PRESENT LAW AND BACKGROUND INFORMATION RELATING TO THE AIRPORT AND AIRWAY TRUST FUND

Scheduled for a Public Hearing
Before the
HOUSE COMMITTEE ON WAYS AND MEANS
on May 7, 2009

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

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CONTENTS

INTRODUCTION AND SUMMARY

The Committee on Ways and Means has scheduled a hearing for May 7, 2009, regarding the Airport and Airway Trust Fund and related taxes. This document[1] describes present law and provides background information on the excise taxes that fund the Airport and Airway Trust Fund and projections of those taxes and trust fund balances.

The Airport and Airway Trust Fund provides funding for capital improvements to the U.S. airport and airway system and funding for the Federal Aviation Administration ("FAA"), among other purposes. The excise taxes imposed to finance the Airport and Airway Trust Fund are:[2]

- taxes imposed on the transportation of persons by air;
- an international air facilities tax;
- taxes imposed on the transportation of property by air;
- taxes imposed on fuel used in noncommercial aviation (19.3 cents per gallon for aviation gasoline, 21.8 cents per gallon for jet fuel (kerosene) and other aviation fuels); and
- taxes imposed on fuel used in commercial aviation (4.3 cents per gallon).

Domestic commercial aviation (the use of an aircraft in a business of transporting persons or property for compensation) is subject to the tax on the transportation of persons and property by air, the international air facilities taxes, and the 4.3-cent-per-gallon fuel tax. Noncommercial aviation is subject only to the fuel taxes, but at rates higher than that imposed on commercial aviation.[3] With the exception of 4.3 cents per gallon of the fuel taxes, the aviation excise taxes do not apply after September 30, 2009. In fiscal year 2008, the aviation excise taxes raised approximately $11.8 billion for the trust fund.

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[1] This document may be cited as *Present Law and Background Information Relating to the Airport and Airway Trust Fund*, JCX-26-09 (May 4, 2009). This document also may be found at www.jct.gov.

[2] Sec. 9502(b)(1). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code"). The Airport and Airway Trust Fund also is credited with interest under sec. 9602(b), amounts equivalent to civil penalties collected under section 47107(n) of Title 49 of the United States Code, and amounts appropriated to the Airport and Airway Trust Fund as required to make authorized expenditures (sec. 9502(c)).

[3] For commercial aviation, the fuel tax consists of two components: 4.3 cents per gallon dedicated to the Airport and Airway Trust Fund 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 Airport and Airway Trust Fund component (21.8 cents per gallon or 19.3 if aviation gasoline) plus 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. This pamphlet focuses on the components of the taxes dedicated to the Airport and Airway Trust Fund.

A. Airport and Airway Trust Fund Taxes

The Airport and Airway Trust Fund provides funding for the national aviation system. It was created by the Airport and Airway Revenue Act of 1970.[4] Revenues from aviation-related excise taxes support the Airport and Airway Trust Fund. The supporting taxes are taxes on the transportation of persons by air (the domestic passenger ticket tax, segment tax, and a tax on amounts paid to air carriers for the right to provide mileage awards), a tax on the transportation of property by air, a use of international air facilities tax, and taxes on aviation fuels. The taxes, summarized in the table below, are scheduled to expire (or in the case of aviation fuel be reduced) on October 1, 2009.[5]

Table 1.–Summary of Airport and Airway Trust Fund Taxes

Tax Type	Tax Rate
Transportation of persons by air • Domestic ticket tax (ad valorem tax) • Domestic flight segment tax (a flight segment is one takeoff and one landing)	• 7.5 percent of ticket price (or amounts paid for the right to provide mileage awards) • $3.60 (indexed) per segment during 2009 (does not apply to flights to and from rural airports)
Use of international air facilities tax (flat tax that applies to passengers arriving or departing for foreign destinations that are not subject to the ticket tax)	$16.10 (indexed) per arrival/departure during 2009 ($8.00 (indexed) for departures from Alaska and Hawaii)
Transportation of property by air (ad valorem tax)	6.25 percent of amount paid for the transportation of property by air
Noncommercial aviation fuel	Aviation gasoline: 19.3 cents per gallon Other aviation fuel: 21.8 cents per gallon
Commercial aviation fuel	4.3 cents per gallon

Table 2 shows the projected baseline revenues for the Airport and Airway Trust Fund taxes.

[4] Pub. L. No. 91-258. sec. 208 (1970).

[5] Sec. 4261(j)(1)(A)(ii) (taxes on transportation of persons by air and use of international air facilities tax); sec. 4271(d)(1)(A)(ii) (tax on transportation of property by air) and sec. 4081(d)(2)(reducing the tax on aviation fuel, including aviation gasoline, to 4.3 cents per gallon).

Table 2.−Baseline Projections of Aviation Excise Taxes
(dollars in millions)

Aviation Excise Taxes	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Transportation of persons by air	8,243	7,654	8,110	8,559	9,027	9,504	9,983	10,434	10,892	11,361	11,836	12,323
Transportation of property by air	535	535	557	594	635	679	724	767	811	857	903	952
Use of international air facilities	2,313	2,296	2,341	2,449	2,599	2,756	2,913	3,066	3,226	3,397	3,555	3,733
Aviation fuel for commercial use	536	520	528	549	572	595	617	634	650	666	681	696
Aviation fuel (other than gasoline)	234	227	231	240	250	260	269	277	284	291	297	304
Aviation gasoline	35	34	34	35	36	37	39	39	40	40	41	41
AATF refunds*	-56	-56	-56	-56	-56	-56	-56	-56	-56	-56	-56	-56
Total net aviation taxes	**11,895**	**11,266**	**11,802**	**12,427**	**13,119**	**13,830**	**14,545**	**15,218**	**15,903**	**16,612**	**17,313**	**18,050**
Airport and Airways Trust Fund (net)	11,839	11,210	11,746	12,371	13,063	13,774	14,489	15,162	15,847	16,556	17,257	17,994

* The Airport and Airway Trust Fund reimburses the General Fund for taxes paid on aviation fuels used for nontaxable purposes.
** Numbers may not add due to rounding.

Source: Congressional Budget Office (March 2009 baseline).

Taxes on the transportation of persons by air

Domestic air passenger excise taxes (ad valorem tax and flight segment 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.[6] The second component is a flight segment tax. For 2009, the flight segment tax rate is $3.60.[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."[8] 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 (1) is not located within 75 miles of another airport that had more than 100,000 such departures in that year, (2) is receiving payments under the Federal "essential air service" program, or (3) is not connected by paved roads to another airport.[9]

The domestic air passenger excise taxes apply 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.[10] 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.

Taxable transportation does not include uninterrupted international air transportation. Uninterrupted international air transportation is any transportation that does not both begin and

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[6] Sec. 4261(a).

[7] Sec. 4261(b)(1) and 4261(e)(4). The Code provides for a $3.00 tax during 2002 and thereafter, which is indexed annually for inflation, resulting in the current rate of $3.60 for 2009.

[8] Sec. 4261(e)(l)(A).

[9] Sec. 4261(e)(l)(B). 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. Sec. 4261(e)(l)(B)(i). Rural airports not connected by paved roads could include those on an island, or in very remote areas, such as in Alaska. The Department of Transportation has published a list of airports that meet the definition of rural airports. See Rev. Proc. 2005-45.

[10] Sec. 4262(a).

end in the United States or in the 225-mile zone and does not have a layover time of more than 12 hours.[11] The tax on international air passenger transportation is discussed below.

Use of international air facilities taxes

For 2009, international air passenger transportation is subject to a tax of $16.10 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.[12] The definition of international transportation includes certain 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 air 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 $8.00 for calendar year 2009.[13]

"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).[14] Examples of such payments are purchases of miles by credit card companies and affiliates (including airline affiliates) for use as "rewards" to cardholders.

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[11] Sec. 4262(c)(3).

[12] Sec. 4261(c) and 4261(e)(4). The international arrival and departure tax rate of $12.00 is indexed annually for inflation, effective each January 1, resulting in the current rate of $16.10 for 2009.

[13] Sec. 4261(c)(3) and 4261(e)(4). The special rule for Alaska and Hawaii tax rate of $6.00 is indexed annually for inflation, effective each January 1, resulting in the current rate of $8.00 for 2009.

[14] Sec. 4261(e)(3).

Tax on the transportation of property by air

Domestic transportation of property by air is subject to a 6.25 percent ad valorem excise tax on the amount paid for the transportation.[15] The tax generally applies only to transportation that both begins and ends in the United States. [16]

Taxes on fuel used in aviation

Taxation of taxable fuel generally

Under section 4081, an excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal,[17] (2) the entry of any taxable fuel into the United States for consumption, use, or warehousing, 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.[18] 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.[19] 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.[20]

The term "taxable fuel" means gasoline, diesel fuel, and kerosene.[21] The term includes kerosene used in aviation as well as aviation gasoline.

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[15] Sec. 4271.

[16] Sec. 4272(a) and (b).

[17] A "terminal" is a taxable fuel storage and distribution facility that is supplied by pipeline or vessel and for which taxable fuel may be removed at a rack. Treas. Reg. sec. 48.4081-1(b). 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. Id.

[18] Sec. 4081(a)(1).

[19] Sec. 4081(a)(1)(B).

[20] 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. Treas. Reg. sec. 48.4081-2(c). 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).

[21] Sec. 4083(a).

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.

Kerosene

In general, section 4081 imposes a tax of 24.3 cents per gallon on kerosene. However, for kerosene removed directly from a terminal into the fuel tank of an aircraft, reduced rates apply.[22] 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.[23] 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.[24] If kerosene that is taxed at 24.3 cents per gallon is used in aviation a credit or refund is allowable for the difference between the tax imposed and the applicable aviation use rate.[25]

"Commercial aviation" generally means any use of an aircraft in the business of transporting persons or property for compensation or hire by air.[26] Commercial aviation does not include transportation exempt from the taxes on the transportation or persons or property by air by reason of section 4281, 4282, 4261(h), or 4261(i). Thus, small aircraft operation 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.

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[22] 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).

[23] Sec. 4081(a)(2)(C)(i). An airline seeking to buy fuel at the reduced rate for commercial aviation must be registered with the IRS and the fuel terminal must be 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).

[24] Sec. 4081(a)(2)(C)(ii).

[25] Sec. 6427(l).

[26] Sec. 4083(b).

4261(i)) are excluded from the definition of commercial aviation (and taxed as noncommercial aviation for purposes of the fuel taxes).

It is possible for an aircraft to be used both for commercial aviation and noncommercial aviation purposes. For example, a private corporate aircraft is treated as engaged in commercial air transportation when it transports persons for compensation. When that same aircraft transports only employees of the owner corporation, it is treated as engaged in noncommercial aviation. Thus, the determination of whether an aircraft is engaged in commercial or noncommercial aviation is made on a flight-by-flight basis.

Aviation gasoline

The tax on aviation gasoline is 19.3 cents per gallon. If aviation gasoline is used in commercial aviation or for an exempt purpose, a credit or refund is allowable for the difference between the tax imposed and the applicable rate.[27]

[27] See, sec. 6421(f)(2), sec. 6416(a), sec. 6420 (farming purposes), sec. 6421(c).

B. Select Legislative History and Committee Activity

Before the establishment of the Airport and Airway Trust Fund, a five-percent tax rate was imposed on passenger transportation beginning in 1960 with revenue going to the General Fund. There was also an aviation gasoline tax imposed at two cents per gallon.

The Airport and Airway Development Act of 1970[28] ("1970 legislation") increased the five-percent tax rate to eight percent concurrently with the establishment of the Airport and Airway Trust Fund in 1970. The use of international air facilities tax was first imposed at a $3 per passenger rate (on departures only) by the 1970 legislation. The 1970 legislation also established the tax on the transportation of property by air at five percent and increased the aviation gasoline tax rate to seven cents per gallon and imposed a tax on other aviation fuel (jet fuel) used in noncommercial aviation at the same rate.[29]

Except for the period from October 1, 1980 through August 31, 1982, when there was a general expiration of the Airport and Airway Trust Fund taxes, the rates for the domestic air passenger tax, and tax on the transportation of property by air, remained the same until the enactment of the Omnibus Budget Reconciliation Act of 1990[30] ("OBRA 1990"). During the period when the Airport and Airway Trust Fund taxes were expired (October 1, 1980 through August 31, 1982) the tax on jet fuel was zero and the tax on aviation gasoline reverted to the rate of two cents per gallon. When the Airport and Airway Trust Fund taxes were reinstated in 1982, the aviation gasoline tax was increased to 12 cents per gallon, and the jet fuel tax rate was increased to 14 cents per gallon.[31]

The Omnibus Budget Reconciliation Act of 1989 increased the international air facilities tax from $3 to $6.[32] In OBRA 1990, the passenger transportation tax rate was increased from eight percent to 10 percent for a five-year period (through December 31, 1995). The tax on transportation of property by air was increased from five percent to 6.25 percent. OBRA 1990 increased the aviation gasoline tax rate from 12 cents to 15 cents per gallon, and increased the jet fuel tax rate from 14 cents to 17.5 cents per gallon.

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[28] Pub. L. No. 91-258 (1970).

[29] The 1970 legislation imposed an annual civil aircraft use tax through 1980. The tax rate was $25 plus, 3.5 cents per pound of the maximum certificated takeoff weight for turbine aircraft, or two cents per pound for maximum certificated takeoff weight in excess of 2,500 pounds for other aircraft (jet aircraft).

[30] Pub. L. No. 101-508 (1990).

[31] Pub. L. No. 97-248 (1982).

[32] Pub. L. No. 101-239 (1989). Except for the period from October 1, 1980 through August 31, 1982, when the tax expired, the international air facilities tax rate remains the same until 1989.

The Omnibus Reconciliation Act of 1993[33] ("OBRA 1993") imposed an additional 4.3 cents per gallon General Fund deficit reduction tax on aviation fuels (for a total tax of 19.3 for aviation gasoline and 21.8 for jet fuel). Fuels used in commercial aviation were exempt through September 30, 1995, after which the 4.3-cents-per-gallon tax applied. The OBRA 1993 4.3-cents-per-gallon tax did not have a sunset and therefore does not expire.

The aviation taxes lapsed on January 1, 1996, for almost eight months. The Small Business Job Protection Act of 1996[34] reinstated the taxes for the period August 27, 1996 through December 31, 1996.

The taxes lapsed again on January 1, 1997, for approximately two months. The Airport and Airway Trust Fund Tax Reinstatement Act of 1997[35] reinstated the taxes through September 30, 1997.

The Taxpayer Relief Act of 1997[36] (effective October 1, 1997), extended the aviation excise taxes for 10 years, until September 30, 2007. It converted the 10-percent tax into the present law combination of a 7.5 percent ad valorem tax and a phased-in flight segment tax. It also imposed a new 7.5 percent tax on payments to airlines for frequent flyer miles and similar awards by banks and credit card companies. It increased the international air facilities tax from $6 to $12 and applied the tax to arrivals in addition to departures. The $6 departure tax for Alaska and Hawaii was indexed. The tax on the transportation of property by air and the fuel taxes were retained. The act transferred the 4.3 cents per gallon deficit reduction fuel tax from the General Fund to the Airport and Airway Trust Fund.

Prior to the enactment of the American Jobs Creation Act of 2004[37] ("AJCA"), instead of being taxed upon removal from the terminal rack, kerosene for aviation was taxed upon sale of the fuel by a producer or importer. Sales by a registered producer to another registered producer were exempt from tax with the result that, as a practical matter, aviation kerosene was not taxed until the fuel was used at the airport (or sold to an unregistered person). The ability to remove large quantities of fuel without payment of tax prior to placing it into the fuel tank of an aircraft prompted concerns about the diversion of aviation fuel to highway uses and fuel tax evasion. The AJCA treated aviation-grade kerosene as a taxable fuel, generally taxed upon removal from the terminal rack at 21.8 cents per gallon, unless the fuel was going directly into the fuel tank of an aircraft for use in commercial aviation (taxed at 4.3 cents per gallon or zero).

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[33] Pub. L. No. 103-66 (1993).

[34] Pub. L. No. 104-188 (1996).

[35] Pub. L. No. 105-2 (1997).

[36] Pub. L. No. 105-34 (1997).

[37] Pub. L. No. 108-357 (2004).

For kerosene not placed directly into the fuel tank of an aircraft, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users[38] ("SAFETEA-LU") equalized the tax rate for aviation-grade kerosene and other kerosene, taxing both at 24.3 cents per gallon, and providing for a refund of the difference between 24.3 cents per gallon and the appropriate rate (commercial or noncommercial) if the fuel was used for an aviation purposes.

SAFETEA-LU also made several modest changes to the aviation excise taxes. Under prior law crop dusters were exempt from fuel taxes while operating over a farm if they received consent from the farmer to claim the refund. SAFETEA-LU repealed the consent requirement and provided that the exemption applied to fuel used in travel to and from a farm as well. Prior law exempted helicopters used in timber operations from the ticket and flight segment taxes. SAFETEA-LU expanded the exception to cover fixed-wing aircraft. SAFETEA-LU expanded the definition of rural airports to include airports annually having fewer than 100,000 commercial passengers departing by air on flights of at least 100 miles and that also are not connected to another airport by paved roads. Tax exemptions for certain transportation by seaplane and for sightseeing flights also were established by SAFETEA-LU.

110th Congress and 111th Congress extensions

The aviation excise taxes, initially scheduled to expire September 30, 2007, have been the subject of a series of extensions through continuing resolutions and other public laws.[39] The most recent extension, the Federal Aviation Administration Extension Act of 2009, continues the aviation excise taxes through the end of fiscal year 2009 (September 30, 2009).

Congressional committee activity

110th Congress

On September 18, 2007, the Committee on Ways and Means marked up H.R. 3539, the "Airport and Airway Trust Fund Financing Act of 2007." H.R. 3539 would have extended the taxes and Airport and Airway Trust Fund expenditure purposes through fiscal year 2011, increased the fuel taxes for noncommercial aviation, and required that the revenues attributable to the increase in tax rates be used only for air traffic control modernization. With regard to the fuel tax increase, the bill would have increased the tax on aviation gasoline from 19.3 cents per gallon to 24.1 cents per gallon. The tax on aviation-grade kerosene would have increased from 21.8 cents per gallon to 35.9 cents per gallon. The tax rates for fuel used in commercial aviation would have been unchanged by the bill. The bill was reported out of Committee in H.R. Rpt.

[38] Pub. L. No. 109-59 (2005).

[39] Pub. L. Nos. 110-92, 110-116, 110-137, and 110-149 (continuing resolutions), the Department of Transportation Appropriations Act, 2008 (Pub. L. No. 110-161), the Airport and Airway Extension Act of 2008 (Pub. L. No. 110-190), the Federal Aviation Administration Extension Act of 2008 (Pub. L. No. 110-253), the Federal Aviation Administration Extension Act of 2008, Part II (Pub. L. No. 110-330), and the Federal Aviation Administration Extension Act of 2009 (Pub. L. No. 111-12).

No. 110-334. The substance of H.R. 3539 was included as Title X in H.R. 2881, the "FAA Reauthorization Act of 2007." H.R. 2881 passed the House on September 20, 2007.

On September 20, 2007, the Senate Committee on Finance marked up S. 2345, the "American Infrastructure Investment and Improvement Act." S. 2345 contained many provisions both related and unrelated to the Airport and Airway Trust Fund. With respect to the Airport and Airway Trust Fund, S. 2345 would have extended the taxes and Airport and Airway Trust Fund expenditure purposes through fiscal year 2011. The bill would have increased the tax on aviation-grade kerosene from 21.8 cents per gallon to 35.9 cents per gallon. The tax rates for fuel used in commercial aviation would have been unchanged by the bill. S. 2345 also would have made several other changes related to the aviation excise taxes. The bill would have increased the international air facilities tax to $16.65 (indexed), established an Air Traffic Control System Modernization Account within the Airport and Airway Trust Fund, imposed a $58 departure tax on aircraft that are part of a fractional aircraft ownership program, and repealed the passenger tax exemption for small aircraft operating on nonestablished lines (while retaining the exemption for aircraft operating solely for sightseeing purposes). The bill was reported in S. Rpt. No. 110-228. No further action was taken on this bill.

The Senate Committee on Commerce, Science and Transportation reported S. 1300, the "Aviation Investment and Modernization Act of 2007," in S. Rpt. No. 110-144. Included among the provisions of S. 1300 was a direction to the FAA to impose a surcharge of $25 per flight on owners or operators of passenger aircraft to fund modernization of the air traffic control system. No further action was taken on this bill.

111th Congress

On March 5, 2009, the House Committee on Transportation and Infrastructure marked up and ordered reported H.R. 915, the "FAA Reauthorization Act of 2009." The bill covers a reauthorization period through fiscal year 2012, but does not contain provisions extending the aviation excise taxes. H.R. 915 also was referred to the House Committee on Science and Technology Subcommittee on Space and Aeronautics, where it is pending.

C. Airport and Airway Trust Fund Expenditures and Balances

As noted above, the Airport and Airway Trust Fund was created in 1970 to finance a major portion of the Federal expenditures on national aviation programs. The statutory provisions relating to the Airport and Airway Trust Fund were placed in the Code in 1982.[40] Authorized expenditures for the Airport and Airway Trust Fund include the Airport Improvement Program ("AIP") (funds construction and safety projects at airports), Facilities and Equipment ("F&E") program (funds the costs of acquiring, establishing, and improving the air traffic control facilities), Research, Engineering, and Development ("RED") program (funds projects in connection with FAA research and development activities), and the Operation and Maintenance ("O&M") programs. In addition to the aviation excise taxes dedicated to the Airport and Airway Trust Fund, the General Fund contributes toward FAA operations. As the chart below indicates, for fiscal year 2009, the Congressional Budget Office ("CBO") anticipates that the General Fund will contribute 24 percent toward aviation expenditures.

[40] Sec. 9502.

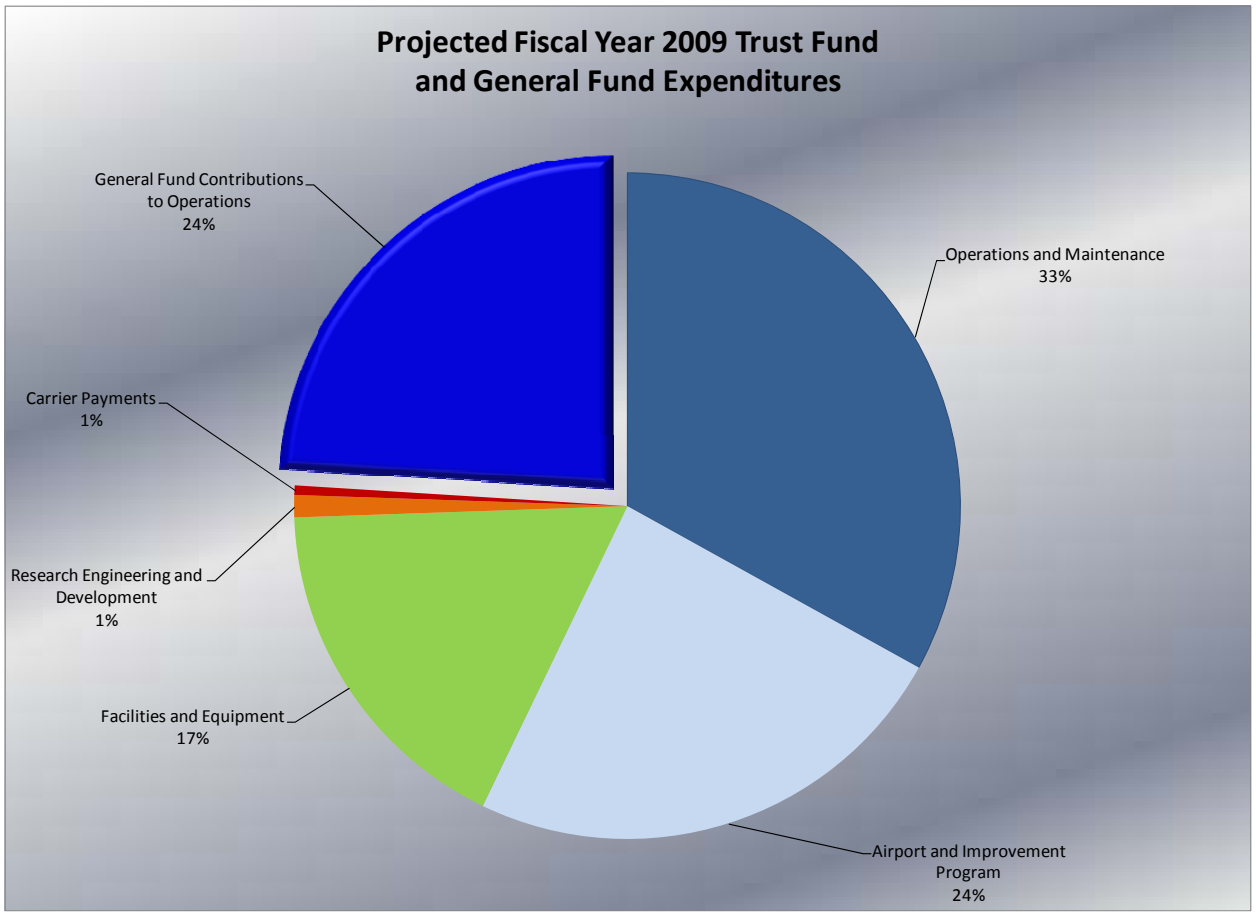

Table 3 below shows the CBO projections of Airport and Airway Trust Fund balances and expenditures. There is no single method for projecting uncommitted balances in the Airport and Airway Trust Fund under CBO's baseline for FAA spending because projections of total spending for the agency—which historically receives a mix of funding from the trust fund and general fund—do not specify the proportional split of funding sources. In other words, there could be many alternative combinations of funding levels from the trust fund and the general fund that would provide the FAA with total funding levels projected in the baseline. One simple method for estimating uncommitted balances, presented in the following table, assumes that the amount of funding provided from the general fund for FAA operations remains at the 2009 enacted level plus inflation. Under that assumption, CBO estimates that the General Fund would provide roughly one-fourth of FAA's funding in future years. Actual balances will be driven by future Congressional actions and will depend on revenue receipts to the Airport and Airway Trust Fund.

Table 3

CBO March 2009 Baseline with Fixed General Fund Contribution to FAA Operations

AIRPORT AND AIRWAY TRUST FUND (AATF)
PROJECTION OF TRUST FUND BALANCES

Assumptions:

Revenues = March 2009 baseline
Spending = March 2009 baseline with inflation
GF share of FAA operations = enacted level plus inflation
AIP outlays controlled by oblim; oblims = 2009 level plus inflation
Uncommitted balances reflect AIP contract authority
Assumes trust fund provides resources for payments to air carriers
Assumes extension of AIP contract authority, trust fund expenditure authority, and taxes

CASH BALANCES	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
BOY cash balance	9,706	9,310	9,176	9,619	10,621	12,240	14,455	17,204	20,476	24,293	28,712
Deposits (revenues and interest)	11,360	11,911	12,571	13,319	14,107	14,886	15,647	16,443	17,287	18,147	19,069
Outlays	11,756	12,045	12,128	12,318	12,488	12,671	12,898	13,172	13,469	13,728	14,054
EOY cash balance	9,310	9,176	9,619	10,621	12,240	14,455	17,204	20,476	24,293	28,712	33,727
BOY unpaid authority	8,270	8,558	8,790	9,060	9,263	9,417	9,553	9,666	9,745	9,777	9,802
New Budget Authority (BA and CA)	12,044	12,277	12,398	12,521	12,642	12,807	13,011	13,251	13,501	13,753	14,023
Outlays	11,756	12,045	12,128	12,318	12,488	12,671	12,898	13,172	13,469	13,728	14,054
EOY unpaid authority	8,558	8,790	9,060	9,263	9,417	9,553	9,666	9,745	9,777	9,802	9,771
EOY cash balance	9,310	9,176	9,619	10,621	12,240	14,455	17,204	20,476	24,293	28,712	33,727
EOY uncommitted balance	752	386	559	1,358	2,823	4,902	7,538	10,731	14,516	18,910	23,956
Change in uncommitted balance	-683	-366	173	798	1,465	2,079	2,636	3,192	3,786	4,394	5,046

SUMMARY OF FUNDING	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
BUDGETARY RESOUCES FROM TRUST FUND											
TF share of Operations	5,238	5,425	5,520	5,616	5,714	5,840	5,994	6,174	6,360	6,551	6,753
Grants-in-aid for airports (AIP contract authority)	3,820	3,820	3,820	3,820	3,820	3,820	3,820	3,820	3,820	3,820	3,820
Facilities and Equipment (F&E)	2,742	2,784	2,808	2,832	2,854	2,889	2,935	2,990	3,049	3,105	3,168
Research, Engin. & Devel. (RED)	171	174	176	178	179	182	185	189	193	197	201
Payments to Air Carriers	73	74	74	75	75	76	77	78	79	80	81
Total, Budgetary Resources from Trust Fund	12,044	12,277	12,398	12,521	12,642	12,807	13,011	13,251	13,501	13,753	14,023
BUDGETARY RESOURCES FROM GENERAL FUND											
Contribution to FAA Operations	3,804	3,940	4,009	4,079	4,150	4,241	4,353	4,484	4,619	4,758	4,904
TOTAL FUNDING (budget authority + contract authority)	15,848	16,217	16,407	16,600	16,792	17,048	17,364	17,735	18,120	18,511	18,927
General fund appropriation as % of total funding	24%	24%	24%	25%	25%	25%	25%	25%	25%	26%	26%
REFERENCE											
Grants-in-aid for airports obligation limitation	*3,515*	*3,549*	*3,571*	*3,594*	*3,612*	*3,646*	*3,692*	*3,751*	*3,812*	*3,871*	*3,935*
Total discretionary resources (BA plus oblim)	*15,543*	*15,946*	*16,158*	*16,374*	*16,584*	*16,874*	*17,236*	*17,666*	*18,112*	*18,562*	*19,042*
General fund appropriation as % discretionary resources	*23%*	*22%*	*22%*	*22%*	*22%*	*22%*	*21%*	*21%*	*21%*	*21%*	*21%*

Note: Estimates of trust fund balances reflect CBO's best estimate of likely outcomes under current law. Actual balances could be higher or lower, depending on the accuracy of revenue and spending estimates.