCISE  
2 TAX LEGISLATION  
3 WEDNESDAY, FEBRUARY 5, 1997  
4 U.S. Senate,  
5 Committee on Finance,  
6 Washington, DC.

Gilmour  
19 pp.

7 The meeting was convened, pursuant to notice, at  
8 9:38 a.m., in room SD-215, Dirksen Senate Office  
9 Building, Hon. William V. Roth, Jr. (chairman of the  
10 committee) presiding.

11 Also present: Senators Chafee, Grassley, Nickles,  
12 Gramm, Jeffords, Mack, Moynihan, Baucus, Rockefeller,  
13 Breaux, Conrad, Graham, Moseley-Braun and Kerrey.

14 Also present: Lindy L. Paull, Staff Director and  
15 Chief Counsel; Mark A. Patterson, Minority Staff Director  
16 and Chief Counsel.

17 Also present: Don Lubick, Assistant Secretary for  
18 Tax Policy, Department of Treasury.

19 Also present: Ken Kies, Chief of Staff, Joint Tax  
20 Committee; Mark Prater, Chief Tax Counsel, Majority;  
21 Jon Talisman, Chief Tax Counsel, Minority  
22  
23  
24  
25

1 OPENING STATEMENT OF THE HON. WILLIAM V. ROTH, JR., A  
2 U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON  
3 FINANCE

4  
5 The Chairman. The committee will please be in  
6 order. We are here to mark-up Aviation Excise Tax  
7 legislation requested by the administration. Let me  
8 summarize the background of this legislation.

9 Last year when we extended the aviation excise taxes  
10 to December 31st, we were told that the money raised  
11 would generate enough funds to get the FAA through the  
12 fiscal year for operations, and until July for new  
13 contracts for improvements.

14 At yesterday's hearing before the committee we were  
15 told by administration officials that the FAA's ability  
16 to enter new contracts could dry up sometime next month.  
17 This would disrupt the FAA's efforts to improve passenger  
18 safety and security.

19 Treasury Secretary Rubin has asked us to immediately  
20 reinstate the aviation excise taxes through late  
21 September of this year and extend the Treasury's  
22 authority to transfer money to the Airport and Airway  
23 Trust Funds.

24 That is why, Senator Moynihan, I called this  
25 emergency meeting of the Finance Committee. Before the

1 committee is legislation to: 1) reinstate the aviation  
2 excise taxes through September 30, 1997; 2) allow  
3 transfers of aviation excise taxes to the trust fund  
4 whenever the tax is paid; 3) modify the safe harbor in  
5 the Treasury regulations to prevent airlines from  
6 delaying the payment of the tax; 4) clarify that the  
7 aviation excise taxes apply to all tickets purchased  
8 after the tax is reinstated through September 30, 1997.

9 Pat and I would like the committee to approve the  
10 proposal without amendment. We will also be seeking a  
11 unanimous consent agreement for the Senate to pass our  
12 bill without amendment and to allow the money raised from  
13 the short-term extension to be available to offset tax  
14 cuts in the future.

15 Before I yield to Pat, I would like to speak to the  
16 period for which the aviation excise taxes will be  
17 reinstated. The administration requested reinstatement  
18 through late September of this year.

19 Some of our members, Pat, would support reinstatement  
20 for a shorter period, some for a longer period, until the  
21 end of the calendar year. The September 30 date  
22 requested by the administration is, I think, a fair  
23 compromise, so that the bill can move forward quickly.

24 I cannot emphasize too much how critical it is that  
25 we enact this legislation promptly, that we should not

1 hold air passenger safety hostage for other amendments,  
2 however meritorious they may be.

3 Pat, would you care to comment?

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 OPENING STATEMENT OF THE HON. DANIEL PATRICK MOYNIHAN, A  
2 U.S. SENATOR FROM NEW YORK

3

4 Senator Moynihan. Well, Mr. Chairman, I will  
5 forbear the temptation that came upon me, listening to  
6 all that rhetoric last night, and will begin this morning  
7 asking a question. Why does the nanny State assume the  
8 responsibility for the protection of travelers, can they  
9 not do it on their own, and that theme generally.

10 Senator Mack. Well, go ahead. I would like to hear  
11 your comments.

12 Senator Moynihan. I do not want to attempt to  
13 arouse you, sir.

14 Can I concur with everything the Chairman has said,  
15 and add an additional point, with which I am sure you  
16 will agree. We have before us the draft of the  
17 legislative language. It was put together last night at  
18 no inconsiderable effort by our staff from our committee  
19 and from the Committee on Ways and Means, and the  
20 Treasury.

21 The Chairman. Joint Taxation.

22 Senator Moynihan. And Joint Taxation. Mr. Kies is  
23 here. So we do have a consensus document. I would only  
24 just repeat what you inferred, which was that this was to  
25 be a clean bill, passed and done, and we get to the

1 larger matters as the Congress goes forward.

2 The Chairman. Thank you, Pat.

3 Mr. Kies. Mr. Chairman?

4 The Chairman. Yes.

5 Mr. Kies. While we have got an opportunity here, if  
6 I could take a second I would like to clarify one point  
7 in the mark-up document, just so there is no confusion.

8 The Chairman. Please proceed.

9 Mr. Kies. One of the issues discussed in the mark-  
10 up document is, when do the taxes apply for  
11 transportation occurring seven days after date of  
12 enactment. The general rule is, of course, that the  
13 taxes are imposed for transportation that occurs seven  
14 days after date of enactment to the extent it is paid for  
15 during that time period up through September 30. That is  
16 the general rule for ticket taxes. However, in the case  
17 of freight, sometimes transportation of freight would  
18 occur, say, before September 30, but the payment might  
19 occur after that date.

20 I just want to clarify that, in that circumstance,  
21 the tax would be imposed because the freight did travel  
22 before September 30. There might have been a little bit  
23 of confusion in the mark-up document, but the statute is  
24 quite clear on that point.

25 The Chairman. Good. Thank you for that

1 clarification.

2 Senator Nickles. Mr. Chairman?

3 The Chairman. Yes, Senator Nickles.

4 Senator Nickles. Mr. Chairman, just a couple of  
5 questions, I guess. This reinstates the excise taxes  
6 through September 30th.

7 The Chairman. That is correct.

8 Senator Nickles. There is significant discussion on  
9 changing the way excise taxes are done, whether it be a  
10 percentage of the ticket tax, or maybe a landing fee, and  
11 so on. Is it the intention of the Chairman and Ranking  
12 Member for this committee, and other committees, the  
13 Commerce Committee, to try to resolve that in the next  
14 six months?

15 The Chairman. It certainly would be a goal  
16 desirable to reach agreement on what the long-term tax  
17 should be. We had considerable discussion yesterday in  
18 the hearing with a number of witnesses from the industry,  
19 as well as from the government.

20 There are a number of studies that are under way, the  
21 final one being completed in October of this year. But  
22 as soon as we can reach some kind of a consensus, I would  
23 hope that we could move forward.

24 Senator Moynihan?

25 Senator Moynihan. Could I say, Mr. Chairman, and to

1 our respected colleague, one came away from yesterday's  
2 long hearing--we were here until 12:30--with an  
3 impression that there is no agreement out there at all,  
4 and neither is there any government agency. The FAA is  
5 evanescent, at most. There is no there to there.

6 [Laughter]

7 Senator Moynihan. A committee was authorized in the  
8 last Congress of 21 persons to look into this question,  
9 which is a familiar kind of transportation question: big,  
10 active, middle-sized, regional, local. One person has  
11 been appointed to this committee.

12 We, on our part in the Congress, have not made  
13 appointments either. But there is no one from the  
14 administration to take on this responsibility. They had  
15 better hurry, I am just saying, because we could find  
16 ourselves with big decisions to make and no real  
17 preparation.

18 I wonder if I could ask Mr. Lubick, Mr. Chairman.  
19 You will take this word back to the Executive Branch,  
20 will you not, Mr. Secretary?

21 Secretary Lubick. I certainly shall, Senator. I  
22 believe you delivered it very well to the FAA yesterday.

23 Senator Moynihan. Well, what there was of it.

24 Secretary Lubick. However, I think they have spoken  
25 to the administrator-designate, who has pledged to move



1 rapidly on this.

2 Senator Nickles. Mr. Chairman, I appreciate Senator  
3 Moynihan's comment. My reason for saying that, is I can  
4 see us very easily, if we are not careful, we are going  
5 to be busy and all of a sudden we are going to be looking  
6 at September 30th, and we will have no game plan and we  
7 will be stuck with the same situation. This is not an  
8 easy issue to resolve.

9 I mean, there are meritorious arguments on both sides  
10 on how you should pay for the system, whether it be  
11 landing fees, whether it be a percentage tax, what its  
12 impact would be on certain carriers, certain regions, and  
13 so on. It is a pretty involved decision. It is one that  
14 Congress needs to wrestle with and certainly try to  
15 resolve.

16 So I was expecting and hoping that we would try to  
17 say, yes, we would have a plan that we would have marked  
18 up and ready to go through by the end of September, but I  
19 am concerned that we will be here September 29th looking  
20 at, should we be doing another short-term extension.  
21 That is the reason why I asked the question.

22 Let me ask one additional question, Mr. Chairman. We  
23 are proceeding to mark this up, but I am assuming that we  
24 will be looking to the House so we do not get blue-  
25 slipped on this. Is the House planning on marking up an

1 identical vehicle and then we will----

2 The Chairman. That is correct. As was indicated,  
3 the drafting of this particular legislation was done with  
4 the House members, on the Senate side, both Republican  
5 and Democrat representation, the Joint Tax Committee.

6 So what we have here is a proposal that has the  
7 support of all groups unanimously. I think it is  
8 critically important that we move forward with what we  
9 have here. On the question of blue-slipping, we can move  
10 ahead and report it out of committee.

11 Senator Moynihan. Mr. Chairman, it is your  
12 intention to hold it at the desk, is that not right?

13 The Chairman. That is correct. We are going to  
14 hold it at the desk, so there will be no blue slip.

15 Senator Gramm?

16 Senator Gramm. Mr. Chairman, I wanted to talk a  
17 little bit about the September 30th date. Of course, we  
18 have discussed it very briefly in our hearing yesterday.  
19 I just wanted to repeat very briefly my argument that we  
20 ought to do it through the end of the year. We are not  
21 going to see the report of this outside commission. In  
22 fact, only one member has been appointed.

23 I do not know how we could come up with a permanent  
24 solution between now and September 30th. I do believe  
25 that the current system does discriminate against long-

1 distance carriers carrying big loads of passengers.

2 I think it artificially subsidizes planes with small  
3 numbers of passengers traveling short distances, if you  
4 are looking at the cost of the system as compared to the  
5 current tax that is now levied.

6 Now, how to solve that problem is obviously the big  
7 question we face. But I do not understand why we do not  
8 go ahead and do this through the end of the year, knowing  
9 that we are not going to get a permanent solution between  
10 now and September 30th. I do not think anybody believes  
11 that we are going to solve this problem between now and  
12 then.

13 I think the probability is that we might well see the  
14 tax expire on September the 30th. Now, I do not know  
15 that that is such a big deal, other than just good  
16 government. Was there strong resistance in the House to  
17 doing it through the end of the year, or why did we reach  
18 this conclusion?

19 The Chairman. For the simple reason, I would say to  
20 the distinguished gentleman from Texas, that the reason  
21 for this is that this is what, number one, the Treasury  
22 asked for. Second, it is what is supported by the House.  
23 They wanted to go to September 30th.

24 I would point out that, whether you have September  
25 30th or December, it is entirely possible that you are

1 going to face the same question, so we are not  
2 necessarily complicating it. It is our hope that, in  
3 reconciliation, we may be able to address the long-term  
4 problem.

5 The fact is, and we had an extensive hearing, as  
6 Senator Moynihan has already pointed out, yesterday.  
7 There is absolutely no consensus as to where we should  
8 go, either on the part of the private sector, where there  
9 is a great difference between the large airlines and the  
10 small. As was pointed out, neither the administration  
11 nor the Congress has appointed the members to the  
12 commission that is supposed to make its recommendations.

13 Some people argue, one reason it is good to do it in  
14 September is to try to put some pressure on these groups  
15 to move ahead and do something. To be candid with you,  
16 it has not worked too well so far.

17 But the fact is, I cannot emphasize too much that  
18 this is as good a consensus as I think we can get at the  
19 present moment. It is not perfect. There are some who  
20 want to make it actually shorter; some want to do like  
21 you, and make it longer. But I would ask that we move  
22 ahead with this proposal.

23 Senator Graham.

24 Senator Graham. Mr. Chairman, with all respect, it  
25 seems to me that we have got to elevate this issue to

1 some basis of common sense and rationale. I think the  
2 statement you just made is one of the better arguments  
3 for extending this to the end of the year.

4 The fact is, it is highly unlikely. On a scale of  
5 zero to 10, I think the prospect of being in a position  
6 to make a permanent decision on this by the 30th of  
7 September is less than two. We have structured that.

8 We all voted for an aviation authorization bill last  
9 year that called for a commission to make a report in  
10 October. If we had wanted the report to be earlier, we  
11 should have written it for an earlier report date.

12 That legislative pattern has been even further  
13 disrupted by the fact that nobody, except for one, of the  
14 members have been appointed. So, the chances of even  
15 meeting the October date are suspect.

16 Here is what has happened as a result of our failure  
17 to be able to deal with the issue of who should pay this  
18 tax. We have had an interruption of the tax, beginning  
19 January 1st of 1996 when the tax expired, and it stayed  
20 expired until August the 27th of 1996. It was reimposed  
21 on August the 27th and stayed in effect until December  
22 31st, and now has been expired from January 1st through  
23 today's date.

24 What have been the consequences of that? Well, this  
25 trust fund provides funding for three principal areas of

1 activity. The largest share goes to facilities and  
2 equipment of the FAA. Those are the facilities that  
3 operate the basic commercial aviation system. The next  
4 largest item, are grants to States and local communities  
5 for airport improvements. Third, is research and  
6 development.

7 In that largest item, facilities and equipment, which  
8 is the thing that keeps the airline systems safe for the  
9 millions of passengers, as recently as 1992 we were  
10 making a national investment in those facilities of  
11 \$2.409 million. That was four years ago. This year, in  
12 1996, we made an investment of \$1.866 billion.

13 So, at a time when the public apprehension about  
14 aviation safety is going up, our commitment to it is  
15 going down. One of the principal reasons it is going  
16 down is because our resource base has gone down, because  
17 this tax has expired twice in the last 14 months.

18 So, Mr. Chairman, I think we are setting up another  
19 lapse if we make the expiration date the 30th of  
20 September. We have some chance of avoiding a lapse if we  
21 put it to a date after October so that we will have an  
22 opportunity to receive and act on this report.

23 So, I would urge that we amend this proposal to  
24 December 31st. I cannot but believe that we can convince  
25 our colleagues, both in the Senate and in the House, and

1 I would also think in the administration, that just  
2 common sense and the good public policy of a continuation  
3 of our support for this vital transportation function  
4 would be better served by a three-month extension of the  
5 effective date of the act. I would offer, at the  
6 appropriate time, an amendment to do so.

7 The Chairman. We have a quorum here and I am  
8 anxious to move head. But, Senator Kerrey, you have a  
9 brief comment?

10 Senator Kerrey. I will be brief, Mr. Chairman. I  
11 listened to Senator Gramm's argument yesterday, and am  
12 sort of yielding to the wisdom of that argument. But  
13 does it not create a problem for us that this thing  
14 expires when we are not in session? If it expires when  
15 we are not in session, do we not potentially have the  
16 same problem we have got right now, which is, we either  
17 come back and deal with it in early January or late  
18 December?

19 I mean, does it not put pressure upon us, if it is  
20 September 30th, to resolve this thing once and for all?  
21 Did the Commerce Committee not debate for two years and  
22 unsuccessfully come up with an answer and create the  
23 commission as a consequence of that inability? I mean,  
24 do we not, by putting September 30th as a deadline, put  
25 pressure upon ourselves to try to come up with an answer?

1 Senator Moynihan. Mr. Chairman?

2 The Chairman. Senator Moynihan.

3 Senator Moynihan. If I could respond to my revered  
4 friend. Part of the purpose of this unanimously agreed  
5 arrangement is to put that pressure on. The  
6 administration understands that it has to have a  
7 position, and we know that we have to.

8 It has not been this committee, but we find ourselves  
9 with the consequences of the inability of others to bring  
10 this to completion. But may I just say to those who were  
11 not here when we started, the draft you have before you  
12 was drafted overnight, with great effort, by both sides  
13 of the Committee on Ways and Means, both sides of the  
14 Finance Committee, the Joint Committee on Taxation, and  
15 the administration.

16 It gets us back in place and puts the pressure where  
17 it should be, on the administration and the other  
18 committees, actually.

19 The Chairman. We do have a quorum. I would ask,  
20 respectfully, of all members to go along with the  
21 proposal that has been worked out with the  
22 administration, as well as with the House, so that we can  
23 proceed. I would like to call for a vote.

24 Senator Moynihan. May I second that?

25 Senator Graham. Mr. Chairman, I would like to be



1 recognized for purposes of offering an amendment.

2 The Chairman. Senator Graham.

3 Senator Graham. I would offer an amendment to  
4 modify the mark to reinstate the air transportation  
5 excise tax through December 31, 1997 rather than  
6 September 30, 1997.

7 The Chairman. And for the reasons we have already  
8 described, we would ask that this amendment be rejected.

9 Senator Graham. Mr. Chairman, could we have some  
10 further debate on this amendment?

11 The Chairman. I would say to the distinguished  
12 Senator, we are going to lose a quorum if we are not able  
13 to vote now.

14 Senator Graham. I will be terse.

15 The Chairman. Thirty seconds.

16 Senator Graham. Mr. Chairman, I think that,  
17 fundamentally, why we are doing this for September 30th  
18 is in order to comply with some arcane budget scoring  
19 rules. I believe that that is not going to be a very  
20 compelling argument in the face of the implications of a  
21 further lapse of this tax and its impact on our ability  
22 to finance a safe and secure commercial aviation system,  
23 and to meet our obligations to local communities that  
24 have depended upon this source of funds to enhance the  
25 quality of their local aviation facilities.

1           There is nothing magical about December 31st, other  
2 than it gets us past the date that we have established as  
3 to when we are supposed to have a report on this  
4 fundamental issue of how the tax should be imposed in the  
5 fairest and most equitable manner.

6           We are setting up a situation where we are  
7 essentially saying we are going to make this decision  
8 before we are able to inform ourselves from the study  
9 that we have mandated. That does not seem to be a  
10 rational sequence. I think it is being done for an  
11 irrational reason and, therefore, I would urge that the  
12 tax be extended three months, to December 31st.

13           The Chairman. For the reasons set forth, I would  
14 hope that this amendment is rejected. I would call for  
15 the vote on the amendment. Those in favor, say aye.

16           [Chorus of ayes]

17           The Chairman. Those opposed, nay.

18           [Chorus of nays]

19           The Chairman. The nays have it.

20           We will now call the vote on the basic legislation.  
21 Those in favor, signify by saying aye.

22           [Chorus of ayes]

23           The Chairman. Opposed, nay.

24           [No response]

25           The Chairman. The ayes have it. The legislation is

1 favorably acted on and will be reported out by the  
2 committee.

3 Senator Moynihan. Mr. Chairman, may I observe that  
4 the first action of this committee in the 105th Congress  
5 has been unanimous and bipartisan? And we have raised  
6 taxes again.

7 The Chairman. Could I observe that I think our last  
8 action in the 104th Congress was unanimous. Thank you,  
9 everyone. The committee is in recess.

10 [Whereupon, at 10:03 a.m., the meeting was  
11 concluded.]

12

13

14

15

16

17

18

19

20

21

22

23

24

25