

**EXTENSION OF AIRPORT AND AIRWAY TRUST
FUND PROVISIONS**

Scheduled for Markup
By the
SENATE COMMITTEE ON FINANCE
on June 5, 2003

Prepared by the Staff
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INTRODUCTION

On May 1, 2003, the Senate Committee on Commerce, Science and Transportation reported S. 824, the “Aviation Investment and Revitalization Vision Act.” S. 824 would authorize appropriations for fiscal years 2004 through 2006 for the Federal Aviation Administration, including the Airport Improvement Program.

The Airport and Airway Trust Fund (“aviation trust fund”) provides funding for capital improvements to the U.S. airport and airway system. Expenditures from this fund support the Federal Aviation Administration. The aviation trust fund pays for the majority of the Federal Aviation Administration’s programs and activities. The aviation trust fund is funded with amounts equivalent to revenues from certain excise taxes on commercial and noncommercial transportation by air and aviation fuel taxes. The Internal Revenue Code (the “Code”) contains the provisions that dedicate revenues from these excise taxes to the aviation trust fund, provides the relevant expenditure provisions governing the purposes for which aviation trust fund monies may be spent, and sets the period for when those expenditures may occur. The aviation trust fund expenditure authority currently expires on October 1, 2003. Because the expenditure purposes are set in the law as of the date of enactment of the Aviation and Transportation Security Act (November 19, 2001), the authorizing and appropriations committees of Congress cannot accomplish expenditure of aviation trust fund monies for any new purposes without an amendment to the Code.

The Committee on Finance has been requested to provide a revenue title to accompany S. 824. This revenue title is requested to include provisions extending expenditure authorization and conforming the purposes for which monies can be spent to those authorized under S. 824. Provisions adopted by the Committee are expected to be incorporated into S. 824 when that bill is considered by the Senate.

The Committee on Finance has scheduled a markup on a revenue title to S. 824 on June 5, 2003.

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the present-law aviation trust fund excise taxes (Part I), the present-law aviation trust fund expenditure purposes (Part II), a summary of S. 824 (Part III), and a description of the companion revenue title for S. 824 (Part IV).

¹ This document may be cited as follows: Joint Committee on Taxation, *Extension of Airport and Airway Trust Fund Provisions* (JCX-57-03), June 3, 2003.

I. PRESENT LAW AVIATION TRUST FUND EXCISE TAXES

The Airport and Airway Trust Fund provides funding for capital improvements to the U.S. airport and airway system. To fund the aviation trust fund, the Code imposes taxes on both commercial and noncommercial aviation. Commercial aviation is the carriage of persons or property by air for compensation (air transportation “for hire”). All other air transportation is defined as non-commercial aviation.²

Four separate excise taxes are imposed to finance the aviation trust fund. The taxes are:

- (1) ticket taxes imposed on commercial passenger transportation;
- (2) a waybill tax imposed on freight transportation; and
- (3) two separate fuels taxes imposed on gasoline and jet fuel used in commercial aviation and non-commercial aviation.

A. Tax on Transportation of Persons by Air

The Code imposes an excise tax on both domestic and certain international transportation of passengers by air. These taxes expire after September 30, 2007.³ Passengers and transportation providers both are liable for payment of the air passenger excise taxes. Transportation providers are subject to special penalties if they do not separately disclose the amount of the passenger taxes on tickets and in advertising.

Domestic air passenger excise tax

Most domestic air passenger transportation is subject to a two-part excise tax.⁴ First, an *ad valorem* tax is imposed at the rate of 7.5 percent of the amount paid for the transportation. Second, a flight segment tax of \$3.00 per segment is imposed. Beginning on January 1, 2003, and for each January 1 thereafter, the flight segment tax is indexed annually for inflation occurring after calendar year 2001. For 2003, the flight segment tax remained unchanged at

² Sec. 4041(c)(2). Because these definitions are based on whether an amount is paid for the transportation, it is possible for the same aircraft to be used at times in commercial aviation and at times in non-commercial aviation. This determination is made on a flight-by-flight basis. For example, a corporate-owned aircraft transporting employees of the corporation is engaged in non-commercial aviation (and subject only to fuels excise tax) while the same aircraft when transporting non-employees is engaged in commercial aviation (and subject to a mix of ticket and fuels taxes).

³ Sec. 4261(i).

⁴ Special rules apply to transportation between the 48 contiguous States and Alaska or Hawaii (or between Alaska and Hawaii) and to certain transportation between the United States and points within the “225-mile zone” of Canada or Mexico or within that zone (when the transportation is purchased within the United States).

\$3.00. A flight segment is defined as transportation involving a single take-off and a single landing. For example, travel from New York to San Francisco, with an intermediate stop in Chicago, consists of two flight segments (without regard to whether the passenger changes aircraft in Chicago).

The flight segment component of the tax does not apply to segments to or from qualified “rural airports.” For any calendar year, a rural airport is defined as an airport that (1) in the second preceding calendar year had fewer than 100,000 commercial passenger departures, and (2) either (a) is not located within 75 miles of another airport that had more than 100,000 such departures in that year, or (b) is eligible for payments under the Federal “essential air service” program.

International air passenger departure tax

For calendar year 2003, international air passenger transportation is subject to a tax of \$13.40 per arrival or departure in lieu of the taxes imposed on domestic air passenger transportation.⁵ The definition of international transportation includes certain purely domestic transportation that is associated with an international journey. Under these rules, a passenger traveling on separate domestic segments integral to international travel is exempt from the domestic passenger taxes on those segments if the stopover time at any point within the United States does not exceed 12 hours.

“Free” travel

Both of the domestic air passenger tax and international air passenger departure tax apply only to transportation for which an amount is paid. Thus, free travel such as that awarded in “frequent flyer” programs and non-revenue travel by airline industry employees are not subject to tax. However, amounts paid to air carriers (in cash or in kind) for the right to award free or reduced-fare transportation are treated as amounts paid for taxable air transportation, subject to the 7.5 percent *ad valorem* tax rate (but not the flight segment rate or the international air passenger tax). This tax applies to payments, whether made within the United States or elsewhere, if the rights to transportation for which the payments are made can be used in whole or in part for transportation that if purchased directly, would be subject to either the domestic or international air passenger taxes.

B. Tax on Air Freight Transportation

Domestic air cargo transportation is subject to a 6.25 percent *ad valorem* excise tax. The tax applies only to transportation that both begins and ends in the United States. Unlike the air passenger taxes, only shippers are liable for payment of the air freight tax. Transportation providers are subject to penalties if they fail to make reasonable efforts to collect the tax. There is no disclosure requirement for the air freight tax. This tax expires after September 30, 2007.⁶

⁵ Rev. Proc. 2002-70, sec. 3.26. The international air transportation tax rate is indexed for inflation annually, effective on each January 1.

⁶ Sec. 4271(d).

C. Aviation Fuels Taxes

Both aviation gasoline and jet fuel are subject to excise taxes. The tax rates are lower for commercial aviation (also subject to the non-fuels taxes described above) than for non-commercial aviation (subject only to fuels taxes). The fuels tax rates are shown below.⁷

Aviation gasoline

Commercial aviation	4.4 cents per gallon
Non-commercial aviation	19.4 cents per gallon

Jet fuel

Commercial aviation	4.4 cents per gallon
Non-commercial aviation	21.9 cents per gallon

These rates include an additional 0.1 cent Leaking Underground Storage Tank (“LUST”) trust fund tax. The LUST fund tax is set to expire after March 31, 2005. Beginning on April 1, 2005, these tax rates will decrease by 0.1 cent per gallon. Further, beginning on October 1, 2007, the tax rates on aviation gasoline and jet fuel will be reduced to 4.3 cents per gallon.⁸

⁷ Fuel mixtures containing at least 10 percent alcohol are taxed at lower rates. See secs. 4041(k)(1), 4081(c), and 4091(c). In the case of 10 percent ethanol mixtures, any sale or use during 2003 and 2004, the 21.9 cents is reduced by 13.2 cents (for a tax of 8.7 cents per gallon), for 2005, 2006, and 2007 the reduction is 13.1 cents (for a tax of 8.8 cents per gallon) and is reduced by 13.4 cents in the case of any sale during 2008 or thereafter. For mixtures not containing ethanol, the 21.9 cents is reduced by 14 cents for a tax of 7.9 cents. When aviation fuel is purchased for blending with alcohol, the rates above are multiplied by a fraction (10/9) so that the increased volume of aviation fuel will be subject to tax. These reduced rates expire after September 30, 2007. Not all of the tax imposed on alcohol mixtures is credited to the aviation trust fund. The General Fund retains 0.6 cents per gallon of the tax imposed on 10 percent ethanol mixtures and 0.67 cents of the tax imposed on fuel used to produce such an ethanol mixture (sec. 9502(e)).

⁸ Secs. 4081(d)(2) and 4091(b)(3).

II. AVIATION TRUST FUND EXPENDITURE PROVISIONS

The aviation 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 statutory provisions relating to the aviation trust fund were placed in the Code in 1982.⁹

Expenditures from the fund support the Federal Aviation Administration (“FAA”) and the majority of the FAA’s programs and activities. The FAA budget has four major components: (1) operations and maintenance; (2) facilities and equipment; (3) research, engineering, and development; and (4) the airport improvement program.¹⁰ Operations and maintenance are the only segments of the FAA budget that are funded by both a trust fund contribution and a General Fund contribution.¹¹ The remaining three items receive all their funding from the aviation trust fund.

A. Trust Fund Expenditure Purposes

The current expenditure purposes for the aviation 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 Aviation and Transportation Security Act (November 19, 2001);¹²

⁹ Sec. 9502.

¹⁰ Congressional Research Service, *Aviation Taxes and the Airport and Airway Trust Fund*, CRS Report 97-657E at CRS-2 (1997). The airport improvement program is only for airports in the National Plan of Integrated Airport Systems.

¹¹ *Id.*

¹² The Acts (or provisions of Acts) pursuant to which aviation 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 provisions of 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; Federal Aviation Administration Authorization Act of 1994; Federal Aviation Reauthorization Act of 1996; the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 providing for payments from the Airport and Airway Trust Fund; the Interim Federal Aviation Administration Authorization Act; section 6002 of the 1999 Emergency Supplemental Appropriations Act, Public Law 106-59; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; and the Aviation and Transportation Security Act.

- (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
- (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 aviation trust fund after September 30, 2003. Because the expenditure purposes are set in the law as of the date of enactment of the Aviation and Transportation Security Act (November 19, 2001), the authorizing and appropriations committees of Congress cannot accomplish expenditure of aviation trust fund monies for any new purposes without an amendment to the Code. In addition, the Code contains a special enforcement provision to prevent expenditure of aviation trust fund monies for purposes not authorized in section 9502.¹³ This provision provides that should such unapproved expenditures occur, no further excise tax receipts will be transferred to the aviation trust fund. Rather, the taxes will continue to be imposed with receipts being retained in the General Fund. This enforcement provision provides specifically that it applies not only to unauthorized expenditures under the current Code provisions, but also to expenditures pursuant to future legislation that may provide for them unless either the legislation providing for the expenditure amends section 9502's expenditure authorization provisions or otherwise authorizes the expenditure as part of a revenue Act.

B. Specific Aviation 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.

¹³ Sec. 9502(f)(1).

(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).¹⁴

(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; 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, fire fighting 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).—Operations and maintenance of air navigation facilities, including air traffic control and flight checks; 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 Development Pilot Program.—For payments to ensure that eligible localities receiving airline service at the time of deregulation continue to have airline service.

¹⁴ Airport construction is usually limited to construction or improvements related to aircraft operations, such as runways, taxiways, etc.

- (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.

III. SUMMARY OF S. 824, “THE AVIATION INVESTMENT AND REVITALIZATION VISION ACT”

On April 8, 2003, Senator McCain, for himself and Senators Hollings, Lott, and Rockefeller, introduced S. 824, “The Aviation Investment and Revitalization Vision Act,” a bill to reauthorize the FAA and its programs, as well as streamline airport capacity projects and improve aviation security. On April 10, 2003, the Commerce Committee held a hearing on S. 824. On May 1, 2003, the Commerce Committee ordered S. 824 to be reported favorably with an amendment in the nature of a substitute. The following is a summary of the major points of the bill.¹⁵

A. Funding

The Aviation Investment and Revitalization Vision Act amends Federal transportation law to authorize appropriations for fiscal years 2004 through 2006 for the FAA. The major programs authorized are FAA operations, facilities and equipment (which funds FAA air traffic control modernization and replacement), the airport improvement program, and research engineering and development. The table below shows the funding levels:

**Funding for the Federal Aviation Administration
2004-2006
[dollars in billions]**

Expenditure Category	2004	2005	2006	Total
FAA operations	7.6	7.7	7.9	23.2
Facilities and equipment	2.9	3.0	3.0	8.9
Airport improvement program	3.4	3.5	3.6	10.5
Research, engineering, and development	0.3	0.3	0.3	0.9
Total	14.2	14.5	14.8	43.5

S. 824 would extend through fiscal year 2006, the spending provisions requiring appropriations from the aviation trust fund for FAA programs to be equal to receipts plus interest credited to the fund. The bill also extends through fiscal year 2006 the provision giving priority

¹⁵ This summary is taken from S.Rpt. 108-041.

and protections for funding from the trust fund for the FAA capital programs. Any funds above the taxes and interest that are required to fund the operations account are derived from the General Fund. The funding “guarantees” that are enforced through points of order in the Senate and in the House of Representatives are also continued.

B. Streamlining of Airport Projects

S. 824 contains provisions designed to expedite the process for construction of airport capacity and safety projects. The environmental streamlining provisions in the bill would allow the Department of Transportation to designate certain airport expansion proposals as National Capacity Projects, which would receive dedicated resources and expedited procedures for environmental reviews. In addition, these projects would receive priority consideration for review and clearance by other Federal agencies. The bill also includes a pilot program intended to allow airports to contribute to a fund that can be used by the FAA to hire more personnel to handle the complex and time-consuming work associated with current environmental reviews.

C. Aviation Security

S. 824 contains a number of provisions related to aviation security. Among them is the creation of a new fund that is financed with \$500 million annually in security service fees that are collected under present law. The fund would be administered by the Secretary of Transportation to make grants to airports to assist with capital security costs. Estimates of the capital cost of modifying airports to accept explosive detection system equipment range from \$3 billion to \$5 billion. The source of funding for these costs has not been clear. In fiscal year 2002, the FAA distributed \$561 million in AIP grants toward these costs. The FAA has indicated it is considering taking action to provide a similar amount in fiscal year 2003. Due to concern that the diversion of AIP grants to security projects threatens to undermine important airport capacity and safety projects, the bill tightens AIP eligibility rules to prohibit the use of AIP for such purposes.

The bill also would require the Secretary of Homeland Security to reevaluate the entire aviation security system, submit a report to Congress on the results of the evaluation, and to redeploy resources accordingly.

IV. DESCRIPTION OF PROPOSAL

The proposal extends expenditure authority for the aviation trust fund through September 30, 2006, and conforms the expenditure purposes to include those obligations of the United States authorized by S. 824, the Aviation Investment and Revitalization Vision Act.

Effective Date

The proposal is effective on the date of enactment.