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AIRPORT AND AIRWAY TRUST FUND TAX REINSTATEMENT ACT OF 1997

FEBRUARY 5, 1997.—Ordered to be printed

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

REPORT

[To accompany S. 279]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 279) to amend the Internal Revenue Code of 1986 to reinstate the Airport and Airway Trust Fund excise taxes, and for other purposes, having considered the same, reports favorably thereon without amendment, and recommends that the bill do pass.

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I. SUMMARY AND BACKGROUND

A. Summary

S. 279, as reported by the Committee on Finance, provides for reinstatement of the excise taxes which fund the Airport and Airway Trust Fund (the "Airport Trust Fund") during the period beginning seven days after the date of enactment and ending after September 30, 1997. The bill further provides for transfer of all revenues derived from these taxes (including those deposited and currently scheduled to be deposited in the Treasury but which cannot be transferred under present law) to the Airport Trust Fund, and includes provisions to ensure prompt deposit of tax receipts with the Treasury once the excise taxes are reinstated.

B. Background and Reasons For Legislation

The operations and capital programs of the Federal Aviation Administration (the "FAA") are financed with appropriations from both the Airport Trust Fund and the General Fund. In general, capital programs are financed from the Airport Trust Fund and operational expenses (e.g., air traffic controllers) are financed from a mix of General Fund and Airport Trust Fund revenues. The Airport Trust Fund taxes were last imposed during the period from August 27, 1996, through December 31, 1996. Receipts from these taxes that were received in the Treasury Department before January 1, 1997, are authorized to be deposited in the Airport Trust Fund.

Recently, it was learned that the Treasury Department, which credits revenues to the Airport Trust Fund based on estimated receipts, has credited the Airport Trust Fund approximately $1.2 billion of tax receipts from transportation sold during the months September, October, and November, 1996, which has not as yet been received by the Treasury Department. The delay in receipts was caused by air carriers that (with Internal Revenue Service approval) delayed remitting taxes collected from their customers during this period until the air carriers file their quarterly excise tax returns for the fourth quarter of 1996 on February 28, 1997. The Treasury Department now must withdraw these amounts from the Airport Trust Fund.

As a result of this reduction in the Airport Trust Fund's balance, the uncommitted monies in the Trust Fund will be sufficient only to fund the FAA's operating expenses through the end of the 1997 fiscal year, plus capital programs (at previously anticipated levels) through March 1997. Further, because this information reflects only the best available estimates and because of provisions of certain contracts for multiple phase projects, the FAA may be required to stop making new capital commitments and to begin providing notice that it intends to terminate other contracts by March 1, 1997, or earlier, absent legislative action.

By reinstating both the prior-law excise taxes and the authority to transfer tax revenues to the Airport Trust Fund, the bill will enable the FAA to avoid possible shut-down of its capital programs and to finance the agency's activities and programs at least through the end of the 1997 fiscal year.

C. Legislative History

COMMITTEE BILL

S. 279 was introduced by Senators Roth and Moynihan on February 5, 1997. The bill was considered in a Committee on Finance markup on February 5, 1997, and was ordered favorably reported by unanimous voice vote.

LEGISLATIVE HEARING

The Committee on Finance held a public hearing on February 4, 1997, on the effects on the FAA budget of the expired air transportation excise taxes and of the recently discovered information regarding the deposit of such taxes collected by the air carriers from consumers during the months of September, October, and November 1996. The hearing also received testimony on the issue of possible restructuring of aviation excise taxes.

II. EXPLANATION OF THE BILL

Prior and Present Law

TAX RATES

Before January 1, 1997, excise taxes were imposed on commercial air passenger and freight transportation and on fuels used in general aviation (i.e., transportation on non-common carrier aircraft which is not for hire) to fund the Airport Trust Fund. The Airport Trust Fund was established in 1970 to finance a major portion of the costs of the Federal Aviation Administration (the "FAA") services and grant programs for State and local government airports. Before establishment of the Airport Trust Fund, Federal aviation expenditures were financed from general revenues; General Fund domestic air passenger and fuels taxes were imposed during this period. The structure of the Airport Trust Fund excise taxes has remained generally unchanged, except for rates, since 1970.

Before 1997, the Airport Trust Fund excise taxes included three taxes on commercial air transportation:

(1) A 10-percent excise tax on domestic air passenger transportation;

(2) A $6 per person international air passenger departure tax; and

(3) A 6.25-percent domestic air freight excise tax.

During the same period, general aviation (e.g., corporate aircraft) was subject to Airport Trust Fund excise taxes on the fuels it used rather than the commercial aviation passenger ticket and freight excise taxes. The Airport Trust Fund rates for these excise taxes were 17.5 cents per gallon for jet fuel and 15 cents per gallon for aviation gasoline.

COLLECTION AND DEPOSIT OF TAX

The air passenger ticket and freight excise taxes are collected from passengers and freight shippers by the commercial air carriers. The air carriers then remit the funds to the Treasury Department; however, the air carriers are not required to remit monies immediately. Excise tax returns are filed quarterly (similar to annual income tax returns) with taxes being deposited on a semi-monthly basis (similar to estimated income taxes). For air transportation sold during a semi-monthly period, air carriers may elect to treat the taxes as collected on the last day of the first week of the second following semi-monthly period.[1] Under these "deemed collected" rules, for example, the taxes on air transportation sold between October 1 and October 15, are treated as collected by the air carriers on or before November 7. These amounts generally must be deposited with the Treasury by November 10. Thus, on average, revenues from commercial air passenger transportation generally are not received by the Federal Government until approximately one month after the air carrier actually sells the transportation.

Like income tax withholding and estimated tax payments, the excise taxes contain payment safe harbors for avoiding underpayment penalties. In general, Treasury Department regulations provide that commercial air carriers are not subject to underpayment penalties if their semi-monthly deposits of passenger ticket and freight waybill taxes for a quarter equal at least the amount of taxes they were required to remit during the second preceding calendar quarter (the "look back" rules). For example, air carriers generally would not be subject to underpayment penalties if their semi-monthly deposits for the fourth quarter (October 1 through December 31) equaled at least the amount they were required to remit during the second quarter (April 1 through June 30) of the same year.

In a general information letter to the Air Transport Association of America, dated August 30, 1996, the Internal Revenue Service advised the air carriers that, notwithstanding that no excise taxes were required to be remitted during a look back quarter, applicable Treasury Department regulations permitted the air carriers to continue to avail themselves of the safe harbor and avoid remitting taxes collected from consumers during September, October, and November of 1996 until the air carriers file their quarterly excise tax returns for that period on February 28, 1997. (Similarly, the air carriers are expected to retain most taxes collected from consumers during December 1996 until their excise tax returns for the first quarter of 1997 are due on May 31, 1997.)

TRUST FUND DEPOSITS

The Airport Trust Fund receives gross receipts attributable to the excise taxes described above. Present law provides that taxes received by the Treasury Department through the end of the period when the taxes were last imposed (i.e., through December 31, 1996) are deposited in the Airport Trust Fund. Taxes received after December 31, 1996, may not be transferred to the Airport Trust Fund under present law.

The Treasury Department credited the Airport Trust Fund with approximately $1.2 billion based on incorrect estimates of excise tax deposits. Subsequently, the Treasury learned that the air car-

[1] Air carriers generally make this election because it allows them to delay remitting tax beyond the date when remittance otherwise would be required.

riers would not remit taxes attributable to the fourth quarter of 1996 to the Treasury until February 28, 1997. The Treasury Department plans to reverse this error. As a result, the combination of the remaining uncommitted balance in the Airport Trust Fund and General Fund appropriations available to the FAA are believed to be sufficient only to support the FAA's operational expenses through the 1997 fiscal year and to allow new capital commitments (assuming previously anticipated commitment levels) to be made through March 1997. However, because best available estimates of the effect of this error on the FAA budget do not include any estimates of the costs of terminating certain multiple phase contracts, the FAA may have to stop making new commitments and begin notifying contractors of its intent to terminate multiple phase contracts on March 1, 1997, or earlier, absent legislative action.

Explanation of Provisions

REINSTATE AIR TRANSPORTATION EXCISE TAXES

The bill reinstates the air transportation excise taxes that expired after December 31, 1996, during the period beginning seven days after the date of enactment and ending after September 30, 1997.

TRANSFER REVENUES TO THE AIRPORT TRUST FUND

The bill authorizes the Treasury Department to transfer to the Airport Trust Fund receipts attributable to excise taxes described above that are imposed on commercial and general aviation. This will permit transfer of receipts attributable to taxes imposed both during the period August 27, 1996, through December 31, 1996, and during the period beginning seven days after the date of enactment.

MODIFY TREASURY DEPARTMENT TAX DEPOSIT REGULATIONS

To prevent a delay in depositing tax similar to that which occurred with respect to the fourth quarter of 1996, the provisions of Treasury Department regulations providing an exception to penalties for underpayment of estimated excise taxes based on a look-back period will be made inapplicable when tax was not imposed throughout the look-back period. In such a case, taxpayers could continue to use a present alternative safe harbor that provides that no underpayment penalty is imposed as long as the taxpayer has paid at least 95 percent of the current quarter's liability.

Effective Date

The provisions reinstating the commercial air transportation excise taxes are effective for (1) transportation beginning during the period beginning seven days after the date of enactment and ending after September 30, 1997, and (2) amounts paid during such period for transportation beginning after September 30, 1997. If the air transportation excise taxes are not extended for transportation occurring after September 30, 1997, refunds would be provided for any taxes paid on passenger and freight transportation purchased before October 1, 1997, for transportation that occurs at a time when the taxes are not in effect. No tax is imposed on any payment made before seven days after the date of enactment (other than certain payments for freight transportation made between related parties), even if the transportation occurs during the period beginning seven days after the date of enactment and ending after September 30, 1997.

The provisions reinstating the general aviation gasoline excise tax are effective for gasoline removed during the period beginning seven days after the date of enactment and ending after September 30, 1997. The provision reinstating the general aviation jet fuel excise tax is effective for fuels sold by producers during the same period. Floor stocks taxes are imposed on these fuels held beyond the removal or producer level on the date which is seven days after the date of enactment.

The provisions relating to transfer of receipts to the Airport Trust Fund and the modification of the Treasury Department's excise tax deposit regulations are effective on the date of enactment.

For any transportation beginning before the date of enactment, present law continues to apply.

III. BUDGET EFFECTS OF THE BILL

A. Committee Estimates

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the bill as reported.

The bill, as reported, is estimated to increase net budget receipts by $2.7 billion for fiscal years 1997 and 1998. (See the following revenues table.)

Estimated Budget Effects of an Extension of the Airport and Airway Trust Fund Excise Taxes Through Sept. 30, 1997; Effective tp7data DOE [1]

[In millions of dollars; fiscal years 1997–2007]

1997	2,730
1998	−54
1999	....
2000	....
2001	....
2002	....
2003	....
2004	....
2005	....
2006	....
2007	....
1997–2002	2,676
1997–2007	2,676

[1] tp7data DOE=tickets purchased 7 days after date of enactment for travel 7 days after date of enactment.

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

B. Budget Authority and Tax Expenditures

BUDGET AUTHORITY

In compliance with section 308(a)(1) of the Budget Act, the Committee states that the provisions of the bill as reported involve no new or increased budget authority.

TAX EXPENDITURES

In compliance with section 308(a)(2) of the Budget Act, the Committee states that the provisions of the bill as reported involve no new or increased tax expenditures.

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has submitted the following statement on this bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 5, 1997.

Hon. WILLIAM V. ROTH, Jr.
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office and the Joint Committee on Taxation (JCT) have reviewed the "Airport and Airway Trust Fund Reinstatement Act of 1997," as ordered reported by the Senate Committee on Finance on February 5, 1997. The bill would reinstate the Airport and Airway Trust Fund excise taxes through September 30, 1997. The JCT estimates that this bill would increase governmental receipts by $2.730 billion in fiscal year 1997 and would decrease revenues by $0.054 billion in fiscal year 1998. The revenue effects of the bill are summarized in the table below.

REVENUE EFFECTS OF THE AIRPORT AND AIRWAY TRUST FUND REINSTATEMENT ACT OF 1997

[By fiscal year, in billions of dollars]

	1997	1998	1999	2000	2001	2002–2007
Proposed changes	2.730	−0.054	0.000	0.000	0.000	0.000

In accordance with the requirements of Public Law 104–4, the Unfunded Mandates Reform Act of 1995, JCT has determines that the bill contains an intergovernmental mandate. The provision to reinstate the Airport and Airway Trust Fund excise taxes through September 30, 1997, imposes a federal intergovernmental mandate because State, local, and tribal governments will be required to pay the requisite taxes for commercial air travel by their employers. JCT estimates that the direct costs of complying with this federal intergovernmental mandate will not exceed $50 million in any of the first five fiscal years.

In addition, JCT has determined that the bill contains a federal private sector mandate. The bill would impose direct costs on the private sector of more than $100 million in fiscal year 1997. The JCT estimates the direct mandate cost of the tax increase in the bill would total $2,730 million in 1997, as shown below:

FEDERAL PRIVATE SECTOR MANDATES

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001
Direct cost of tax increase	2,730	−54	0	0	0

Please refer to the enclosed letter for a more detailed account of these mandates.

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting receipts or direct spending through 1998. Because the bill would affect receipts, pay-as-you-go procedures would apply to the bill. There effects are summarized in the table below.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1997	1998
Changes in receipts	2,730	−54
Changes in outlays	Not Applicable	

If you wish further details, please feel free to contact me or your staff may wish to contact Stephanie Weiner.

Sincerely,

JUNE E. O'NEILL, *Director.*

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, February 5, 1997.

Mrs. JUNE O'NEILL,
Director, Congressional Budget Office,
U.S. Congress, Washington, DC.

DEAR MRS. O'NEILL: We have reviewed the provision approved by the Senate Finance Committee on February 5, 1997, to extend the Airport and Airway Trust Fund excise taxes through September 30, 1997. In accordance with the requirements of Public Law 104–4, the Unfunded Mandates Reform Act of 1995 (the "Unfunded Mandates Act"), we have determined that this provision contains Federal private sector and intergovernmental mandates. The attached revenue table reflects amounts that are no greater than the aggregate estimated amounts that the private sector will be required to spend in order to comply with the Federal private sector mandates imposed by the provision.

In addition, this provision imposes a Federal intergovernmental mandate because State, local, and tribal governments will be required to pay the requisite taxes for commercial air travel by State, local, and tribal government employees. The staff of the Joint Committee on Taxation estimates that the direct costs of complying with this Federal intergovernmental mandate will not exceed $50,000,000 in either the first fiscal year or in any of the 4 fiscal years following the first fiscal year.

If you would like to discuss this matter in further detail, please feel free to contact me. Thank you for your cooperation in this matter.

Sincerely,

KENNETH J. KIES, *Chief of Staff.*

IV. VOTE OF THE COMMITTEE

In compliance with paragraph 7(b) of the Rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the vote of the motion to report the bill. The bill was ordered favorably reported, without amendment, by unanimous voice vote on February 5, 1997, with a quorum present.

One proposed amendment by Senator Graham to extend the Airport Trust Fund excise taxes through December 31, 1997 was defeated by voice vote.

V. REGULATORY IMPACT AND OTHER MATTERS

A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the possible regulatory impact that might be incurred in carrying out the bill as reported.

IMPACT ON INDIVIDUALS AND BUSINESSES

The bill reinstates the Airport Trust Fund excise taxes that were in effect before January 1, 1997, for the period beginning seven days after the date of enactment through September 30, 1997. This will involve imposition and collection of the air passenger and air freight excise taxes by commercial air carriers as well as the timely remittance of the excise taxes to the Federal Government. Depending on whether these excise taxes are partially or fully passed on to consumers in the price, the consumers may or may not incur higher air fares during the tax extension period.

Likewise, the reimposition of the excise taxes on noncommercial aviation may or may not result in some price increase on noncommercial aviation users, depending on price competitive factors now and since the prior taxes expired on January 1, 1997.

IMPACT ON PERSONAL PRIVACY AND PAPERWORK

The bill as reported will have no impact on personal privacy. The reinstatement of the Airport Trust Fund excise taxes will result in the continuation of filing quarterly excise tax returns and semimonthly deposits by commercial air carriers and by users of noncommercial aviation fuels.

B. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the provisions to extend the Airport and Airway Trust Fund excise taxes through September 30, 1997, impose a Federal mandate on the private sector and a Federal intergovernmental mandate. The costs required to comply with the Federal private sector mandate generally are no greater than the revenue estimate for the provisions. The provisions enable the FAA to avoid possible shutdown of its capital programs and to finance the agency's activities and programs at least through the end of the 1997 fiscal year. The Committee believes these benefits of the provisions are greater than the costs required to comply with the Federal mandates contained in the bill.

The provisions to reinstate the Airport and Airway Trust Fund taxes through September 30, 1997, impose a Federal intergovernmental mandate because State, local, and tribal governments will be required to pay the requisite excise taxes for commercial air travel by State, local, and tribal government employees. The staff of the Joint Committee on Taxation estimates that the direct costs of complying with this Federal intergovernmental mandate will not exceed $50,000,000 in either the first fiscal year or in any one of the 4 fiscal years following the first fiscal year. The Committee intends that the Federal intergovernmental mandate be unfunded because the Airport and Airway Trust Fund excise taxes are intended to fund the maintenance of U.S. airports and airways and the Committee believes that it is appropriate for State, local, and tribal governments to bear their allocable share of the responsibility for such funding.

The provisions reinstating the Airport and Airway Trust Fund excise taxes are imposed both on the private sector and on State, local, and tribal governments and, thus, do not affect the competitive balance between such governments and the private sector.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).