

1 EXECUTIVE BUSINESS MEETING TO CONSIDER A CHAIRMAN'S MARK
2 ENTITLED, "AIRPORT AND AIRWAY TRUST FUND REAUTHORIZATION
3 ACT OF 2011"

4 TUESDAY, FEBRUARY 8, 2011

5 U.S. Senate,
6 Committee on Finance,
7 Washington, DC.

8 The meeting was convened, pursuant to notice, at
9 9:34 a.m., in room 215, Dirksen Senate Office Building,
10 Hon. Max Baucus (chairman of the committee) presiding.

11 Present: Senators Bingaman, Kerry, Wyden, Stabenow,
12 Cantwell, Nelson, Carper, Cardin, Hatch, Grassley, Snowe,
13 Kyl, Crapo, Ensign, Cornyn, Coburn, and Thune.

14 Also present: Democratic Staff: Russ Sullivan, Staff
15 Director; Amber Cottle, Chief International Trade
16 Counsel; Lily Batchelder, Chief Tax Counsel; Pat
17 Bousliman, Professional Staff; Holly Porter, Tax Counsel;
18 Ryan Abraham, Tax Counsel; and Andrew Fishburn, Detailee.

19 Republican Staff: Mark Prater, Deputy Chief of Staff and
20 Chief Tax Counsel; Chris Campbell, Republican Chief
21 Counsel; Preston Rutledge, Tax Counsel; and Jim Lyons,
22 Tax Counsel.

23 Also present: Thomas Barthold, Chief of Staff of
24 Joint Committee on Taxation; Nick Wyatt, Tax and
25 Nomination Professional Staff Member; John Parcell,
26 Deputy Tax Legislative Counsel, U.S. Department of
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1 Treasury; Josh Levasseur, Deputy Chief Clerk/Historian;
2 and Danielle Edwards, Deputy Clerk.

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM
2 MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

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4 The Chairman. The committee will come to order.

5 Today the committee has before it a Chairman's mark
6 of an original bill entitled, The Airport and Airway
7 Trust Fund Reauthorization Act of 2011. Senator Hatch
8 and I intend to take the product from this mark-up and
9 offer it as an amendment to the FAA reauthorization bill
10 currently pending on the Senate floor.

11 The Aviation Trust Fund finances our aviation
12 infrastructure and operating costs. The fund is
13 supported by taxes on planes, passengers, and parcels
14 that total \$11 billion per year. As we work to modernize
15 our airways, the fund's reauthorization is long overdue.
16 The last long-term reauthorization of the trust fund
17 expired in 2007. Since then, Congress has extended the
18 trust fund 17 times. These short-term extensions have
19 hindered the ability of airports to engage in long-term
20 planning. That is no way to run a railroad or an
21 aviation trust fund.

22 Last week, the committee heard testimony from the
23 Government Accountability Office on the state of the
24 trust fund. GAO described the importance of Next-Gen, a
25 satellite-based means of air traffic control. Next-Gen

1 will help us make better use of our air space. The new
2 technology lets air traffic controllers and pilots know
3 the exact location of aircraft on a real-time basis.
4 Next-Gen will improve aviation safety and efficiency and
5 it will create jobs.

6 The GAO has described the challenges in financing
7 these improvements. This includes an increased share of
8 financing borne by the general fund rather than by the
9 users of the aviation system. We can address some of
10 these challenges through the legislation before us
11 through three key provisions: first, the Chairman's mark
12 sets the general aviation jet fuel tax at 36 per gallon,
13 up from the current rate of about 22 cents; second, the
14 mark classifies fractional aircraft, or planes with
15 multiple owners, as general aviation for tax purposes.

16 In keeping with a goal that funding a modernized
17 system should be shared broadly, the mark establishes a
18 surcharge on fractional fuel of 14.1 cents per gallon;
19 and third, the market establishes an air traffic control
20 system modernization account in the trust fund. This
21 account will receive \$400 million per year through taxes
22 imposed on jet fuel to help fund Next-Gen modernization.

23 The Senate passed a bill with these provisions last
24 year by a vote of 93:0, but that bill expired at the end
25 of last Congress and it did not become law. Today we can

1 take a solid step to reauthorize the trust fund with
2 input from our new committee members, and I urge us to do
3 so.

4 I now recognize Senator Hatch for any opening
5 remarks that he may wish to make.

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1 OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR
2 FROM UTAH

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4 Senator Hatch. Well, thank you, Mr. Chairman. I
5 am happy to be here with you. Last week during our
6 hearing on the Airport and Airway Trust Fund, I said I
7 was going to help you get FAA reauthorization passed. I
8 am having a rough time saying "FAA" because I am so used
9 to saying "FDA" in my other committees. I am glad that,
10 less than a week later, I will have that opportunity to
11 help you.

12 As has already been repeated and noted, this
13 reauthorization has been a long time coming, despite a
14 package being reported more than three years ago from
15 this committee that had the input and approval of
16 significant users of our airport and airway system, long-
17 term reauthorization's language -- beneath the neglect of
18 17 short-term extensions. These 17 extensions have taken
19 the place of better allocation of the costs of sustaining
20 the Airport and Airway Trust Fund.

21 The absence of long-term reauthorization has made it
22 more difficult for the stewards of our airports to budget
23 resources for construction and maintenance. Even people
24 interested in retro quiche recoil at the thought of our
25 antique air traffic control system. I am sure anyone who

1 has spent hours on the tarmac at Chicago O'Hare Airport
2 because of a computer malfunction has thought profoundly
3 about air traffic control modernization.

4 The tax title we are looking at today will help
5 promote the development and implementation of Next-Gen, a
6 satellite-based air traffic control system designed to
7 take the place of the radar-based system we currently
8 depend on. Today we are putting this committee behind a
9 long-term reauthorization of the Airport and Airway Trust
10 Fund.

11 By promoting a better allocation of the burdens of
12 funding our airport and airway system and fostering
13 stability of the recourse that is needed to maintain and
14 improve that system, we are promoting the development of
15 our economy and nurturing the freedom that comes from the
16 ability to travel unimpeded.

17 In addition to reporting the tax title of a FAA
18 reauthorization bill, this meeting serves another
19 purpose, which is to assert the authority and integrity
20 of the Finance Committee. Committee members and their
21 staffs might be unfamiliar with the procedure of a
22 committee mark-up, and that is understandable because
23 mark-up of tax legislation has not happened for quite a
24 while. The last time the Finance Committee marked up
25 substantive tax legislation was in September and October

1 of 2009, and that was a health reform bill.

2 Now, last year was a monster year for tax policy.
3 The bipartisan tax relief of 2001 and 2003 was set to
4 expire, along with several expiring tax provisions
5 commonly referred to as tax extenders. On top of that,
6 under current law the estate tax was set to snap back to
7 its 2001 status, and in the process slash small
8 businesses and family farms with crippling rates. All of
9 these issues were dealt with on a short-term basis, but a
10 Finance Committee mark-up was not part of that process.

11 I suppose the best way to sum up my comments is to
12 advise committee members and their staffs to carefully
13 observe the procedure of this mark-up, because my plan is
14 for all of us to be doing this any time a revenue bill,
15 or any bill that falls within this great committee's
16 jurisdiction, is scheduled to be debated on the Senate
17 floor.

18 Last week, our eminent Chairman noted the lengths of
19 time it has taken both of us to ascend to our respective
20 positions of Ranking Member and Chairman of this
21 committee. The massive scope of this committee's
22 jurisdiction makes it imperative that those who guide
23 this committee have wisdom attained by years of
24 experience and hard work. Given the long hours put into
25 gaining the experience we have, we are obligated to

1 direct that experience to the betterment of our Nation.

2 That will not happen if we abandon the Finance
3 Committee's jurisdiction, and I personally will not let
4 that happen. I know the distinguished Chairman, I
5 believe, feels the same. Now that we have been blessed
6 to become members of the Finance Committee, it is
7 necessary for every single one of us on both sides to
8 leverage our experience, along with the authority of the
9 Finance Committee, to move this country forward. That is
10 what we are doing now by considering the legislation
11 before us. I am grateful to our Chairman for scheduling
12 this mark-up and I want to thank all of you for your
13 commitment to making this committee work.

14 Thank you, Mr. Chairman.

15 The Chairman. Thank you, Senator. You made a
16 statement which I very much agree with, and you and I
17 have discussed this several times. I am glad that we are
18 both in agreement with it. That is, we are going to have
19 mark-ups. We are going to avoid going to the floor under
20 Rule 14 as much as we possibly can, because I personally
21 believe the more we have mark-ups, the more likely it is
22 we will have a better product.

23 I also believe that tends to minimize partisanship
24 because when we are working, we are working, not
25 speaking, not giving speeches. I thank you very much,

1 especially Senator Hatch, for that statement.

2 Senator Hatch. Thank you.

3 The Chairman. Do any other Senators wish to make
4 any statements?

5 Senator Nelson. Mr. Chairman?

6 The Chairman. Senator Nelson?

7 Senator Nelson. Mr. Chairman, you are waiting
8 until we get a quorum?

9 The Chairman. Waiting until we get eight so that I
10 can lay down the modified mark and we can operate at a
11 committee. At that point, too, the chairman of the Joint
12 Committee on Taxation, Mr. Barthold, will explain the
13 modified mark. But we do need a quorum to pass out the
14 bill. We could pass it by voice vote, but we still need
15 a quorum.

16 Senator Nelson. Sure. Then my inquiry would be,
17 since we have got some time until we get eight, would you
18 want to go ahead and have, in effect, what is the
19 colloquy that you and I are to have --

20 The Chairman. I think that would be a good idea.

21 Senator Nelson [continuing]. About the citrus trust
22 fund.

23 The Chairman. Whatever the Senator wishes.

24 Senator Nelson. All right. May I be recognized?

25 The Chairman. The Senator is recognized.

1 Senator Nelson. At the appropriate time, I will
2 lay down the amendment. Of course, I am not going to
3 offer the amendment because it will be recognized that it
4 is not germane to this bill.

5 Basically we have a problem in the citrus industry,
6 and that is why John Cornyn is a co-sponsor. Any State
7 that grows citrus, there is a disease that has been
8 imported with the ironic name of "greening", for which we
9 know no cure and which kills the citrus tree within five
10 years.

11 This is different from the disease that citrus
12 canker, that you have heard of, which causes blemishes on
13 the fruit but does not degenerate the integrity of the
14 fruit. This disease, greening, is going to put the
15 citrus industry out of business. And by the way, that is
16 not just here, that is anywhere in the world, including a
17 major citrus producer such as Brazil, unless we find a
18 cure.

19 So building on past experience where there have been
20 trust funds that have been set up, such as the Wool Trust
21 Fund set up by the Chairman a decade and a half ago, the
22 Wool Trust Fund is a fund that is created because a
23 tariff is paid into the Federal Government, into this
24 trust fund, by those foreign exporters of wool into the
25 United States. The Chairman had certain purposes for

1 that trust fund to protect the American wool industry.

2 In this case, I am trying to save an industry, not
3 just for the United States, but for the world. What I
4 used to do, was I used to put earmarks in for research to
5 find a cure. Of course, we are beyond earmarks now. So
6 what I am trying to do is to find a dedicated source of
7 revenue, and this tariff that is primarily paid by Brazil
8 to protect the American citrus industry is about \$90
9 million a year.

10 What I am proposing is that we would take about a
11 third of that, or \$30 million a year, of the tariff that
12 would pour into, annually, the Citrus Trust Fund so there
13 would be a dedicated source of revenue that we could find
14 a cure for greening. They have been working on this for
15 several years. They have not found it, any State that
16 has citrus, which is why my colleague from Texas has
17 joined me. Our colleagues from Arizona, our colleagues
18 from California, are clearly going to be very, very
19 concerned about this as well.

20 So, Mr. Chairman, you and I were going to have a
21 colloquy about this. By the way, the Congressional
22 Budget Office has scored this legislation as only
23 costing, over a decade, 10 years, \$132 million. In other
24 words, that is \$132 million that is going to go into the
25 Citrus Trust Fund for the purpose of finding a cure.

1 Now, I understand it is not germane to the bill, but
2 since it is unclear when this committee is going to have
3 an opportunity to consider trade legislation, I want to
4 use the opportunity of this executive session to obtain a
5 commitment from the Chairman and the Ranking Member that
6 when the Senate takes up the trade legislation, either in
7 this committee or on the Senate floor, that we can work
8 together to try to ensure that this Citrus Trust Fund is
9 included.

10 The Chairman. Senator, you have that commitment.
11 I will very much work with you. You have spoken many
12 times about greening. I know it is a huge problem. It
13 is an imported problem. It is one of those invasive
14 species which has raised havoc in this country. When we
15 find the right opportunity, I will certainly work with
16 you.

17 I might also say that, as you mentioned, we do have
18 this little issue of earmarks this year, so the challenge
19 is to find a way to get this thing enacted, dealing with
20 the earmarks issue. It may be written in a way or
21 concluded in some other measure of some kind, because it
22 is a problem. We should not let artificial impediments
23 get in the way of solving a very dread disease in your
24 State. We just have to find some way to address it.

25 Senator Nelson. Well, Mr. Chairman, it is not only

1 the issue of earmarks. I mean, that is one issue. But
2 the certainty of having a dedicated source of revenue
3 that can go to this research is important so that the
4 researchers know that they are not going to be up and
5 down on the amount of money that they can have in order
6 to be able to find a cure. I cannot stress how important
7 this is.

8 As you know, Florida is considered the place of
9 citrus. As a matter of fact, an orange is on our license
10 tag on our cars. Orange juice is a staple on every
11 American breakfast table. Where do you think that came
12 from? That came from the Florida Citrus Commission. So,
13 it is something that is extremely vital to my State, to
14 Arizona, and to Texas, and to California.

15 The Chairman. Thank you, Senator.

16 We will proceed. We now have eight members present.
17 I would like to lay before the committee a modified mark.
18 The mark is now so modified, with our eight members
19 present.

20 The next order of business is for Mr. Barthold to
21 walk through the mark briefly. Mr. Barthold is chief of
22 the Joint Committee on Taxation. Just walk through the
23 modification. You do not have to walk through the whole
24 mark, just the modification.

25 Mr. Barthold. Thank you, Mr. Chairman and Senator

1 Hatch. I will briefly outline the Chairman's
2 modifications that were delivered to your offices
3 yesterday evening.

4 The underlying mark included a termination of the
5 exemption for small aircraft that operate on non-
6 established lines. The Chairman's modification would
7 change that to terminating the exemption only for jet-
8 powered aircraft. Propeller-powered aircraft would
9 retain their exemption as under present law.

10 The Chairman's modification also includes a
11 provision to allow tax-exempt private activity bond
12 financing for fixed-wing emergency medical aircraft.
13 Under present law, all medical aircraft are exempt from
14 fuels excise taxes, both helicopters and airplanes.
15 Helicopters may be bond financed under present law,
16 airplanes may not. The Chairman's modification would
17 have parity between helicopters and airplanes.

18 And lastly, the Chairman's modification also would
19 make some changes to the trust fund provisions of the
20 Code. The Finance Committee and the Code provide
21 expenditure authority as part of the trust fund
22 provisions of the Code. Under present law,
23 appropriations may be made up to 100 percent of the
24 estimated receipts from the dedicated excise taxes.

25 In recent years, actual receipts have sometimes

1 fallen short of the estimated receipts, so appropriations
2 have in fact exceeded the amount of funds that came into
3 the trust fund. The Chairman's modification would place
4 a limit on the amount of appropriations that may be made
5 in any fiscal year from the trust fund to 90 percent of
6 the estimated receipts.

7 That concludes my description of the modification.
8 Of course, I stand ready to answer any questions that
9 members might have about the modification or the
10 underlying mark.

11 The Chairman. Thank you, Tom. I might also say,
12 these modifications are suggestions made by Senators--
13 Senator Ensign, for example, with respect to the
14 exemption for small aircraft and non-established lines.
15 Thank you, Senator, for that contribution. Senator
16 Cantwell, thank you again for the provision allowing tax-
17 exempt private activity bond financing for fixed-wing
18 emergency medical aircraft. That is yours. I want to
19 give you credit for that. And Senator Coburn had a good
20 idea in the 90 percent rule, because sometimes we go
21 overboard, this Congress, and 90 percent would be a good
22 check. So, thank you, Senator, for that.

23 Senator Hatch. Well, I would like to thank
24 Chairman Baucus for his modification to the Chairman's
25 mark, which greatly strengthens the package, while

1 representing how this committee can work constructively
2 in the service of good policy.

3 As the Chairman has mentioned, the modification of
4 the mark contains three worthwhile ideas that strengthen
5 the legislation that we are going to report. The
6 adoption of the Cantwell Amendment #1 corrects for a
7 disparity by which tax-exempt bond financing could be
8 used for helicopters providing emergency medical care,
9 but not for airplanes. The Chairman's modification will
10 correct this disparity and allow tax-exempt financing of
11 airplanes equipped for, and exclusively dedicated to,
12 providing acute care emergency medical services.

13 The second component of the modification fine-tunes
14 the provision in the mark to ensure that it has the
15 impact intended. The current law exemption from the FAA
16 trust fund taxes for aircraft weighing 6,000 pounds or
17 less does not reflect the technological advances allowing
18 for the construction of lightweight jet aircraft. And
19 while the intent of the mark is to make sure all aircraft
20 making use of FAA resources bear a share of the costs,
21 the mark also intends that aircraft used exclusively for
22 sightseeing keep their current law exemption. Senator
23 Ensign's amendment will help protect that exemption.

24 Finally, I want to thank Senator Coburn for
25 contributing the third component for the modification.

1 Over the past 10 years, the uncommitted cash balance
2 remaining in the Airport and Airway Trust Fund at the end
3 of the fiscal year has declined to \$7.3 billion in 2001
4 to \$770 million in 2010. Senator Coburn's common-sense
5 amendment will provide for the long-term fiscal health of
6 the trust fund by providing that only 90 percent of the
7 forecasted revenues for a given fiscal year are made
8 available.

9 Now, the Airport and Airway Trust Fund falls
10 squarely in the jurisdiction of this committee and it is
11 up to us to ensure the long-term health of the trust
12 fund. Senator Coburn's amendment, as incorporated, helps
13 to fulfill that responsibility.

14 So, Mr. Chairman, I am pleased to support your mark,
15 and hope we can pass this through.

16 The Chairman. Thank you, Senator.

17 Are there any further questions by members of the
18 committee of the Joint Committee on Taxation?

19 [No response.]

20 The Chairman. If there are none, I recognize the
21 Senator from Maine.

22 Senator Snowe. Thank you, Mr. Chairman. Thank you
23 again for holding this mark-up to preserve our
24 jurisdiction on the Aviation Trust Fund.

25 I had filed two amendments addressing two

1 significant provisions that would predominantly affect a
2 lot of small businesses and addressing the cost of
3 compliance within the Tax Code. The first amendment is a
4 corollary to the amendment that was offered by Senator
5 Stabenow on the floor, and Senator Johanns, concerning
6 the 1099 information reporting mandate that was included
7 in health reform law.

8 That vote, as we know, would repeal the 1099, but
9 there is an additional provision that was included in the
10 Small Business Jobs Relief Act that was enacted last fall
11 that extended it to rental-owned property. As a result
12 of repealing one mandate but not the other, it is unclear
13 at this time how expensive this mandate is going to be
14 for 1099 reporting for rental real estate.

15 I would like to continue to work with you, Mr.
16 Chairman, and other members of the committee to address
17 these issues because these burdens should not fall
18 disproportionately on one sector of our economy and one
19 sector of small businesses. In the Small Business Jobs
20 Act, the language includes that it would not extend to
21 those who receive only minimal amounts of rental income
22 or for whom the requirements would cause hardship.
23 Obviously that is ambiguous language at best.

24 Timeliness is of the essence because this provision
25 takes effect as of January of this year, and the

1 penalties for lack of compliance were increased
2 significantly in the Small Business Jobs Relief Act as
3 well. There have been no regulations to promulgate this
4 particular rule, so obviously it is going to impose an
5 onerous burden and requirement on those who do have
6 rental property, even at a minimalist position with
7 respect -- whether it is a small business owner that has
8 an apartment or other rental-owned property, somebody who
9 rents out their property, clearly could extend a
10 burdensome reporting requirement. I think that this is
11 an issue that clearly needs to be resolved.

12 On the second amendment, again, this is addressing a
13 provision that was enacted into law back in 2005 that
14 would require 3 percent withholding on government
15 contracts. It would require local, State, and Federal
16 Government to withhold 3 percent of their payments to
17 private contractors, including Medicare payment
18 providers, farm payments, defense contracts, and other
19 grants.

20 This obviously would provide another onerous burden
21 with respect to withholding that 3 percent. It is sort
22 of arbitrary. I understand the initial rationale which
23 will address compliance with the Tax Code, the widening
24 of the tax gap. That is the difference between the tax
25 correctly owed and the amount collected by the Internal

1 Revenue Service. However, there have been some serious
2 costs of compliance that makes this requirement
3 tremendously expensive to implement for all levels of
4 government, State, local and Federal.

5 In addition to that, requiring small businesses to
6 withhold 3 percent of payments to contractors is a
7 significant hurdle and burden because that obviously
8 affects their cash flow. It also would make it virtually
9 impossible to bid on any contracts in the future. It
10 certainly would be cost prohibitive. That is an issue we
11 are already grappling with within the small business
12 communities to make sure all agencies are meeting their
13 contracting goals with the small business sector of 23
14 percent of the contracts being awarded to small
15 businesses.

16 In any event, for many contracts there is not even a
17 3 percent profit, let alone that much tax owed. So I
18 think that we need to explore these issues in terms of
19 the cost of compliance with respect to the burden it is
20 providing on the small business sector of our economy. I
21 know that there had been analyses done in the past, for
22 example, in the Defense Department.

23 They did an analysis that they would retrieved \$17
24 billion in revenues, but in the first five years, to
25 comply, it would cost over \$17 billion. The original

1 revenue estimate from the law in 2005 projected that only
2 \$6.9 billion would be collected over a 10-year window.
3 So it is a case of spending a lot of money in order to
4 collect this.

5 Is there a better way of doing it and ensuring
6 compliance? I think that those are the issues that we
7 need to resolve. So, I hope that we can explore these
8 issues through a series of hearings, through GAO, with
9 you so that we can best examine how better to go about
10 these two particular provisions.

11 The Chairman. Well, Senator, thank you very much
12 for raising both of those issues. First, it is kind of
13 ironic. When we passed the Small Business Jobs Act, the
14 goal of the bill was to relieve unnecessary burdens on
15 small business--not to add, but to relieve.

16 This provision with respect to minimal amounts of
17 rental income is one, as you say, is ambiguous and it
18 probably does cause additional burden on small business.
19 I think the best way to resolve this is to address it as,
20 we work through repeal of 1099, when it is finally
21 repealed, in this Congress. So whether it is in
22 conference, in the House, or in a message back and forth,
23 I think in the meantime we should find a way to address
24 that. I want to work with you to do that. We all know
25 that 1099 is a huge problem, and this is a good idea to

1 kind of piggy-back on the repeal of 1099 and make sure
2 that we have not caught up rental property improperly. I
3 thank you for that.

4 Senator Snowe. Well, I appreciate that.

5 The Chairman. I might also say, in the other
6 provision with the 3 percent, that, too, is something we
7 have to look at. I plan to have a lot of tax reform
8 hearings this year. It would be a good opportunity to
9 look at the 3 percent contractor provision. Perhaps that
10 could be an earlier hearing so we could address that
11 sooner rather than later and find appropriate time to see
12 what resolution makes the most sense there.

13 Senator Snowe. That provision, that requirement
14 into law is truly an unfunded mandate for municipalities
15 and State governments, and at a time when we are facing
16 some major budgetary challenges.

17 The Chairman. The GAO study should very much help
18 in that regard, too.

19 Senator Hatch. Mr. Chairman?

20 The Chairman. Senator Hatch?

21 Senator Hatch. Mr. Chairman, I want to thank you
22 for agreeing to work with Senator Snowe on this important
23 issue. I want to thank Senator Snowe for her efforts in
24 this area. I think a lot of people, including members of
25 Congress, will be surprised to learn that Congress

1 enacted a second 1099 provision last year. This is
2 separate and apart from the 1099 provision enacted in the
3 partisan health care law that we overruled recently with
4 82 votes. I voted against it at the time.

5 This 1099 provision causes landlords that are not
6 even actively engaged in the rental real estate business
7 to send in a Form 1099 to the IRS, and it is required
8 when they pay more than \$600 in one year to a vendor for
9 goods or services. For example, suppose a landlord
10 spends more than \$600 over the course of the year at a
11 home improvement store. For example, that landlord must
12 fill out a Form 1099 and send it in to the IRS. Now,
13 this law creates a large and unexpected paperwork burden
14 on such landlords.

15 So I look forward to working with you, Senator
16 Snowe, along with Senator Baucus, Senator Grassley, and
17 others. I want to also thank you, Mr. Chairman, for
18 again agreeing to work with Senator Snowe on this other
19 important issue.

20 And again, I want to thank Senator Snowe for her
21 work on this issue. I agree that we should have the GAO
22 study the cost of compliance with this 3 percent
23 withholding provision for businesses and Federal, State
24 and local governments. Also, I look forward to working
25 with Chairman Baucus and Senator Snowe on this issue in

1 the future. So I want to compliment you, Senator Snowe,
2 for raising these issues, and I sure want to support you.

3 The Chairman. Thank you.

4 Senator Grassley. Mr. Chairman?

5 The Chairman. Senator Grassley?

6 Senator Grassley. Yes. I think, without
7 repeating, because I agree with what Senator Hatch just
8 said, I would point this out and ask for help from the
9 Chairman. The Government Withholding Relief Coalition
10 has listed a number of legislative and regulatory
11 developments that Senator Snowe has already referred to
12 that have come into existence since the 3 percent
13 withholding was enacted.

14 Last year I asked the Joint Committee on Taxation to
15 analyze the effectiveness of the 3 percent requirement in
16 light of these developments, but I have not response to
17 that request. Also, an alternative to full repeal would
18 be to retain the reporting requirements without the
19 withholding provisions.

20 So, Mr. Chairman, I would like your assistance in
21 obtaining from the Joint Committee an analysis on the
22 alternatives to full repeal, as well as a response to my
23 request.

24 The Chairman. Mr. Barthold, what is the status?

25 Mr. Barthold. We are working on it, Mr. Chairman

1 and Senator Grassley. We are not trying to ignore it.
2 We know it is an important issue for you and the members
3 of the committee.

4 The Chairman. It is important to me, too. So,
5 thank you very much.

6 Senator Grassley. Thank you, Mr. Chairman.

7 The Chairman. Thank you.

8 Senator Nelson, you have an amendment to offer?

9 Senator Nelson. Yes, sir.

10 The Chairman. Which you are going to also
11 withdraw?

12 Senator Nelson. That is correct.

13 Mr. Chairman, for purposes -- since we were
14 operating informally before, I will offer the Citrus
15 Trust Fund amendment and withhold it.

16 Now I would like to offer a second amendment, which
17 is an algae amendment that I have talked to Senator
18 Coburn about. I will not ask for a vote on this because
19 you do not think it is germane to this FAA bill.

20 Basically, we have in law a trial run of a tax
21 credit for making ethanol from cellulosic. This is a
22 trial run that the tax credit of \$1 a gallon goes through
23 the end of 2012, and it was obviously a tax credit that
24 was to bring capital to look to a new source of ethanol--
25 very promising.

1 However, when this was passed in 2008, nobody
2 thought about the definition of cellulosic not including
3 the definition of algae. Now, some of you are from
4 northern climes and you may not know about this noxious
5 substance called algae in heated environments that grows,
6 and all we want to do is to get rid of it.

7 Well, what we found out is that we now have a
8 process by which, from algae, when you combine it with
9 sunlight and, of all things, CO₂, it produces a gallon of
10 ethanol and, for every gallon of ethanol from that algae,
11 it produces a gallon of fresh water. So the definition
12 on this trial run of cellulosic, since it technically
13 does not include algae, I would ask that we have that.

14 The Chairman and the Ranking Member have said that
15 they will bring this up when we do an energy thing. The
16 cost is deminimus, because again it is a trial run. It
17 is basically to get capital flowing into this very
18 promising new technology to create ethanol.

19 Mr. Chairman, thank you for the opportunity of
20 letting me offer my amendment. I am looking forward to
21 an energy bill.

22 The Chairman. I might say, Senator Nelson, a lot
23 of people have talked to me about the potential of algae.
24 We have a lot of coal in Montana, for example. We use a
25 lot of it. We are trying to figure out a way to make our

1 coal cleaner. Based on what I know at this point--and I
2 could be proven wrong--that algae has great potential.

3 I think it is very important that we find some way
4 to help deal with cutting back on greenhouse gas
5 emissions and other obnoxious emissions from power
6 plants. The degree the algae proves to be one way to do
7 it, that would be very helpful. I think it is something
8 we should keep working on and see the degree to which it
9 makes sense.

10 Senator Grassley. Mr. Chairman?

11 The Chairman. Senator Grassley?

12 Senator Grassley. Yes. I want to speak in support
13 of what Senator Nelson is doing. I think in the process,
14 though, of speaking in support of it, you do not have to
15 talk about algae needing some sort of incentive. Well,
16 it does need an incentive. But the point is that already
17 the Defense Department feels it is such a very important
18 source of possible energy so we are not so dependent upon
19 foreign sources of energy for our national defense, that
20 they are already putting a lot of money into it.

21 Then I would also remind the Senator from Florida,
22 or any other Senator, that leading up to algae or any
23 other form of cellulosic ethanol, or whatever is out
24 there that we do not even know exists today, is that you
25 find a lot of opposition today to the subsidy for

1 ethanol. People that find opposition to it would say,
2 well, you should not be using grain, because it is food,
3 for energy. We ought to go to cellulosic ethanol, or we
4 ought to go to algae ethanol.

5 I hope you will remind all of the people that might
6 end up supporting you, and it is a very important thing
7 to do, that you would not have the second generation of
8 ethanol if, for the last 30 years, we have not had some
9 government support of the ethanol industry in the first
10 place.

11 So thank God somebody, 30 years ago, thought that we
12 ought to have ethanol so that we could go to doing it
13 like you, in a very efficient way, from algae, a source
14 of energy that people thought would be ridiculous, is a
15 throw-away item, it has no value. It might have value.
16 But all of this comes on the shoulders of 30 years of
17 support for ethanol. We need to do that.

18 At the same time we are thinking about subsidies for
19 ethanol, remember that sometimes the very same people
20 that want to do away with the subsidy for ethanol are the
21 very same people that support subsidies for big oil and
22 the oil industry and the natural gas industry, and the
23 sort of intellectual inconsistency of being for one
24 government subsidy but being against another government
25 subsidy, or the very same people the environmental

1 movement that opposes joining forces with big oil to
2 fight the ethanol subsidy because you cannot have both a
3 mandate and a subsidy, but those are the very same people
4 that want the rural electric standard, which is a mandate
5 for wind energy, at the same time you have a tax credit
6 for ethanol. So these are some of the things that we
7 need to be educating our colleagues about, and I hope the
8 Senator from Florida will help in that process.

9 Senator Nelson. Senator, I have supported you on
10 corn ethanol and I have supported that for years. Thank
11 you for your kind comments about algae ethanol.

12 The Chairman. Thank you very much, Senators. I
13 think I see the drift of where this is going.

14 Senator Thune. Mr. Chairman?

15 The Chairman. Senator Thune?

16 Senator Thune. It is drifting a little bit,
17 probably, from where you want this to go. But as long as
18 we are on this subject as a follow-up to what the Senator
19 from Iowa said, if we get to where we are going to
20 include -- and I agree with what the Senator from Florida
21 is trying to do in expanding that definition to include
22 algae. We also have a lot of biomass in parts of your
23 State and my State that is excluded from the definition
24 under the RFS that could qualify as a fuel or as a source
25 of fuel for cellulosic ethanol--slash piles, national

1 forests, forest waste on private lands--a lot of those
2 things were excluded from that definition.

3 If we are serious about getting to advanced biofuels
4 and getting beyond corn-based ethanol, we ought to be
5 opening up a lot of these areas, including these in the
6 definition of biomass. So I assume we will have this
7 discussion at some point in the future, but as long as we
8 are talking about algae I want to make that observation.

9 The Chairman. Thank you, Senator.

10 Senator Grassley. Mr. Chairman, can I say that it
11 is appropriate to talk about this at this time because
12 the aviation industry itself is looking into using algae
13 as part of AVGAS and the source of fuel for airplanes.

14 Senator Nelson. Good. Will the Chairman accept my
15 amendment?

16 [Laughter.]

17 The Chairman. Things were going along fine until
18 that element.

19 [Laughter.]

20 The Chairman. As we discussed, Senator, there is
21 an appropriate place for this amendment. I do think it
22 makes a lot of sense, but this is not the appropriate
23 place. If we start going down the road now--and Senator
24 Thune raised some ideas, too--we are just going to get
25 ourselves wrapped around the axle and probably make some

1 decisions and make some mistakes. So things are working
2 fine now. We know there is a lot of positive momentum
3 for algae, so let us keep that momentum going and offer
4 this amendment at the appropriate time and place.

5 Senator Coburn?

6 Senator Coburn. Mr. Chairman, first of all, let me
7 thank you. I was not here at our first hearing of this
8 committee. Thank you for your kind words.

9 The Chairman. You bet.

10 Senator Coburn. I appreciate the opportunity.

11 The Chairman. We can say them all over again now
12 that you are here.

13 Senator Coburn. I do not think it is necessary,
14 but I appreciate the opportunity to serve under your
15 leadership and that of Senator Hatch. I also want to
16 thank you for including the GAO. It was not my
17 recommendation, it was one of the recommendations that
18 GAO made, the 90 percent rule on the trust fund. I think
19 it is prudent in the times that we find ourselves,
20 especially with the general fund transfers that have had
21 to go to the Airport and Airway Trust Fund, that we
22 undertake that.

23 I have an amendment which I will offer and withdraw
24 which reduces the Federal cost share of the airport
25 improvement program to 75 percent. We have looked at

1 what the GAO has done, and also done our own research.
2 It is interesting to know, former Congressman Overstar,
3 who authored the 90 percent as the number for AIP,
4 actually stated publicly that he thought it was way too
5 low of a cost share for the individuals using that.

6 So I will be offering an amendment to change that to
7 75 percent, which is truly reflective of almost
8 everything else we do, not for the purposes of
9 diminishing people's opportunity to participate, but to
10 make sure they are making good judgments. I am just
11 saying, the airport I fly out of every Monday, we are
12 undergoing a huge renovation right now with these funds.

13 It is my personal opinion that it did not have to be
14 done. One of the reasons it is being done is because of
15 the low cost share that made it feasible economically,
16 but not necessarily smart given the times that we face
17 and where those dollars probably could have been used for
18 better use for the citizens of this country.

19 So I will withdraw the amendment and look forward to
20 discussing it going forward. Thank you.

21 The Chairman. Well, thank you, Senator. I take my
22 hat off to you. You are recognizing something that you
23 think is perhaps inefficient, not wasteful. It is in
24 your own State, and you are to be commended for offering
25 an idea which you would like to apply all across the

1 country, including your own State, and I appreciate that.
2 But this is non-germane. We cannot take up this
3 amendment now. But I appreciate you bringing the
4 amendment up on the floor.

5 We are one Senator shy of a quorum. Senator Hatch,
6 if you have something to say, or anybody else has
7 something to say, we will entertain it.

8 Senator Hatch?

9 Senator Hatch. Well, let me just, Mr. Chairman,
10 thank Senator Coburn. I believe his amendment is well-
11 intentioned. It continues his laser-like focus on
12 restraining spending. So, I just want to thank him for
13 working with you and me on this amendment, and we will
14 keep working together.

15 The Chairman. I would also like to thank a lot of
16 committee members for helping to put this bill together.
17 This process began four years ago. I think finally this
18 year we are going to get it passed and enacted and signed
19 by the President. We have had hearings, we have had lots
20 of ideas from Senators that have improved this bill. I
21 am not saying every bill should be delayed several years
22 so we can always improve it, but I am saying that there
23 are improvements here and I thank Senators for their
24 participation.

25 I mentioned earlier that we are going to have mark-

1 ups, so I encourage Senators to have that well in mind.
2 Think of amendments. Just know that we are going to be
3 marking up a lot of legislation, not going as much to the
4 floor directly under Rule 14, but rather doing more work
5 here in committee. There is more opportunity for
6 Senators to introduce bills, introduce amendments, and
7 just help have better products and help your own States.

8 I think, too, it has worked well when we have worked
9 together. This bill is the product of Senators working
10 together. I am not saying we should always have mark-ups
11 without amendments; I am not saying that at all. But I
12 am saying that it helps the more we work together and
13 there is notice about what the amendments might be,
14 because then often we could find ways to make the
15 amendments work in a way that is workable to both sides
16 or to other Senators who may have different points of
17 view. Often that private conversation is quite
18 constructive because we find ways to accommodate each
19 other. But there will be times when we have amendments,
20 and that is fine, too. I look forward to a very active
21 and vigorous committee.

22 We are going to have, I said, many hearings on tax
23 reform. I have not yet decided on the precise order or
24 the agenda. There is corporate tax reform, obviously the
25 individual. We have to look at complexity, look at AMT,

1 look on the international side worldwide versus
2 territorial, to look at tax expenditures, which ones are
3 efficient, which ones not. I do expect this to take a
4 little time. That is, I do not expect a bill to be
5 marked up quickly, but it is my intention to look very
6 closely at our Tax Code. Someone pointed out to me,
7 there are nine million words in our U.S. Tax Code. That
8 is the equivalent of 12 Bibles. It is just too complex,
9 our Code.

10 Senator Hatch. I am not sure about the comparison
11 there to Bibles.

12 [Laughter.]

13 The Chairman. I do not know anybody here who has
14 read the Bible 12 times, but if he or she has, I am all
15 for it.

16 [Laughter.]

17 The Chairman. But it is big. Not as important as
18 the Bible, but big.

19 Also, we will look at different tax expenditures.
20 There was a very interesting article about a week or two
21 ago in the *New York Times* which had a chart showing the
22 effective tax rate of various industries compared to the
23 statutory rate. We all know the statutory rate is 35
24 percent, but the effective tax rate of some industries is
25 very, very low. I think the bio-tech industry is down

1 about 3, or 4, or 5 percent, effective rate, whereas the
2 effective rate in some other industries, like trucking
3 and utilities, is near the statutory rate. It is a huge
4 variation. So if we are going to look at tax
5 expenditures and if we want revenue neutrality, obviously
6 that is not going to be an easy undertaking. It is going
7 to be quite difficult.

8 We now have a quorum. Senator Wyden has arrived.
9 Thank you, Senator, very, very much. All right.

10 Do I hear a motion on the adoption of the bill?

11 Senator Hatch. So moved.

12 The Chairman. It is moved.

13 All those in favor, say aye.

14 [A Chorus of Ayes.]

15 The Chairman. Those opposed, no.

16 [No response.]

17 The Chairman. The ayes have it, and the bill is
18 adopted. I thank the committee very, very much.

19 The committee is adjourned.

20 [Whereupon, at 10:21 a.m., the meeting was
21 concluded.]

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I N D E X

PAGESTATEMENT OF:

THE HONORABLE MAX BAUCUS
A United States Senator
from the State of Montana

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THE HONORABLE ORRIN G. HATCH
A United States Senator
from the State of Utah

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