

Joint Committee on Taxation
April 28, 1992
JCX-17-92

**MARKUP OF WAYS AND MEANS COMMITTEE
AMENDMENT TO H.R. 4691 (AIRPORT AND AIRWAY
SAFETY, CAPACITY, AND INTERMODAL
TRANSPORTATION ACT OF 1992)**

I. Legislative Background

H.R. 4691 ("Airport and Airway Safety, Capacity, and Intermodal Transportation Act of 1992") was reported by the House Committee on Public Works and Transportation ("Public Works") on April 28, 1992. The bill, as reported, amends the Airport and Airway Improvement Act of 1982 (as amended in 1987 and 1990) to provide airport and aviation program authorizations (other than FAA R&D) for fiscal years 1993 and 1994.

The House Committee on Science, Space, and Technology ("Science and Technology") ordered reported H.R. 4557 on April 8, 1992. H.R. 4557 provides authorizations for FAA R&D programs for fiscal years 1993 and 1994. Science and Technology expects to offer the provisions of H.R. 4557 as an amendment to H.R. 4691, when H.R. 4691 is considered by the House.

Public Works has requested that the Committee on Ways and Means ("Ways and Means") provide a conforming amendment to the Airport and Airway Trust Fund ("Trust Fund") statute to reflect the proposed authorizations from the Trust Fund. Public Works is not requesting any changes in, or further extension of, the aviation excise taxes at this time.

II. Present Law

Aviation Excise Taxes and Airport and Airway Trust Fund

Under present law, aviation excise taxes are imposed as follows: 10-percent air passenger ticket tax; 6.25-percent air cargo tax; \$6.00 per person international departure tax; and, fuels taxes for noncommercial aviation (15-cents-per-gallon tax on gasoline and 17.5-cents-per-gallon tax on jet fuel). These taxes are scheduled to expire after December 31, 1995.

The Omnibus Budget Reconciliation Act of 1990 ("1990 Act") provided for increases in the following aviation excise taxes: the air passenger tax from 8 percent to 10 percent; the air cargo tax from 5 percent to 6.25 percent; the gasoline tax for noncommercial aviation from 12 cents to 15 cents per gallon; and the jet fuel tax for noncommercial aviation from 14 cents

to 17.5 cents per gallon. Under the conference agreement for the 1990 Act,¹ the revenues from these increases in the aviation taxes were to be retained in the General Fund (rather than transferred to the Trust Fund) through December 31, 1992, and to be transferred to the Trust Fund for 1993-1995.² However, due to a statutory drafting omission in the 1990 Act, revenues from the increases in the air passenger and air cargo taxes were not retained in the General Fund through 1992 as intended in the conference agreement. Thus, a technical correction³ is needed to reflect the intent of the conference agreement.³ Currently, such revenues are being credited to the Trust Fund.

Trust Fund Expenditure Purposes

Background

The 1990 Act also provided an extension of Trust Fund program authorizations at increased levels for fiscal years 1991 and 1992, and added contract authority from the Trust Fund for payments under the Small Community Air Service Program ("essential air services") for fiscal years 1992-1998.

The present Trust Fund statute (Code sec. 9502(d)) authorizes amounts to be paid out of the Trust Fund for obligations incurred under the previous airport and airway authorization Acts from 1970 to 1990 (as those Acts were in effect on the date of enactment of the Aviation Safety and Capacity Expansion Act of 1990). Also, amounts are authorized to be paid out of the Trust Fund for obligations incurred under the Federal Aviation Act of 1958, as amended, which are attributable to planning, research and development, construction, or operations and maintenance of (1) air traffic control, (2) air navigation, (3) communications, or (4) supporting services for the airway system. In addition, administrative expenses of the Department of Transportation attributable to Trust Fund-related activities described above are authorized from the Trust Fund. Trust Fund expenditures are authorized through September 30, 1992.

¹ 1990 Act Conference Report (H. Rept. 101-964), pp. 1054-1055.

² Revenues from the aviation tax rates as in effect before the 1990 Act continue to go to the Trust Fund (through 1995).

³ Such a technical correction is included in H.R. 1555, as passed by the House on November 26, 1991.

Trust Fund expenditure programs

The Airport and Airway Trust Fund expenditure programs authorized under present law are generally as follows:

(1) Airport Improvement Program (AIP)--

(a) Airport planning--Planning for airport systems for airport master plans and noise compatibility planning for air carrier airports eligible for terminal development costs.

(b) Airport construction--Construction, improvement or repair of a public airport.

(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 (but not for construction of public parking facilities for passenger automobiles or construction, alteration, or repair of a hanger or any airport building unless used to house facilities or activities directly related to safety of persons at the airport).

(d) Land acquisition--Includes acquisition of land or property interests for airport noise control purposes.

(e) Airport-related equipment--Airport security equipment required by DOT regulations, snow removal equipment, noise suppressing equipment, navigation aids, and safety equipment required for airport certification.

(f) Airport noise compatibility--Includes sound-proofing of public buildings.

(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)--Flight check and maintenance of air navigation facilities; services provided under international agreements relating to the U.S. share of joint provision of air navigation services.

(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.

III. Airport and Airway Trust Fund
 Authorizations for Fiscal Years 1993-1994
 (H.R. 4691 and H.R. 4557)

Trust Fund Authorization Amounts and Balances

Trust Fund authorizations

H.R. 4691, as reported by Public Works, and H.R. 4557, as ordered reported by Science and Technology, would provide total Trust Fund authorizations of \$7.4 billion for fiscal year 1993 and \$8.0 billion for fiscal year 1994, as compared to \$6.2 billion for fiscal year 1991 and \$6.7 billion for fiscal year 1992.

Table 1 shows the Trust Fund authorization amounts for fiscal years 1991 and 1992 under present law and for fiscal years 1993 and 1994 under H.R. 4691 and H.R. 4557, respectively.

Table 1.--Airport and Airway Trust Fund Program
 Authorizations, Fiscal Years 1991-1994

(millions of dollars)

<u>Program</u>	<u>1991</u> (Present Law)	<u>1992</u> Law)	<u>1993</u> (Projected)	<u>1994</u>
			<u>H.R. 4691</u>	
Airport Improvement Program (AIP)	1,797.5	1,900.0	2,000.0	2,100.0
Grants to Technical Institutions	----	----	20.0	----
Facilities & Equipment (F&E)	2,095.4	2,394.0	2,700.0	2,900.0
Area Control Facilities (ACF)	----	----	----	100.0
Operations & Maintenance (O&M)	2,002.7	2,109.6	2,221.6	2,401.9
NOAA Weather Reimbursement	34.5	35.4	35.6	37.8
Small Community Air Service	----	38.6	38.6	38.6
Rental Payments (GSA lease)	28.5	29.9	41.7	41.7
Subtotal	5,958.6	6,507.5	7,057.5	7,620.0
			<u>H.R. 4557</u>	
Research, Engineering, and Development	205.0	218.1	297.3	336.0
Total Trust Fund	<u>6,163.6</u>	<u>6,725.6</u>	<u>7,354.8</u>	<u>7,956.0</u>

Trust Fund balance

Under H.R. 4691 and H.R. 4557, the uncommitted Trust Fund balance is projected by FAA to decline from \$7.5 billion at the end of fiscal year 1992 to \$6.3 billion at the end of fiscal year 1994 (i.e., without the technical correction transfer to the General Fund). (FAA projects the balance would decline to \$4.1 billion if the transfer is made to the General Fund through 1992.)

Expansion of, or Specification of, Trust Fund Expenditure Purposes

Area control facilities.--H.R. 4691 would provide that if the FAA Administrator determines that it is necessary to augment or substantially modify elements of the FAA's airway capital investment plan (including a determination that it is necessary to establish more than 23 area control facilities (ACFs)), an additional \$100 million would be authorized from the Trust Fund for ACFs for fiscal year 1994 (in addition to the \$2,900 million authorized for FAA F&E for fiscal year 1994).

Military airports.--H.R. 4691 would remove the limitation on the number of airports which may be designated to participate in the military airport program (under the Airport Improvement Program). Also, the bill would provide that up to \$4 million per airport for fiscal years 1993 and 1994 may be used under the military airport program for construction, improvement or repair of airport surface parking lots, fuel farms, and airport utilities.

Terminal development.--H.R. 4691 would make eligible for AIP funding terminal development of revenue producing areas and construction of non-revenue producing parking lots for non-hub airports (those with less than .05 percent of U.S. passenger enplanements). Before approving a grant for these purposes, the airport sponsor must certify that the grant will not lead to deferral of needed airport development affecting safety, security, or capacity. (The bill also increases the Federal share to such airports from 75 to 85 percent.)

Definition of airport development.--H.R. 4691 would specify that the following items would be eligible for funding under the AIP program: (1) relocation of an air traffic control tower or any navigational aid, if such relocation is necessary to carry out an AIP project (currently, funded under F&E); (2) any construction or purchase of capital equipment necessary for compliance by the airport under the Americans with Disabilities Act, the Clean Air Act, and the Federal Water Pollution Control Act, other than capital equipment which would primarily benefit a revenue producing area of the airport used by a non-aeronautical business; and (3) any acquisition of land for, or work necessary to construct, a pad suitable for aircraft de-icing (but not including costs of aircraft de-icing equipment, fluids, or storage facilities for such equipment and fluids).

Grants to technical institutions.--H.R. 4691 would authorize grants for up to four vocational technical institutions (up to \$5 million per institution) to acquire or construct facilities for the advanced training of maintenance technicians for air carrier aircraft.

Aviation security training.--H.R. 4691 would allow the FAA Administrator to reimburse expenses for the security training of non-Federal domestic and foreign security personnel relating to civil aviation security programs.

Study Commission

H.R. 4691 would establish a "National Commission to Promote a Strong and Competitive Airline Industry" ("Commission"). The Commission is to investigate and study the financial condition of the U.S. airline industry, the adequacy of competition in the airline industry, legal impediments to a financially strong and competitive U.S. airline industry,⁴ and international aviation policy. The Commission is to submit a final report to the Congress by May 1, 1993. The bill does not provide specific funding for the Commission.

IV. Possible Option

1. Trust Fund Amendments

Adopt conforming amendments to the Trust Fund statute to (1) permit expenditures from the Trust Fund for fiscal years 1993 and 1994, and (2) allow expenditures from the Trust Fund for the purposes provided in H.R. 4691 and H.R. 4557, as reported.

These amendments would have no budgetary effects.

2. Technical Amendment

Adopt the technical correction in H.R. 1555 (as previously passed by the House) to provide that the 1990 Act increases in the air passenger and air cargo tax revenues would be retained in the General Fund through December 31, 1992 (as intended in the 1990 Act conference agreement).

This amendment would have no budgetary effect.

⁴ The legal impediments portion of the study is to include a review and investigation of frequent flier programs, the taxes and user fees imposed on U.S. airlines, the application of bankruptcy laws to U.S. airlines, and the obligations of failing airlines to meet pension obligations. (See sec. 205(d) of H.R. 4691.)