

**DESCRIPTION OF H.R. _____,
THE “AIRPORT AND AIRWAY TRUST FUND
FINANCING ACT OF 2007”**

Scheduled for Markup
By the
HOUSE COMMITTEE ON WAYS AND MEANS
on September 18, 2007

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



September 14, 2007
JCX-67-07

CONTENTS

| | <u>Page</u> |
|---|-------------|
| INTRODUCTION | 1 |
| A. Extension of Airport and Airway Trust Fund Tax and Expenditure Provisions..... | 3 |
| B. Taxation of Aviation-Grade Kerosene and Aviation Gasoline | 10 |
| C. Expenditures for Air Traffic Control Modernization..... | 15 |

INTRODUCTION

The Airport and Airway Trust Fund (“AATF”) provides funding for capital improvements to the U.S. airport and airway system and funding for FAA operations and programs, among other purposes. The Internal Revenue Code (the “Code”) contains the provisions that dedicate revenues from certain excise taxes to the AATF, provide the relevant expenditure provisions governing the purposes for which AATF monies may be spent, and set the period for when those expenditures may occur. The excise taxes imposed to finance the AATF are:¹

- ticket taxes imposed on commercial, domestic passenger transportation by air;
- a use of international air facilities tax;
- a cargo tax imposed on freight transportation by air;
- fuels taxes imposed on gasoline used in commercial aviation and noncommercial aviation; and
- fuels taxes imposed on jet fuel (kerosene) and other aviation fuels used in commercial aviation and noncommercial aviation.

Domestic commercial aviation (the use of an aircraft in a business of transporting persons or property for compensation) is subject to the ticket tax and air cargo tax, as well as a 4.3 cent per gallon fuel tax.² Noncommercial aviation is subject only to the fuel taxes, but at higher rates.

With the exception of 4.3 cents per gallon of the fuel tax rates, the taxes imposed and dedicated to the AATF do not apply after September 30, 2007. The AATF expenditure authority expires on October 1, 2007. The purposes for which AATF funds may be expended are fixed as of the date of enactment of the Vision 100—Century of Aviation Reauthorization Act (Pub. L. No. 108-176, December 12, 2003). As a result, the Code provisions must be amended to permit expenditure of AATF monies for purposes as provided for in any new reauthorization bill, as well as to authorize the imposition of the dedicated taxes beyond September 30, 2007.

On June 22, 2007, the House Committee on Science and Technology passed H.R. 2698, the “Federal Aviation Research and Development Reauthorization Act of 2007.” H.R. 2698 would authorize appropriations for fiscal years 2008 through 2011, totaling \$1.8 billion, for the research and development programs of the Federal Aviation Administration (“FAA”). On June 28, 2007, the House Committee on Transportation and Infrastructure ordered reported H.R.

¹ Sec. 9502(b)(1). The AATF also is credited with interest under sec. 9602(b). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

² The fuel tax consists of two components: 4.3 cents per gallon dedicated to the AATF and 0.1 cent per gallon dedicated to the Leaking Underground Storage Tank Trust Fund. The higher fuel tax imposed on noncommercial aviation similarly consists of an AATF component (21.8 cents per gallon for jet fuel, 19.3 cents for aviation gasoline) plus 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. Except where specifically stated, the rates stated in this document are the AATF rates. (i.e., do not include the 0.1 cent-per-gallon Leaking Underground Storage Tank Trust Fund rate).

2881, the “FAA Reauthorization Act of 2007.” H.R. 2881 would authorize appropriations for fiscal years 2008 through 2011, totaling \$66 billion, for the FAA’s operations and capital programs, including the Airport Improvement Program, and FAA facilities and equipment.³ In addition, the House Committee on Transportation and Infrastructure has recommended that the House Committee on Ways and Means extend the existing AATF taxes with an increase in the jet fuel tax for noncommercial aviation from 21.8 cents per gallon to 30.7 cents per gallon, and an increase in the tax on aviation gasoline from 19.3 cents per gallon to 24.1 cents per gallon.⁴

The House Committee on Ways and Means has scheduled a markup of H.R. ____, the “Airport and Airway Trust Fund Financing Act of 2007,” for September 18, 2007. This document,⁵ prepared by the staff of the Joint Committee on Taxation, provides a description of the present-law taxes dedicated to the AATF, a summary of the AATF expenditure purposes, and a description of the bill. That bill reauthorizes the taxes and updates the purposes for which AATF funds may be expended, increases the fuel taxes for noncommercial aviation, and requires that the revenues attributable to the increase in tax rates be used only for air traffic control modernization.

³ The bill provides \$15.8 billion for the Airport Improvement Program, \$13 billion for FAA facilities and equipment (which funds FAA air traffic control modernization and replacement), and \$37.2 billion for FAA operations. A summary of the bill, prepared by the House Committee on Transportation and Infrastructure, can be found at <http://transportation.house.gov/Media/File/Full%20Committee/20070628/HR2881%20Highlights.pdf>.

⁴ These fuels would continue to be subject to an additional tax of 0.1 cent per gallon dedicated to the Leaking Underground Storage Tank Trust Fund.

⁵ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. ____, the “Airport and Airway Trust Fund Financing Act of 2007”* (JCX-67-07), September 14, 2007. This document can also be found on our website at www.house.gov/jct.

B. Extension of Airport and Airway Trust Fund Tax and Expenditure Provisions

Present Law

Taxes on transportation of persons by air

The Code imposes an excise tax on both domestic and certain international transportation of passengers by air. Amounts equivalent to these taxes are transferred to the AATF. The taxes do not apply after September 30, 2007.⁶

Domestic air passenger excise tax

Domestic air passenger transportation generally is subject to a two-part excise tax. The first component is an *ad valorem* tax imposed at the rate of 7.5 percent of the amount paid for the transportation. The second component is a flight segment tax. For 2007, the flight segment tax rate is \$3.40.⁷ A flight segment is defined as transportation involving a single take-off and a single landing. For example, travel from New York to San Francisco, with an intermediate stop in Chicago, consists of two flight segments (without regard to whether the passenger changes aircraft in Chicago).

The flight segment component of the tax does not apply to segments to or from qualified “rural airports.” For any calendar year, a rural airport is defined as an airport that in the second preceding calendar year had fewer than 100,000 commercial passenger departures, and meets one of the following three additional requirements (1) the airport is not located within 75 miles of another airport that had more than 100,000 such departures in that year, (2) the airport is receiving payments under the Federal “essential air service” program, or (3) the airport is not connected by paved roads to another airport.⁸

The domestic air passenger excise tax applies to “taxable transportation.” Taxable transportation means transportation by air that begins in the United States or in the portion of Canada or Mexico that is not more than 225 miles from the nearest point in the continental United States and ends in the United States or in such 225-mile zone. If the domestic transportation is paid for outside of the United States, it is taxable only if it begins and ends in the United States.

⁶ Sec. 4261(j)(1)(A)(ii). The person making the payment (generally the passenger) is liable for the tax; airlines and others receiving payments are liable for remitting tax and are primarily liable if they fail to collect the tax. Secs. 4261(d) and 4263(c).

⁷ Sec. 4261(b)(1) and 4261(d)(4). The Code provides for a \$3 tax indexed annually for inflation, effective each January 1st, resulting in the current rate of \$3.40.

⁸ In the case of an airport qualifying as “rural” because it is not connected by paved roads to another airport, only departures for flight segments of 100 miles or more are considered in calculating whether the airport has fewer than 100,000 commercial passenger departures. The Department of Transportation has published a list of airports that meet the definition of rural airports. See Rev. Proc. 2005-45.

For purposes of the domestic air passenger excise tax, taxable transportation does not include “uninterrupted international air transportation.” Uninterrupted international air transportation is any transportation that does not both begin and end in the United States or in the 225-mile zone and does not have a layover time of more than 12 hours. The tax on international air passenger transportation is discussed below.

Use of international air facilities

For 2007, international air passenger transportation is subject to a tax of \$15.10 per arrival or departure in lieu of the taxes imposed on domestic air passenger transportation if the transportation begins or ends in the United States.⁹ The definition of international transportation includes certain purely domestic transportation that is associated with an international journey. Under these rules, a passenger traveling on separate domestic segments integral to international travel is exempt from the domestic passenger taxes on those segments if the stopover time at any point within the United States does not exceed 12 hours.

In the case of a domestic segment beginning or ending in Alaska or Hawaii, the tax applies to departures only and is \$7.50 for calendar year 2007.

“Free” travel

Both the domestic air passenger tax and the use of international air facilities tax apply only to transportation for which an amount is paid. Thus, free travel, such as that awarded in “frequent flyer” programs and nonrevenue travel by airline industry employees, is not subject to tax. However, amounts paid to air carriers (in cash or in kind) for the right to award free or reduced-fare transportation are treated as amounts paid for taxable air transportation and are subject to the 7.5 percent *ad valorem* tax (but not the flight segment tax or the use of international air facilities tax). Examples of such payments are purchases of miles by credit card companies and affiliates (including airline affiliates) for use as “rewards” to cardholders.

Disclosure of air passenger transportation taxes on tickets and in advertising

Transportation providers are subject to special penalties if they do not separately disclose the amount of the passenger taxes on tickets and in advertising. Failure to satisfy these disclosure requirements is a misdemeanor, upon conviction of which the guilty party is fined not more than \$100 per violation.¹⁰

Tax on transportation of property (cargo) by air

Amounts equivalent to the taxes received from the transportation of property by air are transferred to the AATF. Domestic air cargo transportation is subject to a 6.25 percent *ad*

⁹ Secs. 4261(c) and 4261(d)(4). The international air facilities tax rate of \$12 is indexed annually for inflation, effective each January 1, resulting in the current rate of \$15.10.

¹⁰ Sec. 7275.

valorem excise tax on the amount paid for the transportation.¹¹ The tax applies only to transportation that both begins and ends in the United States. Unlike the air passenger taxes, only shippers (the persons paying for the transportation) are liable for payment of the air cargo tax. There is no disclosure requirement for the air cargo tax. This tax does not apply after September 30, 2007.¹²

Aviation fuel taxes

The Code imposes excise taxes on gasoline used in commercial aviation and noncommercial aviation, and on jet fuel (kerosene) and other aviation fuels used in commercial aviation and noncommercial aviation. Amounts equivalent to these taxes are transferred to the AATF. With the exception of 4.4 cents per gallon (which includes the Leaking Underground Storage Tank Trust Fund tax), the fuel taxes will not apply after September 30, 2007. Table 1 below summarizes the taxes on fuel used in aviation:

Table 1.—Taxes on Fuel Used in Aviation

| Fuel Type | Tax Rate (excluding 0.1 cent for Leaking Underground Storage Tank Trust Fund Tax) |
|---|--|
| <u>Jet fuel and liquids other than aviation gasoline</u> | |
| Commercial aviation..... | 4.3 cents per gallon |
| Noncommercial aviation..... | 21.8 cents per gallon |
| <u>Aviation gasoline</u> | |
| Commercial..... | 4.3 cents per gallon |
| Noncommercial | 19.3 cents per gallon |

Trust Fund expenditure provisions

In general

The AATF was created in 1970 to finance a major portion of the Federal expenditures on national aviation programs. Prior to that time, these expenditures had been financed with

¹¹ Sec. 4271.

¹² Sec. 4271(d).

General Fund monies. The statutory provisions relating to the AATF were placed in the Code in 1982.¹³

Expenditures from the fund support the FAA and the majority of the FAA's programs and activities. The FAA budget has four major components: (1) operations and maintenance; (2) facilities and equipment; (3) research, engineering, and development; and (4) the airport improvement program.¹⁴ Operations and maintenance are the only segments of the FAA budget that are funded by both a trust fund contribution and a General Fund contribution.¹⁵ The remaining three items receive all their funding from the AATF.

The current expenditure purposes for the AATF are:

1. obligations incurred under provisions of previous aviation authorizing legislation enacted since 1970, as those provisions were in effect on the date of enactment of the Vision 100—Century of Aviation Reauthorization Act (December 12, 2003);¹⁶
2. obligations incurred under part A of subtitle VII of Title 49, United States Code (generally, FAA programmatic provisions), which are attributable to planning, research and development, construction, or operation and maintenance of—
 - (a) air traffic control,
 - (b) air navigation,
 - (c) communications, or

¹³ Sec. 9502.

¹⁴ Congressional Research Service, *Aviation Taxes and the Airport and Airway Trust Fund*, CRS Report 97-657E at CRS-2 (1997). The airport improvement program is only for airports in the National Plan of Integrated Airport Systems.

¹⁵ *Id.*

¹⁶ The Acts (or provisions of Acts) pursuant to which aviation trust fund expenditures are allowed are Title I of the Airport and Airway Development Act of 1970; the Airport and Airway Development Act Amendments of 1976; the Aviation Safety and Noise Abatement Act of 1979; the Fiscal Year 1981 Airport Development Authorization Act; the provisions of the Airport and Airway Improvement Act of 1982; the Airport and Airway Safety and Capacity Expansion Act of 1987; the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990; the Aviation Safety and Capacity Expansion Act of 1990; the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992; the Airport Improvement Program Temporary Extension Act of 1994; Federal Aviation Administration Authorization Act of 1994; Federal Aviation Reauthorization Act of 1996; the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 providing for payments from the Airport and Airway Trust Fund; the Interim Federal Aviation Administration Authorization Act; section 6002 of the 1999 Emergency Supplemental Appropriations Act; Public Law 106-59; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; the Aviation and Transportation Security Act; and the Vision 100—Century of Aviation Reauthorization Act.

- (d) supporting services for the airway system; and
- 3. obligations incurred for administrative expenses of the Department of Transportation that are attributable to activities described in items (1) and (2).

No expenditures are permitted to be made from the AATF after September 30, 2007. Because the purposes for which AATF funds are permitted to be expended are fixed as of the date of enactment of the Vision 100—Century of Aviation Reauthorization Act (December 12, 2003), the Code must be amended in order to accommodate new purposes. In addition, the Code contains a special enforcement provision to prevent expenditure of AATF monies for purposes not authorized in section 9502.¹⁷ This provision provides that, should such unapproved expenditures occur, no further excise tax receipts will be transferred to the AATF. Rather, the taxes will continue to be imposed but the receipts will be retained in the General Fund. This enforcement provision provides specifically that it applies not only to unauthorized expenditures under the current Code provisions, but also to expenditures pursuant to future legislation that may provide for them unless either the legislation providing for the expenditure amends section 9502's expenditure authorization provisions or otherwise authorizes the expenditure as part of a revenue Act.

Specific AATF expenditure programs

Authorized expenditures for the following airport and airway programs are included under the general purposes described above.

- 1. Airport Improvement Program (AIP).–
 - (a) Airport planning.–Planning for airport systems for airport master plans; also, airport noise compatibility planning for air carrier airports eligible for terminal development costs.
 - (b) Airport construction.–Construction, improvement, or repair of a public airport (includes removal of airport hazards and construction of physical barriers and landscaping to diminish noise).¹⁸
 - (c) Airport terminal facilities.–Non-revenue-producing public-use areas that are directly related to movement of passengers and baggage at certified air carrier airports; also, development of revenue-producing areas and construction of non-revenue-producing parking lots for nonhub airports (subject to certification that the grant will not defer needed development with respect to safety, security, or capacity).

¹⁷ Sec. 9502(f)(1).

¹⁸ Airport construction is usually limited to construction or improvements related to aircraft operations, such as runways, taxiways, etc.

- (d) Land acquisition.—Includes land or property interests for airport noise control purposes; also includes acquisition of land for, or work necessary to construct, pads suitable for aircraft deicing (subject to certain limitations).
 - (e) Airport-related equipment.—Airport security equipment required by Department of Transportation regulations, snow removal equipment, noise suppressing equipment, firefighting equipment, navigation aids, and safety equipment required for airport certification; also includes construction or purchase of capital equipment necessary for compliance by an airport with the Americans with Disabilities Act, the Clean Air Act, or the Federal Water Pollution Control Act, other than capital equipment that would primarily benefit a revenue-producing area of the airport used by a nonaeronautical business.
 - (f) Airport noise compatibility programs.—Includes sound-proofing of public buildings; local governmental units are eligible for project grants as well as airports.
2. Facilities and Equipment Program (F&E).—Costs of acquiring, establishing, and improving air navigation facilities.
 3. Research, Engineering, Development, and Demonstration Program (R&D).—Projects in connection with FAA research and development activities.
 4. Operations and Maintenance Programs (O&M).—Operations and maintenance of air navigation facilities, including air traffic control and flight checks; services provided under international agreements relating to the U.S. share of joint provision of air navigation services; weather reporting services provided to the FAA by the National Oceanic and Atmospheric Administration.
 5. Small Community Air Service Development Pilot Program.—For payments to ensure that eligible localities receiving airline service at the time of deregulation continue to have airline service.
 6. Vocational Technical Institutions.—Grants to up to four vocational technical institutions for the acquisition of facilities for the advanced training of maintenance technicians for air carrier aircraft.
 7. Airway Science Curriculum Grants.—Grants for higher education airway science study programs, including equipment, buildings, and associated facilities.
 8. Civil Aircraft Security Research and Development.— Grants relating to technologies and procedures to counteract terrorist activities against civil aviation.

Description of Proposal

The proposal extends the taxes imposed on the transportation of persons by air and on the transportation of property by air through September 30, 2011. The proposal extends the taxes imposed on aviation gasoline and aviation kerosene (with modifications described below)

through September 30, 2011. The proposal extends the expenditure authority for the AATF through September 30, 2011, and conforms the purposes for which AATF funds are permitted to be expended to include those obligations authorized under the reauthorization legislation of 2007.¹⁹

Effective Date

The proposal is effective on the date of enactment.

¹⁹ The proposal is intended to cover H.R. 2698, the “Federal Aviation Research and Development Reauthorization Act of 2007,” and H.R. 2881, the “FAA Reauthorization Act of 2007.”

C. Taxation of Aviation-Grade Kerosene and Aviation Gasoline

Present Law

In general

Under section 4081, an excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal,²⁰ (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not registered with the IRS to receive untaxed fuel, unless there was a prior taxable removal or entry.²¹ The tax does not apply to any removal or entry of taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel (excluding deep draft vessels), and the operator of such terminal or refinery are registered with the Secretary.²² If the bulk transfer exception applies, tax is not imposed until the fuel “breaks bulk,” i.e., when it is removed from the terminal, typically by rail car or truck, for delivery to a smaller wholesale facility or retail outlet, or removed directly from the terminal into the fuel tank of an aircraft.²³

The term “taxable fuel” means gasoline, diesel fuel (including any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle or train), and kerosene.²⁴ The term includes kerosene used in aviation (jet fuel) as well as aviation gasoline.

Section 4041(c) provides a back-up tax for liquids (other than aviation gasoline) that are sold for use as a fuel in aircraft and that have not been previously taxed under section 4081.²⁵

²⁰ A “terminal” is a taxable fuel storage and distribution facility that is supplied by pipeline or vessel and from which taxable fuel may be removed at a rack. A “rack” is a mechanism capable of delivering taxable fuel into a means of transport other than a pipeline or vessel. A terminal can be located at an airport, or fuel may be delivered to the airport from a terminal located off the airport grounds.

²¹ Sec. 4081(a)(1).

²² Sec. 4081(a)(1)(B).

²³ In general, the party liable for payment of the taxes when the fuel breaks bulk at the terminal is the “position holder,” the person shown on the records of the terminal facility as holding the inventory position in the fuel. However, when fuel is removed directly into the fuel tank of an aircraft for use in commercial aviation, the person who uses the fuel is liable for the tax. The fuel is treated as used when such fuel is removed into the fuel tank. Sec. 4081(a)(4).

²⁴ Sec. 4083(a).

²⁵ Sec. 4041(c).

Kerosene for use in aviation

In general

Present law generally imposes a tax of 24.3 cents per gallon on kerosene. However, reduced rates apply for kerosene removed directly from a terminal into the fuel tank of an aircraft.²⁶ For kerosene removed directly from a terminal into the fuel tank of an aircraft for use in commercial aviation, the tax rate is 4.3 cents per gallon.²⁷ For kerosene removed directly from a terminal into the fuel tank of an aircraft for use in noncommercial aviation, the tax rate is 21.8 cents per gallon.²⁸

“Commercial aviation” generally means any use of an aircraft in the business of transporting by air persons or property for compensation or hire.²⁹ Commercial aviation does not include transportation exempt from the ticket taxes and air cargo taxes by reason of sections 4281 or 4282 or by reason of section 4261(h) or 4261(i). Thus, small aircraft operating on nonestablished lines (sec. 4281), air transportation for affiliated group members (sec. 4282), air transportation for skydiving (sec. 4261(h)), and certain air transportation by seaplane (sec.

²⁶ If certain conditions are met, present law permits the removal of kerosene from a refueler truck, tanker, or tank wagon to be treated as a removal from a terminal for purposes of determining whether kerosene is removed directly into the fuel tank of an aircraft. A refueler truck, tanker, or tank wagon is treated as part of a terminal if: (1) the terminal is located within an airport, (2) any kerosene which is loaded in such truck, tanker, or wagon at such terminal is for delivery only into aircraft at the airport in which such terminal is located, and (3) no vehicle licensed for highway use is loaded with kerosene at such terminal, except in exigent circumstances identified by the Secretary in regulations. In order to qualify for the special rule, a refueler truck, tanker, or tank wagon must: (1) have storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft; (2) not be registered for highway use; and (3) be operated by the terminal operator (who operates the terminal rack from which the fuel is unloaded) or by a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or tank wagon. Sec. 4081(a)(3).

²⁷ Tax is imposed at this rate if the commercial aircraft operator is registered with the IRS, and the fuel terminal is located within a secured area of an airport. The IRS has published a list of airports with secured areas in which a terminal is located. See Notice 2005-4, 2005-1 C.B. 289, at sec. 4(d)(2)(ii) (2005) (adopting the list from H.R. Conf. Rep. No. 755, 108th Cong., 2d Sess. 692 n. 718 (2004) with modifications) and Notice 2005-80, 2005-2 C.B. 953, at sec. 3(c)(2) (2005). If the fuel terminal is located at an unsecured airport, the fuel is taxed at 21.8 cents per gallon if the fuel is removed directly from the terminal into the fuel tank of an aircraft.

²⁸ As noted above, the fuels excise taxes (including aviation fuels taxes) consist of two components: an AATF rate and a Leaking Underground Storage Tank Trust Fund rate. Except where specifically stated, the rates stated in this document are the AATF rates (i.e. do not include the 0.1 cent per gallon Leaking Underground Storage Tank Trust Fund rate). For kerosene removed directly from a terminal into the fuel tank of an aircraft for an exempt use (such as foreign trade or for the exclusive use of a State or local government), only the Leaking Underground Storage Tank Trust Fund tax of 0.1 cent per gallon applies.

²⁹ Sec. 4083(b).

4261(i)) are excluded from the definition of commercial aviation, and accordingly are subject to the tax regime applicable to noncommercial aviation.

Refunds and credits to obtain the appropriate aviation tax rate

If the kerosene is not removed directly into the fuel tank of an aircraft, the fuel is taxed at 24.3 cents per gallon. (This is generally the rate applied to diesel fuel and kerosene used in highway vehicles). A claim for credit or payment may be made for the difference between the tax paid and the appropriate aviation rate (21.8 cents per gallon for noncommercial aviation, 4.3 cents per gallon for commercial aviation, and 0.1 cent per gallon for an exempt use).³⁰

For noncommercial aviation, other than for exempt use, only the registered ultimate vendor may make the claim for the 2.5-cent-per-gallon difference between the 24.3 cents per gallon rate and the noncommercial aviation rate of 21.8 cents per gallon.³¹ For commercial aviation and exempt use (other than State and local government use), the ultimate purchaser may make a claim for the difference in tax rates, or the ultimate purchaser may waive the right to make the claim for payment to the ultimate vendor.³² For State and local government use, the registered ultimate vendor is the proper claimant.³³

Commercial aviation claimants are permitted to credit their fuel tax claims against their other excise tax liabilities, thereby reducing the amount of excise tax to be paid with the excise tax return.

Transfers between the Highway Trust Fund and the AATF to account for aviation use

Kerosene that is not removed directly from the terminal into an airplane (e.g., the jet fuel is transferred from the terminal by highway vehicle to the airport) is taxed at the generally applicable rate of 24.4 cents per gallon (including the Leaking Underground Storage Tank Trust Fund tax). The Highway Trust Fund is credited with 24.3 cents per gallon of the 24.4 cents per gallon imposed. The remaining 0.1 cent is credited to the Leaking Underground Storage Tank Trust Fund. If a claim for payment is later made indicating that the fuel was used in aviation, the Secretary then transfers to the AATF 4.3 cents per gallon for commercial aviation use and 21.8 cents per gallon for noncommercial aviation use. These transfers initially are based on estimates, and proper adjustments are made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred. Thus, to the extent claims for credit or payment are not made for the difference between the generally applicable rate and the aviation rate, the AATF will not be credited for fuel used in aviation that was taxed at the 24.3 cents per gallon rate.

³⁰ Sec. 6427(l)(4).

³¹ Sec. 6427(l)(4)(C)(ii).

³² Sec. 6427(l)(4)(C)(i).

³³ See secs. 6427(l)(5). Special rules apply if the kerosene is purchased with a credit card issued to a State or local government.

Aviation gasoline

The tax on aviation gasoline is 19.3 cents per gallon. If aviation gasoline is used in commercial aviation, the ultimate purchaser may obtain a refund in the amount of 15 cents per gallon, such that the tax rate on such gasoline is 4.3 cents per gallon.³⁴

Description of Proposal

The proposal creates a separate category of kerosene for tax purposes: aviation-grade kerosene.³⁵ Aviation-grade kerosene is taxed at 35.9 cents per gallon plus 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund.³⁶ Under the proposal, aviation-grade kerosene used for noncommercial aviation will bear the full rate of tax. The proposal subjects aviation gasoline to a tax of 24.1 cents per gallon (increased from 19.3 cents per gallon) plus 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. The rate of tax for fuel used in commercial aviation and exempt use remains unchanged for both aviation-grade kerosene and aviation gasoline.³⁷

Because the tax on aviation-grade kerosene is equal to the applicable rate of tax for noncommercial aviation, the proposal repeals the ultimate vendor refund provisions for noncommercial aviation. In addition, the proposal eliminates the inter-fund transfers from the Highway Trust Fund to the AATF for kerosene used in aviation. Instead, the taxes imposed on aviation-grade kerosene will be credited to the AATF only. As a result, the AATF, rather than the Highway Trust Fund, will reimburse the General Fund for any refunds paid with respect to the use of aviation-grade kerosene for a nontaxable purpose. The proposal also provides a refund mechanism for aviation-grade kerosene used for a taxable purpose other than in an aircraft and the related-trust fund accounting.

In the case of aviation fuel (i.e., aviation-grade kerosene and aviation gasoline) held on October 1, 2007, by any person, a floor stocks tax is imposed equal to the tax that would have been imposed if the increased rates had been in effect before such date, less (1) the tax actually imposed on such fuel and (2) for fuel held by a person for his own use, the amount that such person would reasonably expect to be paid as a refund. The tax is to be paid by January 31, 2008 and in such manner as the Secretary shall prescribe.

³⁴ Sec. 6421(f)(2). If aviation gasoline is sold for an exempt use, a credit or refund is allowable for all but the Leaking Underground Storage Tank Trust Fund tax (0.1 cent per gallon). Sec. 6416(a); sec. 6420 (farming purposes); sec. 6421(c); and sec. 6430.

³⁵ Aviation-grade kerosene means, as defined by the Internal Revenue Service, kerosene-type jet fuel covered by ASTM specification D1655, or military specification MIL-DTL-5624 (Grade JP-5) or MIL-DTL-83133E (Grade JP-8). See section 4(b) of Notice 2005-4.

³⁶ The backup tax on liquids (other than aviation gasoline) used in aviation under section 4041(c) is conformed to reflect the higher rate of tax.

³⁷ Commercial aviation use will continue to be subject to a tax of 4.4 cents per gallon and exempt use will be subject to 0.1 cent per gallon.

The floor stocks tax does not apply to fuel held in the fuel tank of an aircraft on October 1, 2007. Nor does it apply to fuel held exclusively for any use to the extent a refund or credit of tax is allowable under the Code. The floor stocks tax does not apply if the amount of fuel held by a person does not exceed 2,000 gallons.

For purposes of the floor stocks tax, a controlled group is treated as one person. “Controlled group” for these purposes means a parent-subsiary, brother-sister, or combined corporate group with more than 50-percent ownership with respect to either combined voting power or total value. Under regulations, similar principles may apply to a group of persons under common control where one or more persons are not a corporation.

All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 also apply to the floor stocks taxes to the extent not inconsistent with the provisions of the proposal. For purposes of transferring amounts to the Airport and Airway Trust Fund, the floor stocks taxes are treated as if imposed by the provision of section 4081 with respect to the aviation fuel involved.

Effective Date

The proposal is generally effective for fuel removed, entered, or sold after September 30, 2007. The floor stocks tax is effective October 1, 2007.

D. Expenditures for Air Traffic Control Modernization

Present Law

Under present law, there is no special set aside of AATF funds for air traffic control modernization.

Description of Proposal

The proposal requires that the amounts received in the AATF (including interest) attributable to the increase in tax for noncommercial aviation use of aviation-grade kerosene (14.1 cents per gallon) and aviation gasoline (4.8 cents per gallon) be used only for making expenditures to carry out air traffic control modernization.

Effective Date

The proposal is effective for fuel removed, entered, or sold after September 30, 2007.