



**DESCRIPTION OF THE CHAIRMAN'S MODIFICATION
TO THE PROVISIONS IN THE "AIRPORT AND AIRWAY TRUST
FUND REAUTHORIZATION ACT OF 2011," SCHEDULED FOR MARKUP
BY THE SENATE COMMITTEE ON FINANCE ON FEBRUARY 8, 2011**

A. Modification to Certain Provisions of the Chairman's Mark

1. Modification to Item F. of the Chairman's Mark, Termination of Exemption for Small Aircraft on Nonestablished Lines

The Chairman's modification modifies the item F. of the Chairman's Mark, Termination of Exemption for Small Aircraft on Nonestablished Lines. The Chairman's modification strikes item F. and replaces it with the following proposal. The proposal modifies section 4281 of the Code to provide that an aircraft that is not a rotorcraft or propeller aircraft (i.e. that is a jet engine aircraft) does not qualify for the exemption for small aircraft operated on nonestablished lines.

B. Additions to the Chairman's Mark

1. Allow tax-exempt private activity bond financing for fixed-wing emergency medical aircraft

Present Law

Interest on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes.¹ Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. In general, private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals).² The exclusion from income for State and local bonds does not apply

¹ Sec. 103(a).

² See sec. 141 defining "private activity bond."

to private activity bonds, unless the bonds are issued for certain permitted purposes (“qualified bonds”) and other Code requirements are met.³

Section 147(e) of the Code provides, in part, that a private activity bond is not a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is used for airplanes.⁴ The Internal Revenue Service has ruled that a helicopter is not an “airplane” for purposes of section 147(e).⁵

A fixed-wing aircraft providing air transportation for emergency medical services and that is equipped for and exclusively dedicated on that flight to acute care emergency medical services is exempt from the air transportation excise taxes imposed by sections 4261 and 4271.⁶

Description of Proposal

The proposal amends section 147(e) so that the prohibition on the use of proceeds for airplanes does not apply to any fixed-wing aircraft equipped for, and exclusively dedicated to providing, acute care emergency medical services (within the meaning of section 4261(g)(2)).

Effective Date

The proposal is effective for obligations issued after the date of enactment.

2. Ensure solvency of the Airport and Airway Trust Fund

Present Law

The uncommitted cash balance in the Airport and Airway Trust Fund has declined significantly in recent years. At the end of Fiscal Year 2001, the uncommitted cash balance was \$7.3 billion. At the end of Fiscal Year 2010, the balance was approximately \$770 million.⁷

The current statutory formula requires that estimated Airport and Airway Trust Fund receipts each year must equal Trust Fund expenditures. However, amounts appropriated from the Airport and Airway Trust Fund based on revenue receipt projections have exceeded the amounts actually deposited into the Airport and Airway Trust Fund, resulting in declines in the uncommitted cash balance.

³ See sec. 103(b) and sec. 141(e).

⁴ Other prohibited facilities include any skybox, or other private 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. Sec. 147(e).

⁵ Rev. Rul 2003-116, 2003-46 I.R.B. 1083, 2003-2 C.B. 1083 (November 17, 2003) (released: October 29, 2003).

⁶ Section 4261(g)(2).

⁷ Government Accountability Office, “Airport and Airway Trust Fund: Declining Balance Raises Concerns Over Ability to Meet Future Demands,” (February 3, 2011) p. 5.

Description of Proposal

The proposal amends section 9502 to limit the budgetary resources initially made available each fiscal year from the Airport and Airway Trust Fund to 90 percent, rather than 100 percent, of forecasted revenues for that year.

Effective Date

The proposal is effective for fiscal years 2012 and 2013.