

**BACKGROUND INFORMATION ON FEDERAL AIR TRANSPORTATION  
EXCISE TAXES AND THE AIRPORT AND AIRWAY TRUST FUND**

Scheduled for a Public Hearing

Before the

**SENATE COMMITTEE ON FINANCE**

on February 4, 1997

Prepared by the Staff

of the

**JOINT COMMITTEE ON TAXATION**

February 3, 1997

JCX-3-97

## CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
I. OVERVIEW .....	2
II. PRESENT AND PRIOR FEDERAL AIR TRANSPORTATION EXCISE TAXES .....	5
A. In General .....	5
B. Airport Trust Fund Excise Taxes Imposed on Commercial Air Transportation .....	6
C. Airport Trust Fund Excise Taxes Imposed on Fuels Used in General Aviation .....	9
D. General Fund Transportation Fuels Excise Tax .....	11
E. Repealed Air Transportation Excise Taxes .....	12
III. AIRPORT AND AIRWAY TRUST FUND EXPENDITURE PURPOSES .....	13
IV. BUDGET ACT SCOREKEEPING RULES FOR TRANSPORTATION EXCISE TAXES AND TRUST FUND EXPENDITURES .....	16
V. CURRENT AND PROJECTED FINANCIAL STATUS OF THE AIRPORT TRUST FUND .....	19
VI. ESTIMATED BUDGET EFFECTS OF REIMPOSING AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES .....	29
APPENDIX: DATA ON FINANCIAL CONDITION OF COMMERCIAL AIR CARRIERS .....	31

## INTRODUCTION

This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of present and prior air transportation excise taxes and information on the financial status of the Airport and Airway Trust Fund. The Senate Committee on Finance has scheduled a public hearing on this subject for February 4, 1997.

Part I of this document is an overview. Part II is a description of present and prior law with respect to Federal air transportation excise taxes. Part III is a summary description of present-law Airport and Airway Trust Fund expenditure program purposes. Part IV is a discussion of the budgetary treatment of air transportation excise taxes and the Airport and Airway Trust Fund. Part V presents information on the current and projected status of the Airport and Airway Trust Fund. Part VI presents the estimated budget effects of reimposing the Airport and Airway Trust Fund excise taxes. The Appendix presents data on the financial condition of certain U.S. commercial air carriers.

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<sup>1</sup> This document may be cited as follows: Background Information on Federal Air Transportation Excise Taxes and the Airport and Airway Trust Fund (JCX-3-97), February 3, 1997.

## I. OVERVIEW

Since 1970, a majority of the revenues derived from air transportation excise taxes has been dedicated to the Airport and Airway Trust Fund (the "Airport Trust Fund"). Unlike many other tax issues, Federal excise taxes on aviation and other transportation sectors require the Committee on Finance to coordinate tax structure and rate decisions with actions of other Congressional committees that set specific rules governing the level and types of expenditures for which the tax revenues are dedicated. Because the management of, and authority to spend monies deposited in, the transportation Trust Funds generally are contained in provisions of the Internal Revenue Code (the "Code"), the Finance Committee also exercises more direct oversight of these programs than is true of many other Federal expenditure programs with respect to which primary jurisdiction lies in other committees (and which typically are financed with general revenues).

Historically, the portions of the transportation excise taxes that are dedicated to Trust Funds such as the Airport Trust Fund have been imposed on the persons judged to create at least some of the costs associated with the programs financed with the tax revenues. The tax rates and mix of taxes dedicated to Trust Fund program financing are influenced by analyses of the costs expected to be incurred by the Federal Government in providing services to different segments of the sector. The most recently released study of Federal Aviation Administration ("FAA") costs was published in 1991. The FAA completed an updated study in 1996; however, that study has not been released because of establishment of a Congressionally mandated independent commission to review FAA costs and financing in the Federal Aviation Reauthorization Act of 1996.

### Air transportation excise taxes

Before January 1, 1997, excise taxes were imposed on commercial air passenger and freight transportation and on fuels used in general aviation (i.e., transportation on non-common carrier aircraft which is not for hire) to fund the Airport Trust Fund. In addition, like other transportation sectors, the air transportation sector was and is subject to a permanent 4.3-cents-per-gallon excise tax on aviation fuel, revenues from which are retained in the General Fund for deficit reduction.<sup>2</sup> The Airport Trust Fund was established in 1970 to finance a major portion of the costs of Federal Aviation Administration ("FAA") services and grant programs for airports. Before establishment of the Airport Trust Fund, Federal aviation expenditures were financed from general revenues; General Fund domestic air passenger and fuels taxes were imposed during this period. The structure of the Airport Trust Fund excise taxes has remained generally unchanged, except for rates, since 1970.

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<sup>2</sup> The 4.3-cents-per-gallon transportation motor fuels excise tax was enacted by the Omnibus Budget Reconciliation Act of 1993 (the "1993 Act"). Fuels used in commercial aviation were exempt for a period of approximately two years (through September 30, 1995) when the tax initially was imposed.

Prior to 1997, the Airport Trust Fund excise taxes included three taxes on commercial air transportation:

- (1) a 10-percent excise tax on domestic air passenger transportation;
- (2) a \$6 per person international air passenger departure tax; and
- (3) a 6.25-percent domestic air freight excise tax.

During the same period, general aviation (e.g., corporate aircraft) was subject to Airport Trust Fund excise taxes on the fuels it used rather than the commercial aviation passenger ticket and freight excise taxes. The Airport Trust Fund rates for these excise taxes were 17.5 cents per gallon for jet fuel and 15 cents per gallon for aviation gasoline.

### **Airport Trust Fund expenditure programs**

Current Airport Trust Fund program expenditure authorizations are scheduled to expire after September 30, 1998. The Airport Trust Fund expenditure purposes are included in the Code (sec. 9502) by reference to general purposes and to programs as authorized under specific aviation legislation (as periodically updated).

### **Budgetary treatment of air transportation excise taxes and Trust Fund expenditures**

The Budget Enforcement Act of 1990 and related legislation (collectively, the "1990 Budget Act") include two provisions that are central to the operation of the Airport Trust Fund programs and Trust Fund excise taxes: a budget scorekeeping assumption that current dedicated excise taxes are imposed on a permanent basis (even if statutorily they are scheduled to expire) and classification of Trust Fund spending as discretionary spending subject to aggregate annual caps that apply to all discretionary spending (both for transportation and other programs).

The effect of these rules is that under the 1990 Budget Act, there is no budget scorekeeping link between the revenues raised by the air transportation excise taxes (and transferred to the Airport Trust Fund) and the spending from the Airport Trust Fund. The Trust Fund balances similarly have no effect in a broader budgetary sense on the amount that can be obligated for transportation program expenditures. If Trust Fund excise taxes and programs are extended and reauthorized before expiration of the taxes, there is neither a revenue nor a spending budget score from the legislation. However, if the taxes expire (as is currently true with the Airport Trust Fund excise taxes), Congressional Budget Office ("CBO") revenue baselines issued after the expiration do not include any revenue with respect to the expired taxes. Thus, if the taxes are reimposed following issuance of a new CBO revenue baseline, a revenue increase will be scored based upon the period of time for which the taxes are being reimposed. Because there is no link between Airport Trust Fund spending and dedicated revenues, the resulting revenue increases may be used under the Budget Act to offset revenue loss from enactment of other tax provisions without affecting the Trust Fund programs.

## **Financial status of the Airport Trust Fund**

Late in 1996, the FAA and the General Accounting Office reported that the uncommitted balance of the Airport Trust Fund would be sufficient to fund all of the fiscal 1997 operational expenses of the FAA that were expected to be funded from the Trust Fund, and would allow the FAA to enter into new capital program commitments through July 1997. However, the staff of the Joint Committee on Taxation recently received new information which indicates that pursuant to certain Internal Revenue Service tax deposit rules, commercial passenger and freight air carriers have delayed significantly the time when the pre-1997 excise taxes collected by them from air passengers and freight shippers will be received by the Treasury Department. As a result of this delay, an overwhelming majority of the revenues resulting from reimposition of the Airport Trust Fund air passenger and freight excise taxes from August 27, 1996 through December 31, 1996, were not received by the Treasury Department before January 1, 1997, and therefore such revenues cannot be transferred to the Airport Trust Fund.

The Treasury Department has been crediting revenues to the Airport Trust Fund since the beginning of the 1997 fiscal year, based on estimates of receipts that were made before this information was known. As a result of the new information, the Treasury Department will be required to adjust the Airport Trust Fund balance downward. As of January 31, 1997, the amount of the anticipated adjustment is understood to be approximately \$1.2 billion. The FAA estimates that, after this adjustment is made, the uncommitted balance of the Airport Trust Fund, plus the uncommitted portion of the FAA's 1997 fiscal year appropriation from the General Fund, will be sufficient to fund all of the FAA's operations for the 1997 fiscal year, but will only permit the FAA to enter into new capital program commitments through March 1997 at the latest. However, because these numbers are only estimates and because they do not include any estimates of the costs of terminating certain multiple phase contracts, the FAA may have to stop making new commitments and begin notifying contractors of its intent to terminate multiple phase contracts on March 1, 1997, or earlier, absent legislative action.

## II. PRESENT AND PRIOR FEDERAL AIR TRANSPORTATION EXCISE TAXES

### A. In General

Before January 1, 1997,<sup>3</sup> excise taxes were imposed on commercial air passenger and freight transportation and on fuels used in general aviation (i.e., transportation on non-common carrier aircraft that is not for hire) to fund the Airport Trust Fund.<sup>4</sup> In addition, like other transportation sectors, the air transportation sector generally is subject to a permanent 4.3-cents-per-gallon excise tax on fuel used in aviation. Revenues from this 4.3-cents-per-gallon transportation motor fuels tax are retained in the General Fund for deficit reduction. The Airport Trust Fund was established in 1970 to finance a major portion of the costs of FAA services and grant programs for airports. Before establishment of the Airport Trust Fund, Federal aviation expenditures were financed from general revenues; General Fund domestic air passenger and fuels taxes were imposed during this period. The structure of the Airport Trust Fund excise taxes has remained generally unchanged, except for rates, since 1970.

The prior-law Airport Trust Fund excise taxes included three taxes on commercial air transportation:

- (1) a 10-percent excise tax on domestic air passenger transportation;
- (2) a \$6 per person international air passenger departure tax; and
- (3) a 6.25-percent domestic freight excise tax.

During the same period, general aviation (e.g., corporate aircraft) was subject to Airport Trust Fund excise taxes on the fuels it used rather than to the commercial aviation passenger ticket and freight excise taxes. The Airport Trust Fund rates for these excise taxes were 17.5 cents per gallon for jet fuel and 15 cents per gallon for aviation gasoline.

Each of these taxes is described in more detail below.

Current Airport Trust Fund program expenditure authorizations are scheduled to expire after September 30, 1998.

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<sup>3</sup> Previously, the taxes expired during the period January 1, 1996, through August 26, 1996.

<sup>4</sup> Air transportation is taxable regardless of whether public or commercial airports are used in taking off or landing aircraft.

## **B. Airport Trust Fund Excise Taxes Imposed on Commercial Air Transportation**

The three Airport Trust Fund excise taxes imposed on commercial air transportation were retail excise taxes.<sup>5</sup> The structure of these excise taxes has remained unchanged since the period when airline fares were regulated by the Federal Government. That is, ultimate liability for payment of tax was imposed on the person purchasing the transportation, not on the transportation provider.<sup>6</sup> Transportation providers were subject to penalties, however, if they failed to make reasonable efforts to collect the tax. Air transportation providers were required to state separately the domestic air transportation excise tax on passenger tickets.

### **Domestic air passenger excise tax**

Imposition and tax base.--The 10-percent air transportation passenger tax generally applied only to amounts paid for domestic air transportation (Code sec. 4261).<sup>7</sup> In the case of domestic air transportation for which payment was made outside the United States, the tax applied only if the transportation both began and ended within the United States. Domestic transportation is defined generally to include travel between two points within the United States or travel to or from a point within the continental United States<sup>8</sup> and a point within the "225 mile zone." The 225 mile zone includes the portions of Canada and Mexico which are not more than 225 miles from the nearest point in the continental United States.<sup>9</sup>

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<sup>5</sup> It is possible for specific aircraft to be used in both commercial and general aviation. For example, a private corporate aircraft is treated as engaged in commercial air transportation (and subject to the commercial passenger tax) when it transports persons for compensation, but when the same aircraft transports only employees of the owner corporation, it is treated as engaged in general aviation (and subject to the Airport Trust Fund fuels taxes, described below). A similar flight-by-flight determination regarding taxation is made with respect to aircraft owned by affiliated groups of corporations.

<sup>6</sup> Structured in this manner, the excise taxes were not a factor in rates set by regulatory bodies. The only other example of a "collected" Federal excise tax is the telephone tax, which also originally was imposed only on activities subject to governmental rate regulation.

<sup>7</sup> Because the tax applied to "amounts paid" for air transportation, no tax was imposed on transportation under airline frequent flyer programs for which no charge was made. Similarly, no-charge transportation provided to airline employees as a fringe benefit was not subject to tax; tax was imposed (determined by reference to actual amounts paid) for reduced-rate travel available under both frequent flyer programs and airline employee and family fringe benefit programs.

<sup>8</sup> The term "continental United States" excludes Alaska and Hawaii.

<sup>9</sup> The Treasury Department was authorized to enter into agreements with Canada and Mexico excluding specified areas that geographically fall within 225 miles of the United States



Special rules applied to air transportation between the continental United States and Alaska or Hawaii and between Alaska and Hawaii. The portion of such transportation which was not within the United States (e.g., the portion over the Pacific Ocean between the continental West Coast or Alaska and Hawaii) was not subject to the 10-percent air passenger excise tax.<sup>10</sup> The 10-percent excise tax applied in full, however, to air transportation within the States of Alaska and Hawaii.

The 10-percent air passenger transportation excise tax also did not apply to domestic United States segments of uninterrupted international air transportation. Uninterrupted international air transportation was defined to include only travel (entirely by air) that did not both begin and end in the United States (or in the 225 mile zone) and during which there was not more than a 12-hour scheduled period between arrival and departure at any point in the United States.<sup>11</sup> For example, assume that a passenger traveled from Tokyo to New York, with a four-hour stop in Seattle. The domestic segment of the flight (i.e., Seattle to New York) was not subject to the domestic air passenger transportation excise tax because that segment was a part of uninterrupted international air transportation.

The Federal Government, State and local governments, and private, non-profit organizations were subject to tax on commercial air transportation purchased by them.

Exemptions.--Exemptions were provided for helicopters engaged in the exploration for, or the development or removal of, hard minerals, oil, or gas, and in timber (including logging) operations if the helicopters neither took off from nor landed at a facility eligible for Airport Trust Fund assistance or otherwise used Federal aviation services during the flight.<sup>12</sup> In addition, emergency medical aircraft (both fixed-wing and helicopter) were exempt from tax when the aircraft were equipped for and exclusively dedicated to emergency medical transportation. This latter exemption applied regardless of whether the Federal aviation system was used or the aircraft took off from or landed at a Federally assisted airport. A further exemption applied to transportation on aircraft having a maximum FAA certificated takeoff weight of 6,000 pounds or less, except when the aircraft was operated on an established line.

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from the taxable zone if the Treasury determined that Canada or Mexico, respectively, imposed an appropriate air transportation tax on flights from such locations.

<sup>10</sup> The \$6 per passenger international air passenger departure excise tax, described below, did apply to this transportation.

<sup>11</sup> A more liberal rule was provided for military personnel traveling in uniform while on leave in transportation that involves both international and domestic United States segments.

<sup>12</sup> In the case of flights involving multiple intermediate stops, this determination was made on a segment-by-segment basis.

History of tax.--The 10-percent domestic air passenger transportation excise tax rate dates to 1990 legislation. In 1990, the tax rate was increased from 8 percent to 10 percent for a five-year period (through December 31, 1995) as part of budget reconciliation legislation, which also provided that revenues from the 2-percentage point increase would be retained in the General Fund as a deficit reduction measure for two years of the five-year period. The 10-percent tax lapsed after December 31, 1995. The Small Business Job Protection Act of 1996 (the "1996 Act") reinstated the tax for the period August 27, 1996 through December 31, 1996.

The 8-percent tax rate was imposed concurrent with establishment of the Airport Trust Fund in 1970. Except for a period between 1980 and 1982 when the rate temporarily was reduced to 5 percent as a result of a general expiration of the Airport Trust Fund excise taxes, the rate remained at 8 percent until enactment of the 1990 legislation described above. Before establishment of the Airport Trust Fund in 1970, the tax was imposed at rates varying between 5 and 15 percent, with revenues going to the General Fund. (Federal aviation expenditures were financed entirely from the General Fund before 1970.)

### **International air passenger departure tax**

Imposition and tax base.--Prior to 1997, a \$6 per passenger excise tax was imposed on international air transportation which began in the United States (sec. 4261(c)). The \$6 tax applied to all commercial air passenger transportation from the United States which was exempt from all or a part of the 10-percent domestic air passenger excise tax. Thus, transportation between the continental United States and Alaska or Hawaii and between Alaska and Hawaii was subject to this tax (because the international portion of the flight was exempt from the 10-percent tax) as was transportation from the United States to a foreign country. This tax applied regardless of whether the transportation was purchased within the United States (i.e., the tax applied to a return segment from the United States of "round trip" travel originating and ending in a foreign country even if payment occurred within the foreign country).

History of tax.--The international air passenger transportation tax was first imposed, at a \$3 per passenger rate, by the 1970 legislation that established the Airport Trust Fund. Except for a period between 1980 and 1982 when the tax expired, the tax rate was not changed until 1989, when it was increased to \$6 per passenger beginning on January 1, 1990. This tax expired after December 31, 1995, and was reinstated by the 1996 Act for the period August 27, 1996, through December 31, 1996.

### **Domestic air freight excise tax**

Imposition and tax base.--Before January 1, 1997, a 6.25-percent excise tax was imposed on air transportation of freight within the United States (sec. 4271). Like the domestic air passenger excise tax, this tax applied regardless of whether payment for the transportation was made within the United States; however, the tax did not apply unless the transportation both began and ended within the United States. Transportation was treated as beginning and ending within the United States if both the point of origination and the final destination point were

within the United States (i.e., layover time outside the United States and movement of aircraft in deadhead service were treated as part of taxable transportation).

Air freight transportation between the continental United States and Alaska or Hawaii and between Alaska and Hawaii was partially exempt from this tax under special rules similar to those that applied under the domestic air passenger excise tax. Transportation of freight within either Alaska or Hawaii was fully taxable, even when a portion of the transportation occurred over international waters or Canada.

The domestic air freight excise tax base did not include charges for accessorial ground services. These services included costs of ground transportation such as movement from a downtown freight carrier drop station to the airport. Accessorial service charges were excluded only if the service could be performed by a party other than the transportation provider and if the provider maintained in its records a separate accounting for the charge.

Unlike the air passenger excise taxes, air freight transportation providers were not required to state the amount of this tax separately on customer bills.

Exemptions.--The air freight excise tax did not apply to property transported by emergency medical aircraft performing qualifying medical services. The Treasury Department further ruled that the tax did not apply to amounts paid for transportation of property in cropdusting, and aerial firefighting service, or the use of helicopters in construction such as setting equipment on the roofs of buildings or installing power lines.

History of tax.--The domestic air freight excise tax was first imposed by the 1970 legislation that established the Airport Trust Fund. Except for a period when the Airport Trust Fund excise taxes generally expired between 1980 and 1982, the tax rate was 5 percent of the transportation charge until 1990, when the 6.25-percent rate was enacted. Revenues attributable to the 1.25-percentage point rate increase were retained in the General Fund as a deficit reduction measure for the first two years of the original five-year period during which the 6.25-percent rate applied. The tax expired after December 31, 1995, and was reinstated by the 1996 Act for the period August 27, 1996, through December 31, 1996.

### **C. Airport Trust Fund Excise Taxes Imposed on Fuels Used in General Aviation**

#### **Imposition of tax and tax base**

In lieu of the passenger and freight excise taxes imposed on commercial air transportation, general aviation was subject to Airport Trust Fund excise taxes on the fuels consumed (secs. 4081 and 4091) during the period when the Airport Trust Fund excise taxes were imposed. These taxes were imposed at rates of 17.5 cents per gallon on jet fuel and 15 cents per gallon on aviation gasoline. The jet fuel tax was imposed on the sale of the fuel by

producers, defined to include registered wholesale distributors.<sup>13</sup> The aviation gasoline tax was imposed on the removal of the gasoline from registered terminal facilities under the same administrative rules as apply to the highway motor fuels excise taxes.

Like the Airport Trust Fund excise taxes on commercial air transportation, the fuels taxes imposed on general aviation expired after December 31, 1996. The tax on jet fuel and 1 cent per gallon of the tax on aviation gasoline expired during the period January 1, 1996, through August 26, 1996; the remaining 14 cents per gallon of the aviation gasoline excise tax continued to be collected, with revenues being deposited in the Highway Trust Fund. When the Airport Trust Fund excise taxes were reinstated in 1996, revenues from this 14-cents-per-gallon tax collected during the tax-expiration period were transferred to the Airport Trust Fund. All of the aviation fuels taxes (including the 14-cents-per-gallon tax) expired after December 31, 1996.

### Exemptions

Exemptions were provided for helicopters engaged in the exploration for, or the development or removal of, hard minerals, oil, or gas, and in timber (including logging) operations if the helicopters neither took off from nor landed at a facility eligible for Airport Trust Fund assistance or otherwise used Federal aviation services during the flight.<sup>14</sup> In addition, emergency medical aircraft (both fixed-wing and helicopter) were exempt from fuels taxes when the aircraft were equipped for and exclusively dedicated to emergency medical transportation.<sup>15</sup> This latter exemption applied regardless of whether the Federal aviation system was used or the aircraft took off from or landed at a Federally assisted airport. A further exemption applied to fuels used by tax-exempt aircraft museums operated for the care and exhibition of World War II combat aircraft.

Fuels sold for export or for use as supplies for vessels or aircraft (generally use by the United States military and in foreign trade), by State and local governments and nonprofit educational organizations, or on a farm for farming purposes were exempt from the aviation fuels excise taxes.

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<sup>13</sup> The majority of this tax was imposed on wholesale distributors of jet fuel. Because most major airports have wholesale distributors on site that deliver fuel directly into aircraft, the absence of a retail intermediary effectively rendered much of the tax a retail tax.

<sup>14</sup> In the case of flights involving multiple intermediate steps, this determination was made on a segment-by-segment basis.

<sup>15</sup> The Airport Trust Fund exemptions for fixed-wing emergency medical aircraft were enacted in the Small Business Job Protection Act of 1996. A technical correction is needed to clarify application of the fuels tax exemptions to these aircraft.

## History of tax

The aviation gasoline tax was imposed at a 2-cents-per-gallon rate before the Airport Trust Fund was established in 1970 (revenues from this tax were dedicated to the Highway Trust Fund from 1956 through 1970). The gasoline tax rate was increased to 7 cents per gallon beginning in 1970, and the tax on jet fuel was imposed at the same rate. In 1982, the aviation gasoline tax rate was increased to 12 cents per gallon, and the aviation jet fuel tax rate was increased to 14 cents per gallon. In 1990, the aviation gasoline tax rate was increased further to 15 cents per gallon and the jet fuel tax rate was increased to 17.5 cents per gallon.

### **D. General Fund Transportation Fuels Excise Tax**

#### Imposition of tax and exemptions

The 1993 Act imposed a permanent, General Fund excise tax on transportation motor fuels for deficit reduction (secs. 4081 and 4091). The tax rate is 4.3 cents per gallon. The tax applies generally to motor fuels used in all transportation sectors, including aviation. Fuels used in commercial aviation were exempt during the period through September 30, 1995.

This General Fund motor fuels excise tax rate is administered as an "add-on" to existing Trust Fund excise taxes. Thus, the tax on aviation jet fuel is imposed (along with any applicable Airport Trust Fund excise tax) on the sale of the fuel by a producer (typically, a wholesale distributor); aviation gasoline is taxed upon removal of the fuel from registered terminal facilities.

Fuels used in a use that is exempt from all Trust Fund excise taxation similarly is exempt from the General Fund transportation motor fuels excise tax.<sup>16</sup>

#### History of tax

The Omnibus Budget Reconciliation Act of 1990 (the "1990 Act") represented the first time that transportation motor fuels excise taxes had been used for General Fund purposes since enactment of the various Federal Trust Fund programs (e.g., aviation in 1970). The 1990 General Fund "deficit reduction" tax of 2.5 cents per gallon applied only to highway and rail transportation fuels and was scheduled to expire after September 30, 1995. The 1993 Act expanded upon the 1990 Act, adding an additional 4.3-cents-per gallon to the existing General

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<sup>16</sup> The tax base established in 1993 for this tax generally paralleled that of the Leaking Underground Storage Tank ("LUST") Trust Fund fuels excise tax. The LUST tax rate of 0.1 cents per gallon applied to aviation (both commercial and general), highway, rail, inland and intracoastal waterway, and recreational motorboat (gasoline). Revenues from the LUST excise tax, which expired after December 31, 1995, were used to finance clean up of pollution from leaking underground petroleum storage tanks.

Fund tax rate, and expanding the transportation sectors subject to this additional tax rate to include aviation (commercial aviation after September 30, 1995) and inland waterway fuels. The 1993 tax is permanent.

### **E. Repealed Air Transportation Excise Taxes**

Two additional excise taxes previously were imposed on air transportation. First, an annual civil aircraft use tax was imposed from 1970 to 1980. The tax rate was \$25 plus 3.5 cents per pound of the maximum certificated takeoff weight (turbine aircraft) or 2 cents per pound of maximum certificated takeoff weight in excess of 2,500 pounds (other aircraft).

Second, before 1984, aircraft tires and tubes were subject to tax as part of a general tire and tube excise tax that also applied to highway vehicles.

Revenues from the annual aircraft use tax and the tax on aircraft tires and tubes (after 1970) were dedicated to the Airport Trust Fund.

### III. AIRPORT AND AIRWAY TRUST FUND EXPENDITURE PURPOSES

The Airport Trust Fund 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 General Fund monies. The 1996 expenditure authorization legislation, enacted on October 9, 1996, generally extended expenditure authority for these programs through September 30, 1998; conforming amendments to the Code Airport Trust Fund expenditure provisions were included in that legislation.<sup>17</sup> The statutory provisions relating to the Airport Trust Fund were placed in the Code in 1982 (sec. 9502).

#### General Trust Fund expenditure purposes

The current general expenditure purposes for the Airport Trust Fund 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 FAA Act of 1996;<sup>18</sup>

(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
- (d) supporting services for the airway system; and

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<sup>17</sup> Federal Aviation Reauthorization Act of 1996 (the "FAA Act of 1996"), enacted on October 9, 1996 (P.L. 104-264). See also conference report on H.R. 3539 (H. Rept. 104-848). Title X of H.R. 3539 extended the authority to spend from the Airport Trust Fund through September 30, 1998.

<sup>18</sup> The Acts (or provisions of Acts) pursuant to which Airport 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 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; the Federal Aviation Administration Authorization Act of 1994; and, the Federal Aviation Reauthorization Act of 1996.

(3) obligations incurred for administrative expenses of the Department of Transportation which are attributable to activities described in items (1) and (2).

No expenditures are permitted to be made from the Airport Trust Fund after September 30, 1998. Because the expenditure purposes are set in the law as of the date of enactment of the FAA Act of 1996 (October 9, 1996), the authorizing and appropriations committees of Congress cannot accomplish expenditure of Trust Fund monies for any new purposes without an amendment (approved by the tax-writing committees) to the Code.

### **Specific Airport Trust Fund 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).

(c) **Airport terminal facilities**-- Non-revenue-producing public-use areas which are directly related to movement of passengers and baggage at certified air carrier airports having required safety and security equipment (including baggage facilities and passenger-moving equipment); 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).

(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, 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 which 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).--Expenses of flight checks and operations and maintenance of air navigation facilities, including air traffic control; 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 Program.--Contract authority for fiscal years 1992-1998 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.

#### **General Fund air transportation expenditures**

Under the FAA Act of 1996, spending from the Airport Trust Fund for FAA operations and maintenance for fiscal years 1997 and 1998 may not exceed the lesser of (1) 50 percent of the amounts appropriated for airport grants, airway facilities and equipment, and research and development or (2) (a) 72.5 percent (as compared to 70 percent for fiscal years 1994-1996) of total FAA expenses minus (b) expenses under (1).<sup>19</sup> The balance of those expenses, principally a portion of FAA operations and maintenance (e.g., air traffic control expenses), is financed from general revenues.

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<sup>19</sup> See section 48104, 49 U.S.C.

#### **IV. BUDGET ACT SCOREKEEPING RULES FOR TRANSPORTATION EXCISE TAXES AND TRUST FUND EXPENDITURES**

The 1990 Budget Act includes two provisions that are central to the financing and operation of the Federal transportation Trust Fund programs: a budget scorekeeping assumption that dedicated excise taxes are imposed permanently (even if statutorily they are scheduled to expire) and classification of Trust Fund spending as discretionary spending subject to aggregate annual caps that apply to all discretionary spending (both for transportation and other programs).

The effect of these rules is that under the 1990 Budget Act, there is no budget scorekeeping link between the revenues raised by the transportation excise taxes and the spending from the transportation Trust Funds. The Trust Fund balances similarly have no effect in a broader budgetary sense on the amount that can be obligated for transportation program expenditures.<sup>20</sup> If Trust Fund excise taxes and programs are extended and reauthorized before expiration of the taxes, there is neither a revenue nor a spending budget score from the legislation. However, if as is currently true with the Airport Trust Fund excise taxes, the taxes have expired and a new CBO revenue baseline has been issued, the new CBO baseline includes no revenue with respect to the expired taxes. Thus, the reimposition of the taxes would be scored as a revenue increase. Further, because Airport Trust Fund spending is not linked to dedicated revenues, the resulting revenue increases may be used under the Budget Act to offset the revenue loss from enactment of other tax or direct spending provisions without affecting Trust Fund programs.

##### **Treatment of dedicated excise taxes under CBO revenue baseline**

The 1990 Budget Act provides that excise taxes that are dedicated to Trust Funds are assumed permanent for budget scorekeeping purposes. This means that revenues from the excise taxes are automatically included each year in the CBO and Office of Management and Budget revenue baseline, even though the taxes may be scheduled to expire before the end of the baseline period. The CBO issues this annual baseline as part of its overall economic forecast in approximately January or February of each year; the forecast is used in developing the Congressional budget resolution. Both revenue and spending estimates are determined relative to that forecast (and the budget resolution) throughout the year.<sup>21</sup> As a result of their inclusion in the revenue baseline, extensions of Trust Fund excise taxes generally are not scored as raising

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<sup>20</sup> Unrelated to this general budgetary result, the Highway Trust Fund, but not the Airport Trust Fund, has internal anti-deficit provisions that limit amounts that can be authorized and appropriated from specific Trust Fund Accounts (Highway and Mass Transit Accounts).

<sup>21</sup> The CBO typically issues an update of its forecast in August; however, because the budget resolution is based on the earlier baseline, revenue estimates continue to be determined by reference to the January or February baseline throughout the year.

revenues when the extensions are enacted. On the other hand, reductions in excise taxes (even as part of an extension of those taxes), are scored as losing revenue.

The following examples illustrate the operation of these budget scorekeeping rules.

Example (1).--In 1995, the Airport Trust Fund excise taxes were scheduled to expire after December 31, 1995. The taxes had been imposed since before January 1, 1995. In November 1995, when Congress passed the Balanced Budget Act of 1995 extending these excise taxes, no revenue increase was scored from the extension. This occurred because the 1995 CBO revenue baseline, against which legislation was scored, assumed permanent continuation of these dedicated excise taxes (i.e., the scheduled expiration date was disregarded in forecasting future Government receipts).

Example (2).--The Airport Trust Fund excise taxes expired after December 31, 1995. When the CBO issued its 1996 revenue baseline, projected future receipts from the Airport Trust Fund excise taxes were deleted, and deficit forecasts were adjusted accordingly. The excise taxes were reimposed by the Small Business Job Protection Act of 1996 the "Small Business Act" for the period August 27, 1996, through December 31, 1996. Because the Airport Trust Fund excise taxes had expired when the 1996 CBO revenue baseline was issued, no revenue from these excise taxes was included in the baseline, and thus, revenue increases were scored from their reinstatement in the 1996 Act, for the approximately four-month period during which the taxes actually were reimposed.

Example (3).--The Airport Trust Fund excise taxes expired again after December 31, 1996. Because the Airport Trust Fund excise taxes expired before the January 1997 CBO revenue baseline was issued, the baseline does not include any projected receipts from them. If Congress acts to reimpose the taxes in 1997, revenue increases will be scored for the period during which the taxes are reimposed.

### **Trust Fund expenditures as discretionary spending**

The 1990 Budget Act divides Federal Government spending into two major categories: direct spending and discretionary spending. Direct spending is spending for which no appropriation is required (e.g., entitlements such as social security old age benefits). Discretionary spending may occur only when funds are appropriated. All discretionary spending programs must compete for a fixed pool of dollars under aggregate annual caps imposed on Federal discretionary spending. As described above, spending for the Federal transportation Trust Fund programs is classified as discretionary spending. When authorizing legislation is enacted, generally, it is not considered to be an increase in Federal spending. Rather, that spending is scored when the funds are appropriated, which occurs after the competing demands of transportation and other discretionary spending programs have been reconciled within the annual caps. This spending reconciliation is independent of issues related to imposition or revenue scoring of dedicated Trust Fund excise taxes.

### Concepts of "gross receipts" and "net revenues"

Under present law, the Code transfers amounts equivalent to "gross receipts" raised by the air transportation excise taxes, rather than the "net revenues" produced by those taxes, to the airport Trust Fund. Net revenues equal approximately 75 percent of gross receipts. The concept of net revenues reflects budget scorekeeping conventions that discount excise tax revenues by the amount that income tax receipts are expected to decrease as a result of monies being removed from the private economy for payment of excise taxes.

Amounts in excess of net revenues produced by the excise taxes may be dedicated to the Airport Trust Fund without a budgetary effect because, as described above, there is no budget scorekeeping link between the amount of revenues dedicated to the Trust Fund and the level of Trust Fund expenditures: the Trust Fund is included within the unified Federal budget, and expenditures from the Trust Fund are classified by the Budget Act as discretionary spending, subject to aggregate annual caps on all such spending. If, however, expenditures from the Trust Funds were reclassified as direct spending which occurs automatically without appropriation, a budgetary shortfall could result if the amount of such direct spending was based on the gross receipts from the taxes rather than the net revenues estimated to be raised by the taxes. Similarly, if the Airport Trust Fund were removed from the unified budget, an increase in stated deficits could occur because actual outlay patterns from the Trust Fund typically lag behind excise tax collections. Under present law, receipts in excess of the amount to be spent during the current budget period (even though such funds may be obligated for future transportation expenditures) act to reduce current budget deficits.

## V. CURRENT AND PROJECTED FINANCIAL STATUS OF THE AIRPORT TRUST FUND

### In general

Expenditures from the Airport Trust Fund are governed by three sets of statutory provisions: authorizing Acts, annual appropriations Acts, and the Code's Trust Fund provisions. The current authorizing Act provides for expenditures through September 30, 1998 (generally by authority granted to the FAA to enter into contracts). Public Law 104-205, providing transportation appropriations for the 1997 fiscal year, limits authorized contract authority to specified dollar amounts for the various FAA programs. This appropriations Act further provides that at least a portion of the funding for each of the FAA programs is "to be derived from the Airport and Airway Trust Fund," with the balance being derived from general revenues. In general, all of the appropriations for FAA programs, except for a portion of the FAA's operating expenses, which is derived from the General Fund, are derived from the Airport Trust Fund. These programs include the FAA's operating expenses, expenditures for facilities and equipment programs; research, engineering and development program expenditures; and, the airport improvement grant program for State and local government airports. In addition to setting dollar limits on future commitments for the capital programs, the current appropriations Act generally provides that the amounts appropriated for capital expenditures may be utilized at any time through September 30, 1999.

The Code's Trust Fund provisions adopt, by cross-reference, the expenditure provisions of these authorization and appropriation Acts. In addition, the Code's Trust Fund provisions determine which revenues will be deposited into the Airport Trust Fund, and thus will be available to finance expenditures which are authorized and appropriated from that Fund. The current Code provisions transfer to the Airport Trust Fund only those receipts from the air transportation excise taxes that are received by the Treasury Department before January 1, 1997. Amounts received after December 31, 1996, are retained in the General Fund (and thus are not available for financing authorized and appropriated Airport Trust Fund expenditures) under present law. As described more fully below, the commercial air transportation excise taxes are not deposited in the Treasury immediately following their collection from consumers by commercial passenger and freight air carriers (the "air carriers"). Until recently, it was anticipated that these Code provisions would allow transfer to the Trust Fund of all receipts attributable to taxes paid by consumers when the taxes were imposed in 1996 except those paid by consumers during the month of December 1996.<sup>22</sup>

The financial condition of the Airport Trust Fund generally is evaluated by reference to two balances: a cash balance and an uncommitted balance. The cash balance reflects all cash on

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<sup>22</sup> A similar situation arose with respect to amounts attributable to air transportation taxes paid by consumers during the month of December 1995. Those amounts were transferred to the Airport Trust Fund when the Trust Fund taxes were reimposed in the 1996 Act.

hand in the Trust Fund--both that which is required to satisfy outstanding obligations (or commitments) and funds with respect to which no commitments have been made. This balance is used to evaluate the Trust Fund's ability to pay outstanding bills as they become due. The uncommitted balance includes only funds with respect to which binding commitments have not as yet been made. This balance is used to evaluate the ability of the FAA to enter into new commitments as provided in authorization and appropriation Acts. As is true with most other transportation Trust Funds, actual disbursements from the Airport Trust Fund for capital expenditures lag significantly behind the time when commitments are made because many of the commitments are for capital projects, with respect to which payment is made only as work is completed. Thus, the cash balance typically is significantly larger than the uncommitted balance. (For example, at the beginning of the 1997 fiscal year, the cash balance of the Trust Fund was estimated by the CBO to be approximately \$7.9 billion, whereas the uncommitted balance was estimated to be only \$2.4 billion.) The delay in actual disbursements produces Trust Fund cash balances that frequently are referred to as "surpluses" by persons who propose increased transportation spending. Because expenditures continued to be made from the Airport Trust Fund during the part of calendar year 1996 when no excise taxes were imposed, both the cash balance and the uncommitted balance of the Trust Fund are lower than has been true in the past.

**Cash and uncommitted balances of the Airport Trust Fund (as reported in the December 1996 CBO baseline)**

Tables 1 and 2, below, provide the CBO's current baseline estimate of the financial condition of the Airport Trust Fund.<sup>23</sup> Both of these tables were produced before receipt of new information, also described below, regarding when air passenger and freight taxes imposed on consumers during the period September 1 through November 30, 1996, were deposited by the air carriers with the Treasury Department. Therefore, the balances reflected in these tables are understood to be overstated, but the exact amount of this overstatement is unknown at the present time. The tables should be viewed only as providing an upper limit on funds available from the Trust Fund.

Table 1 shows that, looking at the cash balance, the Airport Trust Fund is projected to continue to be able to pay bills coming due with respect to previous commitments through the end of the 1997 fiscal year. The CBO projects that the Airport Trust Fund will end the 1997 fiscal year with a cash balance of \$4.2 billion.

Table 2 provides the CBO's current estimates of the fiscal condition of the Airport Trust Fund with respect to uncommitted funds. This table shows that the Trust Fund's uncommitted

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<sup>23</sup> Table 1 is an updated version of Table 4 in Joint Committee on Taxation, Present Law and Background Information on Federal Transportation Excise Taxes and Trust Fund Expenditure Programs, JCS-10-96, November 14, 1996, p. 55. The current table reflects the CBO's December 1996 baseline. The prior table was based on the CBO's March 1996 baseline.

balance is projected to be depleted before the end of the 1997 fiscal year. Thus, absent reinstatement of the air transportation excise taxes, or dedication of either other revenue sources to the Airport Trust Fund or appropriation of additional amounts from the General Fund, the FAA would not be able to enter into new capital contracts at some point during the current fiscal year.<sup>24</sup> It should be understood, however, that because the current appropriations Act provides that appropriated amounts will remain available for spending through September 31, 1999, the constraints on current fiscal year spending resulting from the lower uncommitted Airport Trust Fund balance will not prevent the FAA from ultimately spending these appropriated amounts. Instead, those commitments could be made without further Congressional appropriations action once additional receipts are deposited in the Airport Trust Fund.

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<sup>24</sup> The General Accounting Office recently has reported that, absent additional funds, the uncommitted balance of the Trust Fund would reach zero by July 1997. See, United States General Accounting Office, Airport and Airway Trust Fund: Issues Raised by Proposal to Replace the Airline Ticket Tax (GAO/RCED-97-23) December 1996, pp.12-13.

**Table 1.--Congressional Budget Office Projection of Airport and Airway Trust Fund Revenues, Outlays, and Cash Balances,  
Fiscal Years 1997-2007 (in millions of dollars)  
[December 1996 Baseline, Prior to Information Relating to Semi-Monthly Deposits<sup>a</sup>]**

<b>Trust Fund Balances</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Beginning of Year Cash Balance	7,875	4,208	-1,329	-7,254	-13,660	-21,585	-28,048	-36,160	-44,950	-54,431	-64,695
Tax Revenue	1,527	0	0	0	0	0	0	0	0	0	0
Interest Revenue	399	94	-275	-659	-1,062	-1,483	-1,926	-2,433	-2,932	-3,514	-4,147
Total Revenue	1,926	94	-275	-659	-1,062	-1,483	-1,926	-2,433	-2,932	-3,514	-4,147
Outlays	5,593	5,630	5,650	5,748	5,864	5,980	6,185	6,357	6,549	6,750	7,029
End of Year Cash Balance	4,208	-1,329	-7,254	-13,660	-20,585	-28,048	-36,160	-44,950	-54,431	-64,695	-75,871

a - Estimate of tax revenue assumes the Airport Trust Fund is credited with semi-monthly deposits during the period October 1 - December 31, 1996. The staff of the Joint Committee on Taxation recently learned that most such deposits were not made, suggesting that these December 1996 baseline estimates overstate current cash balances. The staff of the Joint Committee on Taxation understands that as much as \$1.2 billion in excise taxes were not deposited during the period of October 1 - December 31, 1996. See text for detailed explanation.

Source: Congressional Budget Office.



**Table 2.--Congressional Budget Office Projection of Airport and Airways Trust Fund Uncommitted Balances,  
Fiscal Years 1997-2007 (in millions of dollars)  
[December 1996 Baseline, Prior to Information Relating to Semi-Monthly Deposits <sup>a</sup>]**

<b>Trust Fund Balances</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Beginning of Year Unpaid Commitments <sup>b/</sup>	5,498	6,072	6,856	7,807	8,856	9,989	11,214	12,446	13,724	15,035	16,378
New Budget Authority <sup>c/</sup>	6,167	6,414	6,601	6,797	6,997	7,205	7,417	7,634	7,860	8,094	8,333
Outlays	5,593	5,630	5,650	5,748	5,864	5,980	6,185	6,357	6,549	6,750	7,029
End of Year Unpaid Commitments	6,072	6,856	7,807	8,856	9,989	1,214	12,446	13,724	15,035	16,378	17,862
End of Year Cash Balance <sup>d/</sup>	4,208	-1,329	-7,254	-13,660	-20,585	-28,048	-36,160	-44,950	-54,431	-64,695	-75,871
End of Year Uncommitted Balances	0	0	0	0	0	0	0	0	0	0	0

- a - This estimate of uncommitted balances assumes the Airport Trust Fund is credited with semi-monthly deposits of air transportation excise taxes during the period October 1 through December 31, 1996. The staff of the Joint Committee on Taxation recently learned that most such deposits were not made, suggesting that these December 1996 baseline estimates overstate current uncommitted balances. The staff of the Joint Committee on Taxation understands that as much as \$1.2 billion in excise taxes were not deposited during the period of October 1 through December 31, 1996. See text for detailed explanation.
- b - Unpaid Commitments: all budget authority which has been provided but not yet expended, a combination of unobligated and obligated balances.
- c - Budget Authority: authority provided by Congress to enter into contracts committing funds.
- d - "Cash" available in Airport Trust Fund at the end of the fiscal year, see Table 1.

Source: Congressional Budget Office.

## New information relating to cash and uncommitted balances of the Airport Trust Fund

Before new information was discovered during the week of January 27, 1997, the FAA and the General Accounting Office had reported that the uncommitted balance of the Airport Trust Fund would be sufficient to fund all 1997 fiscal year operational expenses of the FAA that were expected to be funded from the Trust Fund and to allow the FAA to enter into new capital program commitments (as anticipated by current authorization and appropriation Acts) until July 1997. However, the staff of the Joint Committee on Taxation recently received new information which indicates that, pursuant to certain Internal Revenue Service tax deposit rules, many commercial air transportation providers ("air carriers") have delayed significantly the time when taxes will be received in the Treasury Department. As a result of this delay, it is understood that an overwhelming majority of the revenues resulting from reimposition of the Airport Trust Fund air passenger and freight excise taxes from August 27, 1996, through December 31, 1996, were not received by the Treasury Department before January 1, 1997, and therefore cannot be transferred to the Trust Fund. Thus, the cash and uncommitted balances reported in the December 1996 CBO baseline estimates (Tables 1 and 2) are likely to be substantially overstated.

As described in Part II, the air passenger ticket and air freight excise taxes are collected from passengers and freight shippers by the commercial air carriers. The air carriers then remit the funds to the Treasury Department; however, the air carriers are not required to remit monies immediately. Excise tax returns are filed quarterly (similar to annual income tax returns) with taxes being deposited on a semi-monthly basis (similar to estimated income taxes). For air transportation sold during a semi-monthly period, air carriers may elect to treat the taxes as collected on the last day of the first week of the second following semi-monthly period.<sup>25</sup> Under these "deemed collected" rules, for example, the taxes on air transportation sold between October 1 and October 15, are treated as collected by the air carriers on or before November 7. These amounts generally must be deposited with the Treasury by November 10. Thus, on average, revenues from commercial air passenger and freight transportation generally are not received by the Federal Government until approximately one month after the air carrier actually sells the transportation.

Like income tax withholding and estimated tax payments, the excise taxes contain payment safe harbors for avoiding underpayment penalties.<sup>26</sup> In general, Treasury regulations provide that commercial air carriers are not subject to underpayment penalties if their semi-monthly deposits of passenger ticket and freight waybill taxes for a quarter equal at least the amount of taxes they were required to remit during the second preceding calendar quarter (the

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<sup>25</sup> Air carriers generally make this election because it allows them to delay remitting tax beyond the date when remittance otherwise would be required.

<sup>26</sup> See, Treas. reg. secs. 40.6302(c)-1 and (c)-3.

"look back" rules). For example, air carriers generally would not be subject to underpayment penalties if their semi-monthly deposits for the fourth quarter (October 1 through December 31) equaled at least the amount they were required to remit during the second quarter (April 1 through June 30) of the same year.

During calendar year 1996, no commercial air transportation excise taxes were imposed before August 27. In a general information letter to the Air Transport Association of America, dated August 30, 1996, the Internal Revenue Service advised the air carriers that, notwithstanding that no excise taxes were required to be remitted during the second quarter of 1996, applicable Treasury Department regulations permitted the air carriers to continue to avail themselves of the look back rules in determining tax deposits for the fourth quarter. Because the Airport Trust Fund taxes had expired and therefore nothing was required to be remitted during the second quarter, the Internal Revenue Service stated that air carriers were not required to make semi-monthly deposits with respect to the fourth quarter. The staff of the Joint Committee on Taxation recently learned that, in general, the air carriers therefore chose not to make semi-monthly deposits of these taxes during the fourth quarter of 1996. Instead, the air carriers generally retained the taxes collected from their passengers on tickets sold and freight shipped during the period September 1-November 30, 1996, and intend to remit the entire amount they collected with their excise tax returns for the fourth quarter, due on February 28, 1997. (Similarly, the air carriers are expected to retain most taxes attributable to December 1996 sales until their excise returns for the first quarter of 1997 are due on May 31, 1997.)

Therefore, with the exception of receipts attributable to the period August 27, 1996 through August 31, 1996, it is understood that only relatively small amounts were received by the Treasury before January 1, 1997, as a result of the 1996 reimposition of the commercial air transportation excise taxes. Tax receipts that were received after December 31, 1996, cannot be credited to the Airport Trust Fund, absent further legislative change.

#### **Effect on Airport Trust Fund balance and the Federal Aviation Administration budget for the 1997 fiscal year**

When the Treasury Department and the FAA learned that most air carriers had not deposited passenger and freight excise taxes during the fourth quarter of 1996, the two agencies re-evaluated their projections of the Airport Trust Fund's uncommitted balance and the ability of the FAA to fund its operations and enter into new capital commitments during the 1997 fiscal year. The current FAA funding constraints do not affect the ability of the FAA to continue to make payments on commitments that have been entered previously (except for certain "incrementally accrued" contracts, described below). The cash balance of the Airport Trust Fund includes committed funds that are sufficient to finance completion of those prior commitments. Table 3, below, was submitted by the FAA on January 31, 1997, and summarizes the FAA's analysis of its financial condition as of that date. The information contained in Table 3 is very preliminary and may change before the Finance Committee's hearing on February 4, 1997.

The Treasury Department estimates that it incorrectly credited the Airport Trust Fund with approximately \$1.2 billion of receipts that were assumed to have been received before January 1, 1997, but in fact will not be received from the airlines until February 28, 1997. These receipts are attributable to excise taxes collected from consumers during the months of September, October, and November 1996, as explained above. Table 3 shows that, after this adjustment, the FAA currently estimates the Trust Fund's uncommitted balance to be \$1.9 billion. The 1997 fiscal year appropriations Act also provides \$3.3 billion in General Fund appropriations for the FAA's operations. As of January 31, 1997, the FAA estimates that it has obligated \$1.2 billion of the General Fund appropriation, thus leaving \$2.1 billion available for additional commitments in the 1997 fiscal year. When the Trust Fund's uncommitted balance and the remaining General Fund appropriation are combined, the FAA is provided with a total of approximately \$4.0 billion to finance its operations for the remaining months of the 1997 fiscal year.

As Table 3 shows, the amount needed to fund FAA operations (e.g., air traffic controller salaries) through the end of the current fiscal year is estimated to be approximately \$3.5 billion.<sup>27</sup> The remaining \$0.5 billion in available funds could then be used to enter into new capital commitments. Under normal circumstances, this \$0.5 billion would permit the FAA to continue entering into new capital program commitments at planned levels through March 1997. Because these numbers are only estimates and because of provisions of certain outstanding contracts, described below, the FAA may need to reduce capital commitments before the end of March to protect against inadvertently overcommitting available Trust Fund monies.

The FAA's contract accounting does not treat the full cost of certain contracts that are "incrementally accrued" as committed when contracts are entered. An example of such an arrangement would be a contract for a project to be completed in multiple phases, where the FAA would treat as committed only the amounts required for the current phase of the project, but the contract might provide that if the contract is terminated before all phases are completed, the contractor could receive liquidated damage payments. In some cases, these liquidated damage payments may be increased if the FAA fails to provide 30 to 60 days notice of its intent not to continue the contract. The FAA is continuing to review its outstanding contracts to determine the extent of such liquidated damage provisions. Table 3 does not include any estimates of such damages. Any liquidated damages under these contracts would reduce the \$0.5 billion otherwise available for new capital commitments during February and March 1997. Thus, absent earlier legislative action, it appears that the FAA may have to stop entering new commitments and begin notifying contractors that they will not extend contracts such as those described beginning on March 1, 1997, or earlier.

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<sup>27</sup> This \$3.5 billion includes monies required to fund the salaries of approximately 2,800 FAA employees that are paid through capital accounts (primarily the facilities and equipment ("F&E") and research and experimental development ("RED") accounts).

**Table 3.--Estimated Effects of New Information on the Uncommitted Balance of the  
Airport Trust Fund and the FAA Budget  
(Submitted by the FAA on January 31, 1997)**

**DRAFT ANALYSIS OF FAA's FY 1997 SPENDING OPTIONS**

(All Sums in \$Billions)

**TRUST FUND (TF) BALANCE INFORMATION**

	FY1997	
TF uncommitted balance, beginning of year	\$2.4	
Total FY 1997 Adjustments (interest, recoveries, etc.)	\$0.6	
Available FY 1997 TF balance after adjustments, before obligations	\$3.0	
Net obligations of FY 1997 appropriations through January 31	\$1.1	
Remaining TF balance for rest of FY 1997	<b>\$1.9</b>	\$1.2 available to fund Operations for 3 months \$0.2 available to fund F&E/R,E&D workforce for 8 months \$0.5 remaining to fund capital programs

**GENERAL FUND BALANCE INFORMATION**

GF balance, beginning of year	\$3.3
GF obligations through January 31	\$1.2
Remaining GF balance	<b>\$2.1</b> Funds Operations for 5 months

**SCENARIO: PROTECT AGENCY WORKFORCE THROUGH FISCAL YEAR**

*Shaded Area Indicates Months That Can Be Fully Obligated*

	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.
Obligation rate per month for Operations (post 1/31)	\$0.40	\$0.41	\$0.41	\$0.41	\$0.41	\$0.41	\$0.41	\$0.41
Cumulative Remaining Operations Obligations	\$0.40	\$0.81	\$1.21	\$1.62	\$2.03	\$2.43	\$2.84	\$3.25
<b>Capital Programs 1/</b>								
Obligation rate per month for F&E (post 1/31)	\$0.18	\$0.20	\$0.11	\$0.13	\$0.13	\$0.10	\$0.13	\$0.12
Obligation rate per month for RE&D (post 1/31)	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02
Obligation rate per month for AIP (post 1/31)	\$0.07	\$0.08	\$0.08	\$0.09	\$0.16	\$0.27	\$0.28	\$0.31
Total capital obligations per month (post 1/31)	\$0.26	\$0.30	\$0.21	\$0.24	\$0.30	\$0.39	\$0.42	\$0.45
Cumulative remaining capital obligations	\$0.26	\$0.56	\$0.77	\$1.01	\$1.31	\$1.70	\$2.12	\$2.57

1/ Monthly totals do not include costs associated with potential interruptions in contracts.

**Table 3.—Estimated Effects of New Information on the Uncommitted Balance of the Airport Trust Fund and the FAA Budget, continued**

**DRAFT ANALYSIS OF FY 1997 SPENDING OPTIONS**

(All Sums in \$Billions)

<b>TRUST FUND (TF) BALANCE INFORMATION</b>		<b>FY1997</b>												
TF cash balance, beginning of year (not additive to table)		[\$7.9]												
TF uncommitted balance, beginning of year		\$2.4												
Adjustment for recapture of December 1995 taxes		\$0.2												
Oct. to Dec. 1996 transfers by Treasury		\$1.2												
Funds to be withdrawn by Treasury (subject to upward revision)		(\$1.2)												
Available TF balance before interest on cash balance		\$2.6												
Interest for FY 1997 (based on adjusted cash balance)		\$0.4												
Available TF balance before obligations		\$3.0												
Obligations for F&E programs through 1/31		\$0.9												
Obligations for F&E from FY 1996 appropriations		(\$0.6)												
Obligations for RE&D through 1/31		\$0.1												
Obligations for AIP through 1/31		\$0.1												
Obligations for Operations through 1/31		\$0.5												
Obligations for OST programs (completed 1/97)		\$0.1												
Net obligations of FY 1997 appropriations through January 31		\$1.1												
Remaining TF balance (including interest)		\$1.9												
<b>GENERAL FUND BALANCE INFORMATION</b>														
GF appropriation, beginning of year		\$3.3												
GF obligations through 1/31		\$1.2												
Remaining GF balance		\$2.1												
<b>RATES OF OBLIGATION</b>														
		Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Total
Obligation rate per month for Operations		\$0.39	\$0.37	\$0.55	\$0.40	\$0.40	\$0.41	\$0.41	\$0.41	\$0.41	\$0.41	\$0.41	\$0.41	\$4.95
Capital Programs 1/														
Obligations per month for F&E		\$0.05	\$0.35	\$0.19	\$0.31	\$0.18	\$0.20	\$0.11	\$0.13	\$0.13	\$0.10	\$0.13	\$0.12	\$1.98
Obligations per month for RE&D		\$0.00	\$0.03	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.21
Obligations per month for AIP		\$0.00	\$0.01	\$0.06	\$0.06	\$0.07	\$0.08	\$0.08	\$0.09	\$0.16	\$0.27	\$0.28	\$0.31	\$1.46
Total capital obligations per month		\$0.05	\$0.39	\$0.26	\$0.39	\$0.26	\$0.30	\$0.21	\$0.24	\$0.30	\$0.39	\$0.42	\$0.45	\$3.65
Total Operations and capital obligations per month		\$0.45	\$0.75	\$0.81	\$0.78	\$0.66	\$0.71	\$0.61	\$0.65	\$0.71	\$0.80	\$0.83	\$0.85	\$8.61

1/ Monthly totals do not include costs associated with potential interruptions in contracts.

## **VI. ESTIMATED BUDGET EFFECTS OF REIMPOSING AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES**

Table 4, below, shows the estimated budget effects of reimposing the Airport Trust Fund excise taxes (both commercial and general aviation taxes) that expired after December 31, 1996. The first line of the table shows the estimated budget effects of reimposing the excise taxes for the period March 1, 1997, through September 30, 1997. The second line shows the estimated budget effects of reimposing the excise taxes for the period March 1, 1997, through September 30, 2007.

The revenue estimates in Table 4 assume that the provisions of the Treasury Department's regulations relating to deposits of excise taxes are overridden to prevent recurrence of a delay in receipt of tax deposits such as that which has been discovered with respect to the fourth quarter of 1996. The estimates also assume that the reinstated air passenger ticket tax, international departure tax, and domestic air freight excise tax would be effective for air transportation beginning after February 28, 1997 (with respect to amounts paid after that date),<sup>28</sup> and that these three excise taxes would terminate with respect to transportation purchased after the termination date. Transportation would be considered to be purchased no later than the date on which a ticket was issued. (Earlier tender of payment by the consumer, whether or not processed by the air carrier in the case of checks or credit card payments, would be treated as payment.)

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<sup>28</sup> Payments between related parties before March 1, 1997, for transportation occurring after February 28, 1997, would not receive the benefit of this delayed effective date.

TABLE 4.--ESTIMATED REVENUE EFFECTS OF OPTIONS TO EXTEND AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES<sup>a/</sup>

Fiscal Years 1997 - 2007

[Billions of Dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997-02	1997-07
1. Extension of airport and airway trust fund excise taxes through 9/30/97.....	3/1/97	2.7	0.2	---	---	---	---	---	---	---	---	---	2.9	2.9
2. Extension of airport and airway trust fund excise taxes through 9/30/07.....	3/1/97	2.7	5.2	5.5	5.9	6.2	6.6	7.0	7.4	7.9	8.4	8.9	32.1	71.8

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

a - This table shows the net revenue effect of reimposition of the excise taxes (gross receipts less income tax revenue offset).



## APPENDIX: DATA ON FINANCIAL CONDITION OF COMMERCIAL AIR CARRIERS

The following figures and tables report revenues and net income for twelve selected air passenger airlines for the period 1990 through 1995. The data are revenues and net income as reported for financial accounting purposes and were derived from the CompuStat data base.

The revenue and income data for the selected airlines are reported by two groups. The first group is comprised of American Airlines, Continental Airlines, Delta Airlines, Northwest Airlines, Trans World Airlines, United Airlines, and USAir. These seven airlines are the seven largest air passenger carriers serving the domestic market. Each of the seven airlines have had annual revenues in excess of \$3 billion throughout the period 1990 through 1995. Figure 1 and Table A.1 report annual revenues, which largely are comprised of passenger ticket sales, for each of these seven large airlines. The data show that throughout the period American, United, and Delta experienced revenue growth. Revenues for Northwest and USAir were flat, while Continental and TWA experienced revenue declines. Figures 2 and 3 and Table A.2 report net income for these airlines. Generally each airline reported losses between 1990 and 1994, while 1995 was a year of positive net income for all except TWA.

The second group of airlines is five smaller airlines: Alaska Airlines; America West Airlines; Atlantic Southeast Airlines; Comair; and Southwest Airlines. Each of these airlines had annual revenues of less than \$3 billion throughout the period 1990 through 1995. While there are other "small" airlines, these five airlines were selected because of the availability of data on revenue and net income for each year of the period 1990 through 1995. Figure 4 and Table A.3 report revenues for these airlines. Alaska Airlines, America West, Atlantic Southeast, and Comair each reported modest revenue growth for 1995 compared to 1990. Southwest Airlines reported more substantial revenue growth throughout the period. Figure 4 and Table A.5 document that these five smaller airlines generally were profitable throughout the period 1990-1995.

Reported 1996 operating results for these twelve air carriers are not yet generally available. However, financial news accounts generally characterize 1996 as a year of revenue and profit growth.<sup>29</sup>

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<sup>29</sup> For example, *The Value Line Investment Survey* recently wrote that "[t]he Air Transport Industry will report its highest profits ever for 1996, and next year should be good, also. Traffic has been rising and ticket prices are higher than they were a year ago." The Value Line analyst projects that total industry revenues (including freight operations) will be more than ten percent higher for 1996 than 1995 and that total industry profits will be 35 percent higher in 1996 than in 1995. *The Value Line Investment Survey*, December 20, 1996, p. 251.

**Table A-1.--Sales Revenues of the Seven Domestic Passenger Airlines with Annual Revenues of \$3 Billion or Greater, 1990-1995 (\$ millions)**

<u>Year</u>	<u>Northwest Airlines Corp.</u>	<u>Trans World Airlines</u>	<u>United (UAL Corp)</u>	<u>USAir Group</u>	<u>American (AMR Corp)</u>	<u>Continental Air Lines Inc.</u>	<u>Delta Air Lines Inc.</u>
1990	7,426.4	4,601.3	11,037.4	6,558.6	11,719.6	6,230.5	8,582.2
1991	7,682.9	3,651.4	11,662.5	6,514.1	12,887.0	5,551.0	9,170.6
1992	8,127.6	3,618.7	12,889.7	6,686.4	14,396.0	5,575.2	10,836.7
1993	8,648.9	3,154.4	14,511.0	7,083.2	15,701.0	5,775.3	11,996.6
1994	9,142.9	3,407.7	13,950.0	6,997.2	16,137.0	5,669.9	12,359.0
1995	9,084.9	3,316.8	14,943.0	7,474.3	16,910.0	5,825.0	12,194.0

Source: CompuStat

**Table A-2.--Net Income of the Seven Domestic Passenger Airlines with Annual Revenues of \$3 Billion or Greater, 1990-1995 (\$ millions)**

<u>Year</u>	<u>Northwest Airlines Corp.</u>	<u>Trans World Airlines</u>	<u>United (UAL Corp)</u>	<u>USAir Group</u>	<u>American (AMR Corp)</u>	<u>Continental Air Lines Inc.</u>	<u>Delta Air Lines Inc.</u>
1990	-302.5	-237.6	94.5	-454.4	-39.6	-2,343.8	302.8
1991	-320.2	34.6	-331.9	-305.3	-240.0	-305.7	-324.4
1992	1,079.5	-317.7	-956.8	-1,228.9	-935.0	-125.3	-506.3
1993	-115.3	623.8	-50.0	-393.1	-110.0	2,601.6	-1,001.9
1994	295.5	-435.8	51.0	-684.9	228.0	-613.3	-409.0
1995	450.9	-227.5	349.0	119.3	167.0	224.0	408.0

Source: CompuStat

**Table A-3.--Sales Revenues of Five Selected Domestic Passenger  
Airlines with Annual Revenues Less Than \$3 Billion,  
1990-1995 (\$ millions)**

<u>Year</u>	<u>Alaska Airgroup Inc.</u>	<u>America West Airlines</u>	<u>Southwest Airlines</u>	<u>Atlantic Southeast Airlines</u>	<u>Comair Holdings Inc.</u>
1990	1,047.0	1,315.8	1,186.8	187.2	201.7
1991	1,104.0	1,413.9	1,313.6	221.9	217.4
1992	1,115.4	1,294.1	1,685.2	235.6	248.3
1993	1,128.3	1,325.4	2,296.7	288.5	296.6
1994	1,315.6	1,408.8	2,591.9	312.1	360.7
1995	1,417.5	1,550.6	2,872.8	328.7	463.3

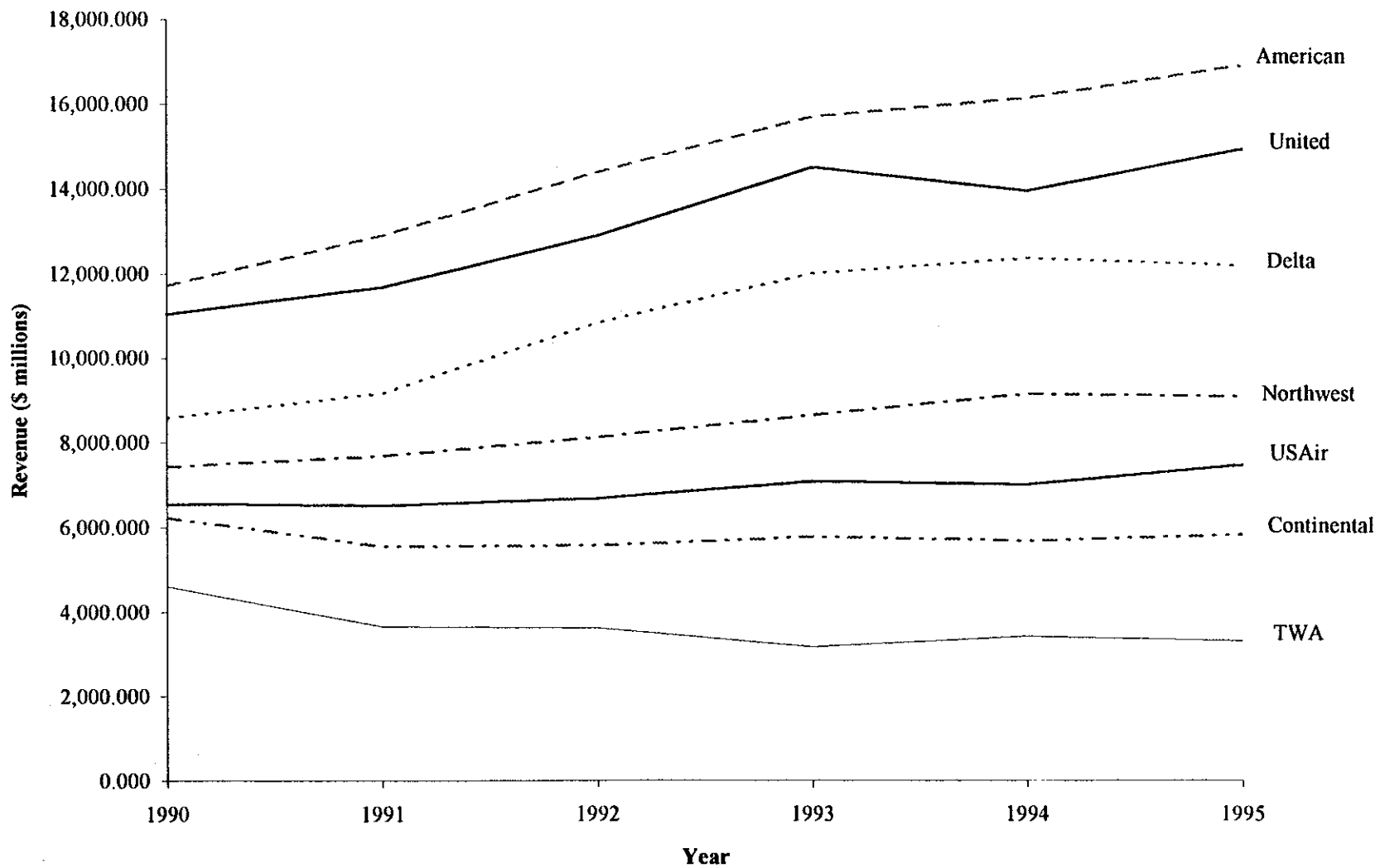
Source: CompuStat

**Table A-4.--Net Income of Five Selected Domestic Passenger  
Airlines with Annual Revenues Less Than \$3 Billion,  
1990-1995 (\$ millions)**

<u>Year</u>	<u>Alaska Airgroup Inc.</u>	<u>America West Airlines</u>	<u>Southwest Airlines</u>	<u>Atlantic Southeast Airlines</u>	<u>Comair Holdings Inc.</u>
1990	17.2	-74.7	47.1	25.4	13.1
1991	10.3	-222.0	26.9	32.5	12.4
1992	-84.8	-131.8	103.6	37.1	19.3
1993	-30.9	37.2	169.5	50.5	28.5
1994	22.5	62.2	179.3	52.7	29.3
1995	17.3	53.8	182.6	51.1	60.0

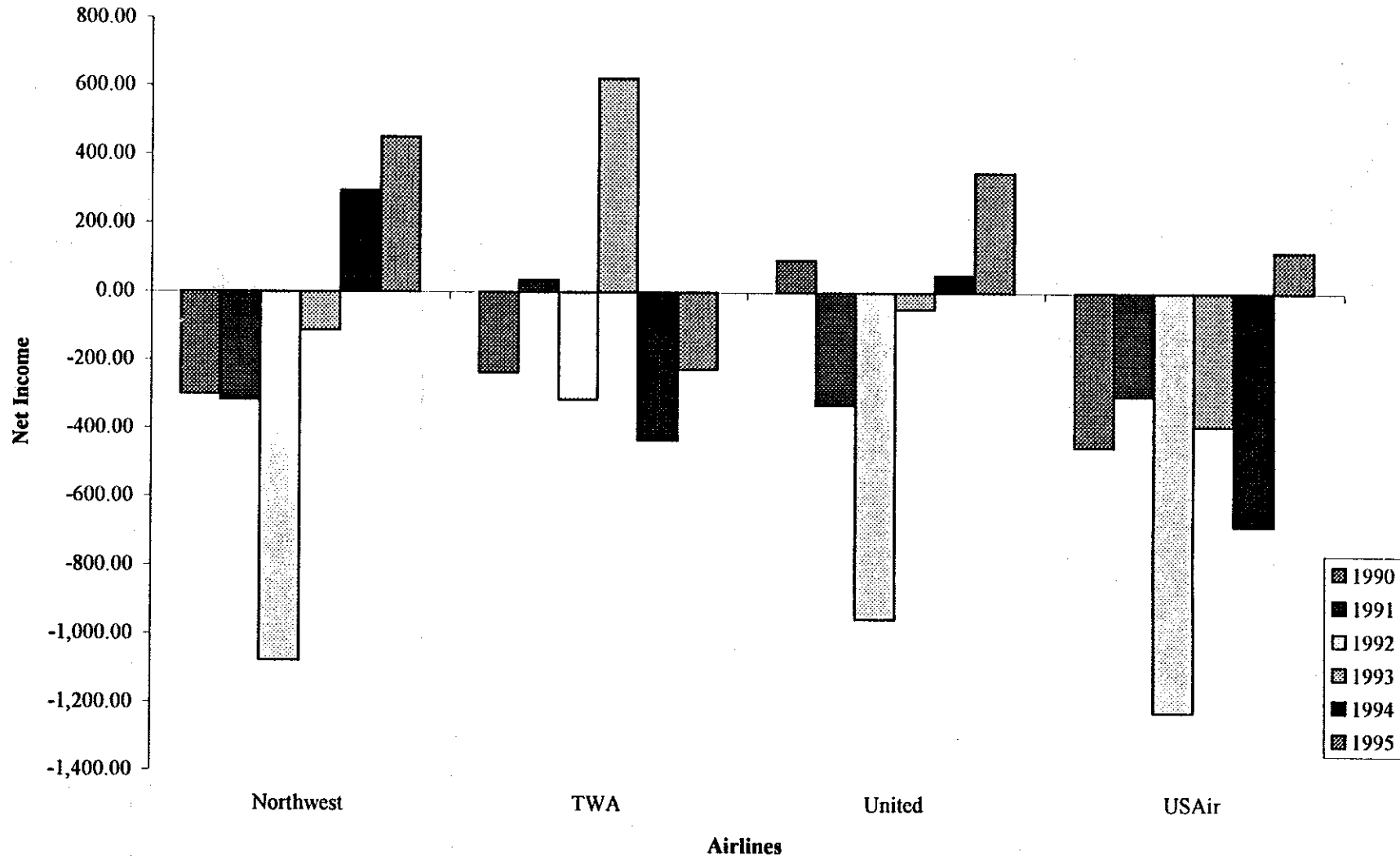
Source: CompuStat

**Figure 1.-- Sales Revenues of Seven Major Airlines, 1990-1995**



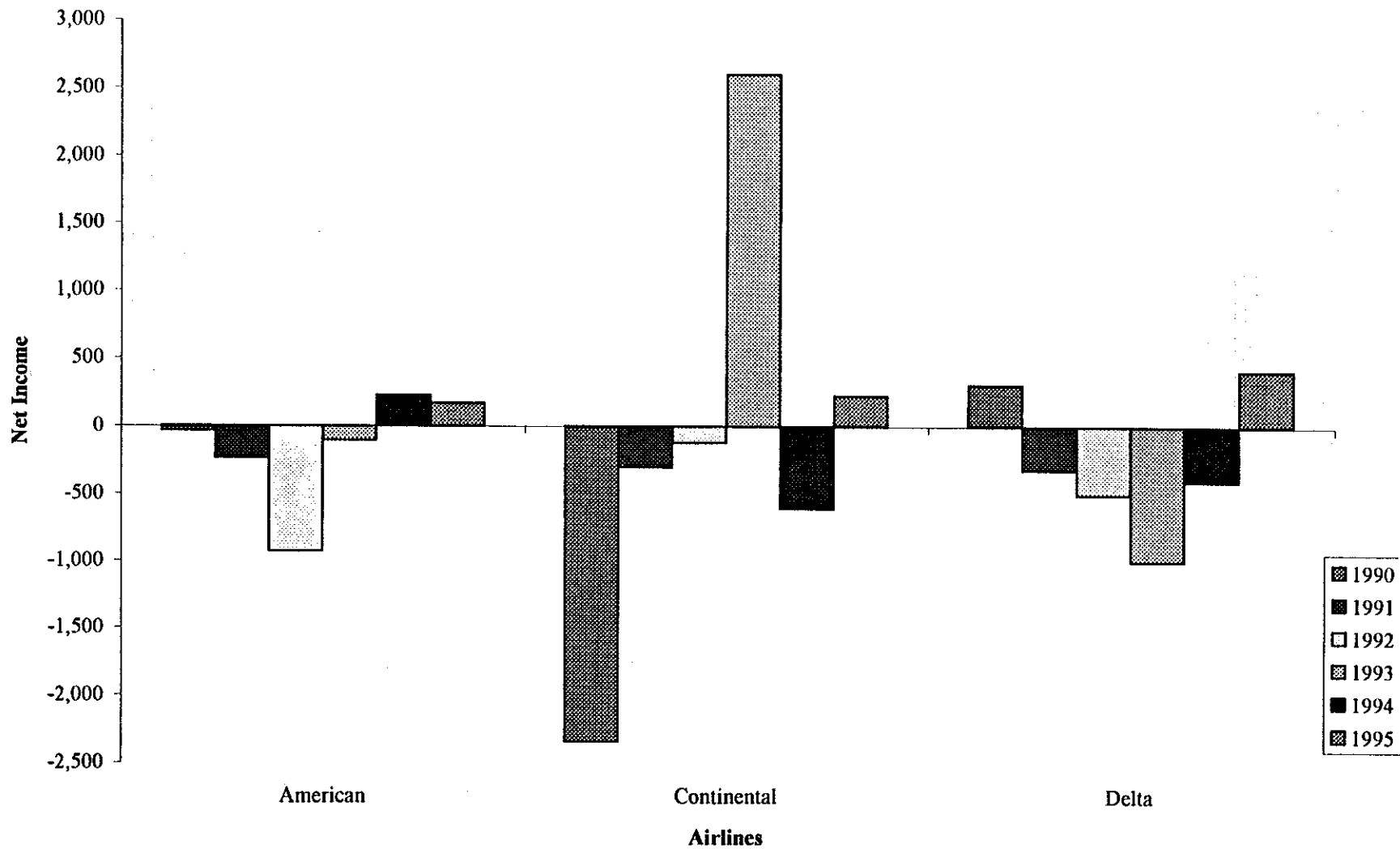
- 34 -

**Figure 2.--Net Income of Northwest, TWA, United, and USAir, 1990-1995**



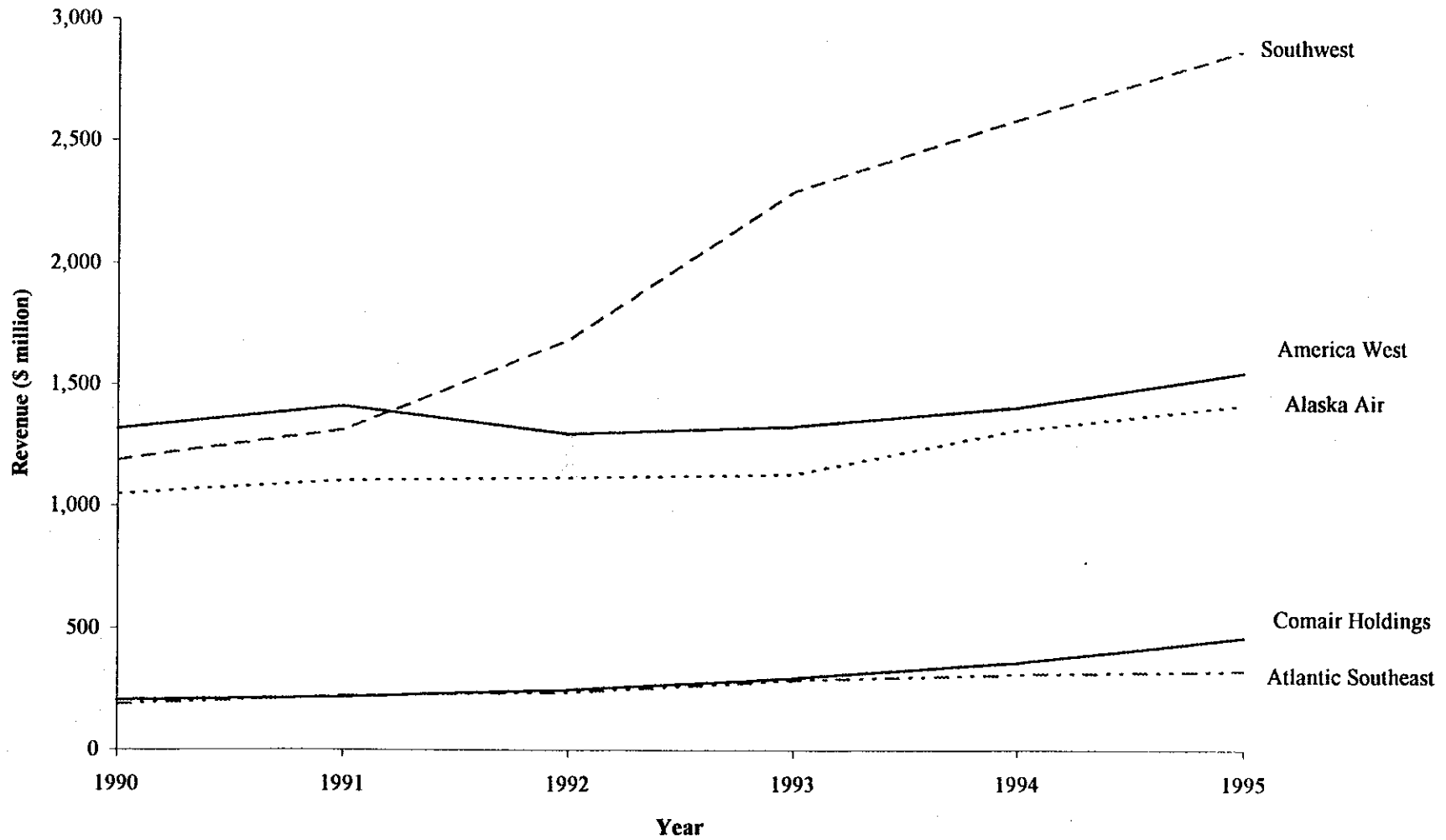
Source: CompuStat

**Figure 3.--Net Income of American, Continental, and Delta, 1990-1995**



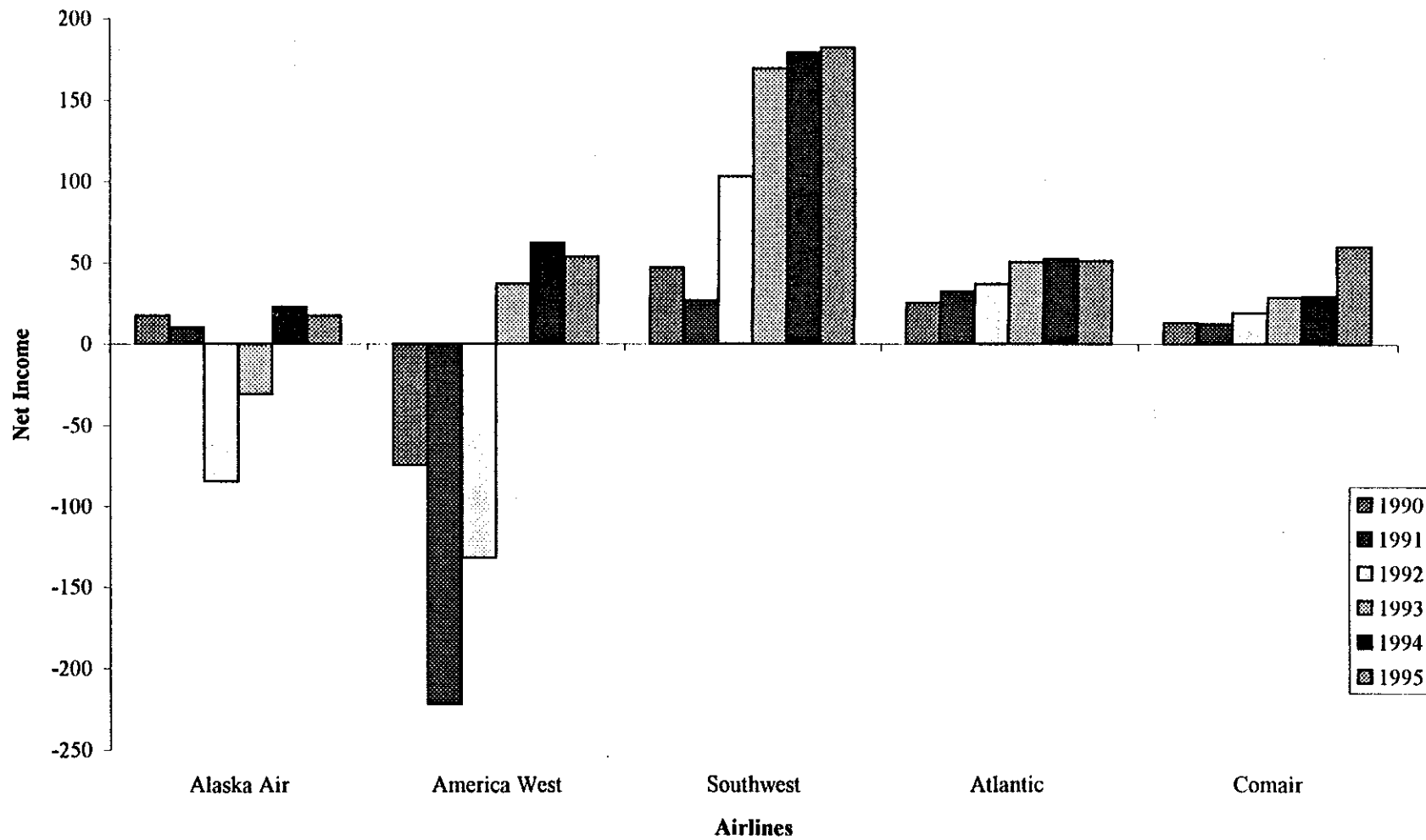
Source: CompuStat

**Figure 4.--Sales Revenues of Alaska Air, America West, Southwest, Atlantic Southeast, and Comair, 1990-1995**



Source: CompuStat

**Figure 5.--Net Income of Alaska Air, America West, Southwest, Atlantic Southeast, and Comair, 1990-1995**



Source: CompuStat