Amendment List

Airport and Airway Trust Fund Reauthorization Act of 2011

February 8, 2011

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Cantwell Amendment #1 to the Airport and Airway Trust Fund Reauthorization Act of 2011

Short title: To amend the Internal Revenue Code of 1986 to allow tax-exempt bond financing for fixed-wing emergency medical aircraft.

Description of Amendment: Under current law, tax-exempt bonds cannot be issued for the purchase of any "*airplane*, skybox or other privacy luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises."

The law has been interpreted to exclude the purchase of new fixed-wing planes to provide air ambulance services, but the purchase of helicopters—which are not airplanes—is permitted.

The Cantwell amendment would clarify that the general restriction against the use of tax-exempt bonds for purchasing an airplane does not apply in the case of planes that are equipped for and exclusively dedicated to providing acute care emergency medical services.

The proposal would be effective for bonds issued after date of enactment.

Cantwell Amendment #2 to the Airport and Airway Trust Fund Reauthorization Act of 2011

Cosponsors: Senator Kerry

Short title: To allow the IRA rollover of amounts received in airline carrier bankruptcy.

Description of Amendment: Current law (as passed in the Worker, Retiree, and Employer Recovery Act of 2008) allowed certain airline workers to rollover airline bankruptcy settlement payments into a Roth Individual Retirement Account.

The provision permits qualified airline employees to rollover bankruptcy settlement amounts to a traditional IRA, and to re-characterize a prior contribution of a settlement amount to a Roth IRA as a contribution to a traditional IRA.

Under the provision, a qualified airline employee may contribute any portion of an airline payment amount to a traditional IRA within 180 days of receipt of such amount (or, if later, within 180 days of enactment of the provision). Such a contribution is treated as a qualified rollover contribution to the IRA.

An airline payment amount is defined as any payment of any money or other property payable by a commercial passenger airline to a qualified airline employee: (1) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007; and (2) in respect of the qualified airline employee's interest in a bankruptcy claim against the airline carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount. An airline payment amount shall not include any amount payable on the basis of the carrier's future earnings or profits.

A qualified airline employee is an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which (1) is qualified under section 401(a) and (2) was terminated or became subject to the benefit accrual and other restrictions applicable to plans maintained by commercial passenger airlines pursuant to paragraphs 402(b)(2) and (3) of the Pension Protection Act.

The proposal is effective with respect to contributions to an IRA made after enactment with respect to airline payment amounts paid before, on, or after such date.

Nelson Amendment #1 to the Airport and Airway Trust Fund Reauthorization Act of 2011

Short Title: Citrus Disease Research and Development Trust Fund Act

Description of Amendment:

The amendment modifies the Trade Act of 1974 to establish a Citrus Disease Research and Development Trust Fund, consisting of revenues from duties paid on imported citrus and citrus products. The purpose of the amendment is to establish a dedicated source of funding for scientific research aimed at addressing diseases, invasive pests, and other challenges to the U.S. citrus industry and providing for the dissemination of research findings to the citrus industry.

The Secretary of the Treasury shall transfer to the Trust Fund amounts that are attributable to the duties collected on articles that are citrus and citrus products classifiable under chapters 8, 20, 21, 22, and 33 of the Harmonized Tariff Schedule of the United States. The amount transferred to the Trust Fund in any fiscal year may not exceed the lesser of -- (A) an amount equal to 1/3 of the amount attributable to the duties received on the articles above, or (B) $30,000,000.

The operation of the Trust Fund is to be overseen by a board of nine members composed of representatives of the U.S. citrus industry, with the composition weighted to correspond approximately with production volumes on a state basis. The scientific research supported by the Trust Fund is aimed at assisting all citrus producers and address challenges they face, regardless of their location.

In order to ensure that the tariffs diverted for this purpose are administered in a manner to support the objectives of this legislation, the Secretary of Agriculture shall be given oversight and audit authority to monitor the operation of the trust fund. The Secretary of the Treasury, in consultation with the Secretary of Agriculture, shall prepare and submit to Congress an annual report on the financial condition and the results of the operations of the Trust Fund.
The Trust Fund shall terminate on December 31 of the fifth full calendar year that begins after the year of the date of the enactment of the legislation.

The cost of the Citrus Disease Research and Development Trust Fund act is offset by extending customs user fees for an amount of time necessary to fully offset the cost of the Trust Fund.

Nelson Amendment #2 to the Airport and Airway Trust Fund Reauthorization Act of 2011

Short Title: Algae-based Renewable Fuel Promotion Act

Description of Amendment:

The amendment clarifies that algae-based renewable fuels qualify for existing biofuel tax incentives. Current federal tax policy discourages the production of algae-based fuels by failing to provide a level playing field relative to other alternative and renewable fuels. Many of the existing renewable fuel tax incentives were added to the tax code well before recent technological developments demonstrated the extraordinary promise of algae as a renewable fuel source. In order to ensure that federal tax incentives stimulate the most promising and environmentally beneficial energy sources available, the tax code should be updated to include algae-based fuel production.

The amendment modifies the $1.01 per gallon income tax credit for cellulosic biofuels to cover algae-based biofuels. The bill retains the current law December 31, 2012 expiration date for the cellulosic biofuel producer credit. Second, the amendment extends the capital investment tax incentives for cellulosic biofuels to cover equipment used to produce algae-based fuels. Specifically, the amendment modifies the 50 percent bonus depreciation provision for property used to produce cellulosic biofuel by extending the provision to qualified algae-based biofuel plant property. The bill retains the current law requirement that qualified property must be placed in service before January 1, 2013.

Nelson Amendment #3 to the Airport and Airway Trust Fund Reauthorization Act of 2011

Short Title: Commercial Space Jobs and Investment Act

Description of Amendment:

The amendment directs the Secretary of Commerce to designate up to five Commercial Space Enterprise Zones (CSEZs) in the United States based on applications submitted by individual states. In order to qualify for a CSEZ designation, the nominated area must be experiencing high unemployment in space-related jobs, must have the capacity – human and capital – to effectively use federal incentives for commercial space development, and must have a unified strategy for increasing U.S. competitiveness in the commercial space sector.

Once designated as a CSEZ, the qualifying region will be eligible for federal incentives designed to promote job creation and investment in the commercial space sector. The CSEZs will act as magnets for commercial space projects that can generate new discoveries and technologies. The CSEZ designation will help bring stakeholders together and ensure critical support from local communities, the private sector, and the federal government.

The four major CSEZ incentives include: (1) an investment tax credit for patient, long-term investment in a commercial space business, (2) an enhanced research and development tax credit for commercial space research expenses, (3) the accelerated depreciation of commercial space equipment, and (4) a tax credit for commercial space education and job training programs provided by employers. Each of the incentives is described in greater detail below:

- **Commercial space capital formation credit**. The amendment creates an investment tax credit equal to 20 percent of the equity investment in a domestic corporation or partnership whose principal trade or business is the commercial development of space. In order to encourage patient, long-term investment, the credit is recaptured if the equity investment is held less than five years.

- **Commercial space research credit**. The amendment increases the regular R&D tax credit from 20 to 30 percent for qualified commercial space research expenses. Qualified expenses include both in-house and contract commercial space research.

- **Bonus depreciation for commercial space equipment**. The amendment provides a special 50-percent depreciation deduction for the construction, development, or acquisition of commercial space property. Qualifying commercial space property includes private space launch vehicles, reentry vehicles, launch support facilities, and space recovery support facilities, and other space transportation infrastructure.

- **Commercial space education and job training tax credit**. The amendment provides employers with a tax credit of up to $2,000 per participating employee for expenses related to maintaining a commercial space educational assistance program for employees.

Snowe Amendment #1_ - Repeal of 1099 Mandate on Rental Real Estate

Snowe Amendment #1 to the Airport and Airways Trust Fund Reauthorization Act of 2011, to repeal the mandate from the Small Business Jobs Act that rental real estate owners must file forms 1099 for goods and services.

Short Summary: Current law (as passed in the Patient Protection and Affordable Care Act (PPACA) PL 111-148) requires the filing of forms 1099 for all business to business purchases of goods and services. The Small Business Jobs Act (SBJA) (PL 111-240) expanded the initial mandate on 1099 to include rental real estate. The Stabenow Amendment to the FAA Authorization Act (SA 9, Senate roll call vote 8) repealed the initial 1099 mandate by a vote of 81-17 but it did not repeal the subsequent expansion of the mandate. The rental real estate community cannot be singled out with this onerous 1099 mandate due to an oversight of Congress. While the Stabenow Amendment repealed the 1099 mandate that would take effect January 1, 2012, **the rental real estate mandate included in the Small Business Jobs Act already became effective on January 1, 2011** and so the unwary are already in violation and no regulations have been promulgated by the IRS.

Amendment: The amendment completes the repeal of the new 1099 information reporting mandate. On February 2, the Senate voted 81-17 to repeal the mandate on businesses to provide forms 1099 for the purchase of goods and services exceeding $600 in value. This mandate was enacted in the PPACA. Subsequently, the SBJA (PL 111-240) expanded the initial mandate on 1099 to include rental real estate property owners who are not actively in the business of being landlords.

Professionals who are engaged in the business of renting real property must file 1099s for service providers but this requirement does not extend to purchases of goods. The only taxpayers who would be subject to the 1099 mandate for goods and services would be property owners who are not professional landlords. Examples of people who would be solely subjected to the goods and services mandate for 1099s include those who rent a vacation home, those who have moved from a condo to a house and now rent the condo, and retailers on Main Street who rent the second floor of their building to another small business. To make matters worse, this mandate became effective for payments made after December 31, 2010 yet no regulations have been promulgated by the IRS, and the SBJA more than doubled the penalties for non-compliance with the 1099 mandate.

The SBJA did include an exception for property owners who receive only "minimal amounts of rental income" or "for whom the requirements would cause hardship" yet because no regulations have been promulgated these standards are unknown.

Cost/Offset: $2.546 billion over 10 years.

Snowe Amendment #2 - Repeal of 3% Withholding on Government Contracts

Snowe Amendment #2 to the Airport and Airways Trust Fund Reauthorization Act of 2011, to repeal the 3% withholding mandate on government contracts at the local, state and federal level.

Short Summary: The Amendment repeals IRC §3402(t), enacted in the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) (P.L. 109-222) which mandates that federal, state, and local governments withhold 3% of almost all of their payments to private contractors including Medicare provider payments, farm payments, defense contracts and certain grants.

Amendment:

The amendment repeals IRC §3402(t), enacted in the TIPRA which mandates that federal, state, and local governments withhold 3% of almost their payments to private contractors including Medicare provider payments, farm payments, defense contracts and certain grants.

Compliance with this law will impose billions of dollars of compliance costs on both the public and private sectors, with a disproportionate impact on small businesses. These compliance costs will far exceed projected tax collections. For instance, just one federal agency, the Department of Defense, estimated that it would cost over $17 billion in the first five years to comply, and the original revenue estimate from TIPRA projected that only $6.977 billion would be collected over a 10 year window. This is a case of spending a dollar to collect a dime, which is counter-productive for addressing the nation's deficits.

In the American Recovery and Reinvestment Act (ARRA) Congress delayed for one year the implementation of this mandate in recognition of the exorbitant expenditures that will be necessary to implement accounting systems and hire new compliance employees at a time when the those resources were desperately needed for productive uses. The provision now becomes effective on January 1, 2012 and state, local and federal government agencies are faced with these implementation compliance burdens in 2011. This is an unfunded mandate on state and local governments.

The revenue from the provision is concentrated in the first year after implementation because it requires 3 percent of payments on government contracts to be remitted to the IRS. In subsequent years, the amounts withheld will be refunded to contractors but the withholding will restrict cash flow needed for day-to-day business operations and investments. This cash flow restriction is particularly onerous for small businesses, making them less able to compete for contracts.

Cost: $10.212 billion over 10 years (estimate from JCX-7-09)

ENSIGN AMENDMENT #1 ON SMALL AIR TOUR OPERATORS

Ensign Amendment #1 to the Airport and Airways Trust Fund Reauthorization Act of 2011

Short Title: To preserve fairness to small air tour operators.

Description of Amendment: According to the Chairman's Mark, "Under section 4281 of the Internal Revenue Code, transportation by aircraft weighing 6,000 pounds or less is exempt from certain AATF taxes unless the aircraft operates on an 'established line,' defined by IRS as a route 'operated with some degree of regularity between definite points.' The bill repeals the exemption for transportation by small aircraft operating on non-established lines. The current-law exemption for flights operated for the sole purposes of sightseeing is unchanged by the proposal."

Unfortunately, small air tour operators have come to rely upon the current law and are concerned about this change that may require new regulation and interpretation by the IRS. Specifically, air tour operators have come to rely upon the interpretation that they are not "established lines" and prefer that this language stay in place. Accordingly, Senator Ensign proposes to strike the change in the bill and replace it with the following language intended to address the concern by the Chairman about excise tax avoidance by very light turbojet air taxis that rely upon and use FAA resources.

Section 4281 [current law with change underlined]

The taxes imposed by section 4261 and 4271 shall not apply to transportation by an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less, except when such aircraft is operated on an established line <u>or when such aircraft is a turbojet powered airplane.</u>

Coburn Amendment #1 to the "Airport and Airway Trust Fund Reauthorization Act of 2011" – To Ensure the Solvency of the Airport and Airway Trust Fund by Limiting Appropriations of Expected Revenues.

Short Title: To Ensure the Solvency of the Airport and Airway Trust Fund

Description of Amendment: According to recent testimony by the Government Accountability Office (GAO), the Airport and Airway Trust Fund (AATF) has been drained over the last ten years.[1] Specifically, after several years of incorrect AATF revenue forecasts (which are based off of revenues in the first quarter of the preceding fiscal year) the uncommitted balances (i.e. reserves) have been reduced from over $7.35 billion in FY01 to just $770 million in FY10. Even in years when trust fund receipts increased, the uncommitted balances have been reduced (with the exception of last year when a large General Fund transfer resulted in a $400 million increase).

As a result of the recent instability of the AATF, Congress has increased General Fund transfers to make up for the shortfall. Over the last ten years, these transfers have increased by 60 percent, including a $3.17 billion increase over just the past two years, while AATF revenues have only increased by 12 percent. In FY10, 34 percent of FAA expenditures came from the General Fund ($5.29 billion). Congress has similarly used such transfers to supplement revenue shortfall for the Highway Trust Fund three times in the past three years.

This amendment would require that not more than 90 percent of the expected AATF revenues are appropriated each year, ensuring somewhat of a buffer in case revenue projections are overly optimistic. This amendment was suggested as a possible solution to ensuring the solvency of the trust fund by the GAO and presented at the recent Senate Finance Committee Hearing on the status of the trust fund on February 3, 2010 by Dr. Dillingham – Director of Physical Infrastructure at GAO.

[1] Dillingham, Gerald "AIRPORT AND AIRWAY TRUST FUND: Declining Balance Raises Concerns over Ability to Meet Future Demands," Government Accountability Office, February 3, 2011, http://www.gao.gov/new.items/d11358t.pdf

This amendment would modify 26 USC 9502(e), which already places limitations on transfers to the trust fund. Specifically, if any appropriations under section 9502(d)(1) in aggregate exceed the 90 percent level, transfers to the AATF would also be shut down. The Finance Committee has this authority because the Committee has authority over taxes going into trust funds.

AMENDMENT NO.____ Calendar __

Purpose: To amend the Internal Revenue Code of 1986 to protect the Airport and Airway Trust Fund balances.

IN THE SENATE OF THE UNITED STATES—112TH CONG.,1ST SESS.

S. 223

To modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide for modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. Coburn

Viz:

At the end of title VIII, add the following:

SEC. ___. PROTECTION OF AIRPORT AND AIRWAY TRUST FUND BALANCES.

(a) IN GENERAL.—Paragraph (1) of section 9502(e) of the Internal Revenue Code of 1986 is amended by inserting "or, in the case of any expenditure described in subsection (d)(1), which exceeds in the aggregate for any fiscal year 90 percent of the receipts of the Airport and Airway Trust Fund for such fiscal year as estimated by the Secretary of the Treasury" after "this section".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fiscal years beginning after the date of the enactment of this Act.

Coburn Amendment #2 to the "Airport and Airway Trust Fund Reauthorization Act of 2011" – To reduce the maximum federal cost-share of the Airport Improvement Program to 75 percent.

Short Title: To Improve the Effectiveness of the Airport Improve Program

Description of Amendment: This amendment would reduce the maximum potential federal cost-share for most Airport Improvement Program (AIP) projects at non-primary airports from 90 to 75 percent. Current law allows for federal cost-shares of up to 90 percent for non-primary airports (49 USC 47109(a)). This high federal cost-share has contributed to dozens of low-priority AIP projects that crowd out more important aviation projects and prohibit effective leveraging of valuable AIP funds.

The goal of this amendment is to discourage low-priority, wasteful aviation projects at non-primary airports that would not be funded by increasing the non-federal cost share to just 25 percent. These projects siphon away funds from more important projects at other airports, such as NextGen technology projects at congested airports. This amendment would likely reduce federal spending in the long-term and increase the sustainability of the Airport and Airways Trust Fund.

One example of waste under the current cost-share is the Pellston Regional Airport in northern Michigan, which averaged 66 departing passengers a day in 2009, yet, received $7.5 million from federal taxpayers to build a 34,500-square-foot, lodge-style building with three stone fireplaces, ticket counters with stone facade and exposed log beams decorating the business center, observation deck and lounge with picture windows. State and local costs totaled $900,000. Since the terminal opened in 2004, the number of departures has dropped 22 percent and the number of departing passengers has decreased by 32 percent However, according to the airport manager that's ok because, "It's every airport's job to get as much as it can for itself."[2]

This amendment would not apply to airports specifically exempted under 49 USC 47109 in subsections (b), (c), & (d).

[2] Frank, Thomas, "72-passenger-a-day airport gets $7.5M for terminal," December 14, 2009, USA TODAY, http://www.usatoday.com/travel/flights/2009-12-13-airports-side_N.htm