

**DESCRIPTION OF H.R. 1034,
THE “AIRPORT AND AIRWAY TRUST FUND
FINANCING REAUTHORIZATION ACT OF 2011”**

Scheduled for Markup
By the
HOUSE COMMITTEE ON WAYS AND MEANS
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Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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CONTENTS

| | <u>Page</u> |
|---|-------------|
| INTRODUCTION | 1 |
| A. Extension of Airport and Airway Trust Fund Expenditure Authority | 3 |
| B. Extension of Taxes Funding the Airport and Airway Trust Fund | 5 |

INTRODUCTION

The Airport and Airway Trust Fund provides funding for capital improvements to the U.S. airport and airway system and funding for Federal Aviation Administration (“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 Airport and Airway Trust Fund, provide the relevant expenditure provisions governing the purposes for which Airport and Airway Trust Fund monies may be spent, and set the period for when those expenditures may occur. The excise taxes imposed to finance the Airport and Airway Trust Fund are:¹

- ticket taxes imposed on commercial, domestic passenger transportation by air;
- a use of international travel 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 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 Airport and Airway Trust Fund do not apply after March 31, 2011. The Airport and Airway Trust Fund expenditure authority generally expires on April 1, 2011. The purposes for which Airport and Airway Trust Fund funds may be expended are fixed as of the date of enactment of the Airport and Airway Extension Act of 2010, Part IV. As a result, the Code provisions must be amended to permit expenditure of Airport and Airway Trust Fund monies for purposes as provided for in any new reauthorization bill, as well as to authorize the imposition of the dedicated taxes beyond March 31, 2011.

On February 16, 2011, the House Committee on Transportation and Infrastructure ordered reported H.R. 658, the “FAA Reauthorization and Reform Act of 2011.” H.R. 658 would authorize appropriations for fiscal years 2011 through 2014, with an overall funding level

¹ Sec. 9502(b)(1). The Airport and Airway Trust fund 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 actually 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 for jet fuel, 19.3 cents for aviation gasoline) plus 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund.

of \$59.7 billion.³ The House Committee on Ways and Means has scheduled a markup of H.R. 1034, the “Airport and Airway Trust Fund Financing Reauthorization Act of 2011,” for March 16, 2011.

This document,⁴ prepared by the staff of the Joint Committee on Taxation, provides a summary of the Airport and Airway Trust Fund expenditure purposes, a description of the present-law taxes dedicated to the Airport and Airway Trust Fund, and a description of H.R. 1034. The bill extends the current taxes through September 30, 2014, amends the purposes for which Airport and Airway Trust Fund funds may be expended to include the reauthorization bill, and extends the expenditure authority through September 30, 2014.

³ A summary of the bill, prepared by the House Committee on Transportation and Infrastructure, can be found at http://republicans.transportation.house.gov/Media/file/112th/Aviation/2011-02-11-HR_658_FAA_Bill_Section_Summary.pdf.

⁴ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R.1034, the “Airport and Airway Trust Fund Financing Reauthorization Act of 2011”* (JCX-16-11), March 11, 2011. This document can be found on our website at www.jct.gov.

A. Extension of Airport and Airway Trust Fund Expenditure Authority

Present Law

In general

The Airport and Airway Trust Fund was created in 1970 to finance a major portion of Federal expenditures on national aviation programs. Operation of the Airport and Airway Trust Fund is governed by the Code and authorizing statutes. The Code provisions govern deposit of revenues into the trust fund and approve the use of trust fund money (as provided by appropriation acts) for expenditure purposes in authorizing statutes as in effect on the date of enactment of the latest authorizing Act. The authorizing acts provide specific trust fund expenditure programs and purposes.

Authorized expenditures from the Airport and Airway Trust Fund include the following principal programs:

1. Airport Improvement Program (airport planning, construction, noise compatibility programs, and safety projects);
2. Facilities and Equipment program (costs of acquiring, establishing, and improving the air traffic control facilities);
3. Research, Engineering, and Development program (FAA research and development activities);
4. FAA Operations and Maintenance (“O&M”) programs; and
5. Certain other aviation-related programs specified in authorizing acts.

Part of the O&M programs is financed from General Fund monies as well. Of the total FAA appropriations, the General Fund contribution has ranged from 15 to 24 percent in recent years.⁵

Limits on Airport and Airway Trust Fund expenditures

No expenditures are currently permitted to be made from the Airport and Airway Trust Fund after March 31, 2011. Because the purposes for which Airport and Airway Trust Fund monies are permitted to be expended are fixed as of the date of enactment of the Airport and Airway Extension Act of 2010, Part IV, the Code must be amended to authorize new Airport and Airway Trust Fund expenditure purposes. In addition, the Code contains a specific enforcement provision to prevent expenditure of Airport and Airway Trust Fund monies for purposes not authorized under section 9502. Should such unapproved expenditures occur, no further aviation

⁵ Congressional Budget Office, *Financing Federal Aviation Programs: Statement of Robert A. Sunshine before the House Committee on Ways and Means* (May 7, 2009) at 3.

excise tax receipts will be transferred to the Airport and Airway Trust Fund. Rather, the aviation taxes would continue to be imposed, but the receipts would be retained in the General Fund.

Description of Proposal

The proposal authorizes expenditures from the Airport and Airway Trust Fund through September 30, 2014, and revises the purposes for which money from the Airport and Airway Trust Fund funds are permitted to be expended to include those obligations authorized under the reauthorization legislation of 2011 (i.e., the “FAA Reauthorization and Reform Act of 2011,” which sets forth aviation program expenditure purposes through September 30, 2014).

Effective Date

The proposal takes effect on date of enactment.

B. Extension of Taxes Funding the Airport and Airway Trust Fund

Present Law

Overview

Excise taxes are imposed on amounts paid for commercial air passenger and freight transportation and on fuels used in commercial aviation and noncommercial aviation (i.e., transportation that is not “for hire”) to fund the Airport and Airway Trust Fund. The present aviation excise taxes are as follows:

| Tax (and Code section) | Tax Rates |
|---|--|
| Domestic air passengers (sec. 4261) | 7.5 percent of fare, plus \$3.70 (2011) per domestic flight segment generally ⁶ |
| International travel facilities tax (sec. 4261) | \$16.30 (2011) per arrival or departure ⁷ |
| Amounts paid for right to award free or reduced rate passenger air transportation (sec. 4261) | 7.5 percent of amount paid |
| Air cargo (freight) transportation (sec. 4271) | 6.25 percent of amount charged for domestic transportation; no tax on international cargo transportation |
| Aviation fuels (sec. 4081): ⁸ <ol style="list-style-type: none"> 1. Commercial aviation 2. Non-commercial (general) aviation: <ul style="list-style-type: none"> • Aviation gasoline • Jet fuel | 4.3 cents per gallon 19.3 cents per gallon 21.8 cents per gallon |

All Airport and Airway Trust Fund excise taxes, except for 4.3 cents per gallon of the taxes on aviation fuels, are scheduled to expire after March 31, 2011. The 4.3-cents-per-gallon fuels tax rate is permanent.

⁶ The domestic flight segment portion of the tax is adjusted annually (effective each January 1) for inflation (adjustments based on the changes in the consumer price index (the “CPI”).

⁷ The international travel facilities tax rate is adjusted annually for inflation (measured by changes in the CPI).

⁸ Like most other taxable motor fuels, aviation fuels are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund.

Taxes on transportation of persons by air

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 2011, the flight segment tax rate is \$3.70.⁹ 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.¹⁰

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.

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.

International travel facilities tax

For 2011, international air passenger transportation is subject to a tax of \$16.30 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.¹¹ The definition of international transportation

⁹ Sec. 4261(b)(1) and 4261(d)(4). The Code provides for a \$3 tax indexed annually for inflation, effective each January 1, resulting in the current rate of \$3.70.

¹⁰ 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.

¹¹ 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 \$16.30.

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 \$8.20 for calendar year 2011.

“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 relating to the disclosure of the amount of the passenger taxes on tickets and in advertising. The ticket is required to show the total amount paid for such transportation and the tax. The same requirements apply to advertisements. In addition, if the advertising separately states the amount to be paid for the transportation or the amount of taxes, the total shall be stated at least as prominently as the more prominently stated of the tax or the amount paid for transportation. Failure to satisfy these disclosure requirements is a misdemeanor, upon conviction of which the guilty party is fined not more than \$100 per violation.¹²

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 Airport and Airway Trust Fund. Domestic air cargo transportation is subject to a 6.25 percent *ad valorem* excise tax on the amount paid for the transportation.¹³ The tax applies only to transportation that both begins and ends in the United States. There is no disclosure requirement for the air cargo tax.

Aviation fuel taxes

The Code imposes excise taxes on gasoline used in commercial aviation (4.3 cents per gallon) and noncommercial aviation (19.3 cents per gallon), and on jet fuel (kerosene) and other aviation fuels used in commercial aviation (4.3 cents per gallon) and noncommercial aviation

¹² Sec. 7275.

¹³ Sec. 4271.

(21.8 cents per gallon).¹⁴ Amounts equivalent to these taxes are transferred to the Airport and Airway Trust Fund.

Description of Proposal

The proposal extends the present-law Airport and Airway Trust Fund excise taxes through September 30, 2014.

Effective Date

The proposal takes effect on the date of enactment.

¹⁴ These fuels are also subject to an additional 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. If there was not a taxable sale of the fuel pursuant to section 4081 of the Code, a backup tax exists under section 4041(c) for such fuel that is subsequently sold or used in aviation.