

Joint Committee on Taxation
February 5, 1997
JCX-5-97

**REINSTATEMENT OF AIR TRANSPORTATION EXCISE TAXES
AND
TRANSFER OF EXCISE TAX REVENUES TO THE
AIRPORT AND AIRWAY TRUST FUND**

**Scheduled for a Markup
by the
Senate Committee on Finance
on
February 5, 1997**

The Senate Committee on Finance (the "Finance Committee") has scheduled a markup on February 5, 1997, on the reinstatement of the expired Airport and Airway Trust Fund (the "Airport Trust Fund") excise taxes and the transfer of revenues from those taxes to the Airport Trust Fund. The Finance Committee held a public hearing on this subject on February 4, 1997.¹

I. Prior and Present Law

Tax rates

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. The Airport Trust Fund was established in 1970 to finance a major portion of the costs of the Federal Aviation Administration (the "FAA") services and grant programs for State and local government 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.

¹ See document prepared for the hearing by the Joint Committee on Taxation, Background Information on Federal Air Transportation Excise Taxes and the Airport and Airway Trust Fund (JCX-3-97), February 3, 1997.

Before 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.

Collection and deposit of tax

The air passenger ticket and 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.² 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 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. In general, Treasury Department 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 "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.

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 a look back quarter, applicable Treasury

² Air carriers generally make this election because it allows them to delay remitting tax beyond the date when remittance otherwise would be required.

Department regulations permitted the air carriers to continue to avail themselves of the safe harbor and avoid remitting taxes collected from consumers during September, October, and November of 1996 until the air carriers file their quarterly excise tax returns for that period on February 28, 1997. (Similarly, the air carriers are expected to retain most taxes collected from consumers during December 1996 until their excise tax returns for the first quarter of 1997 are due on May 31, 1997.)

Trust Fund deposits

The Airport Trust Fund receives gross receipts attributable to the excise taxes described above. Present law provides that taxes received by the Treasury Department through the end of the period when the taxes were last imposed (i.e., through December 31, 1996) are deposited in the Airport Trust Fund. Taxes received after December 31, 1996, may not be transferred to the Airport Trust Fund under present law.

Before learning that the air carriers would not remit taxes attributable to the fourth quarter of 1996 to the Treasury until February 28, 1997, the Treasury Department incorrectly credited the Airport Trust Fund with approximately \$1.2 billion. The Treasury Department plans to reverse this error. As a result, the combination of the remaining uncommitted balance in the Airport Trust Fund and General Fund appropriations available to the FAA are believed to be sufficient only to support the FAA's operational expenses through the 1997 fiscal year and to allow new capital commitments (assuming previously anticipated commitment levels) to be made through March 1997. However, because best available estimates of the effect of this error on the FAA budget 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. Description of Proposal

Reinstate air transportation excise taxes

The air transportation excise taxes that expired after December 31, 1996, would be reinstated during the period beginning seven days after enactment and ending after September 30, 1997.

Transfer revenues to the Airport Trust Fund

Authorization would be provided for the Treasury Department to transfer to the Airport Trust Fund receipts attributable to excise taxes imposed before October 1, 1997. This would permit transfer of receipts attributable to taxes imposed both during the period August 27, 1996, through December 31, 1996, and during the period beginning seven days after enactment and ending after September 30, 1997, both without regard to when the revenues are received by the Treasury Department.

Modify Treasury Department tax deposit regulations

To prevent a delay in depositing tax similar to that which occurred with respect to the fourth quarter of 1996, the provisions of Treasury Department regulations providing an exception to penalties for underpayment of estimated excise taxes based on a look-back period would be made inapplicable when tax was not imposed throughout the look back period. In such a case, taxpayers could continue to use a present alternative safe harbor that provides that no underpayment penalty is imposed as long as they have paid at least 95 percent of the current quarter's liability.

III. Effective Date

The provisions reinstating the commercial air transportation excise taxes would be effective for amounts paid (e.g., tickets purchased) during the period beginning seven days after the date of enactment and ending after September 30, 1997. (An anti-abuse rule would provide that amounts paid between related parties before seven days after the date of enactment for transportation occurring during the period when taxes are imposed would be treated as paid when the transportation takes place.) If taxes are not reimposed for transportation occurring after September 30, 1997, refunds would be provided for any taxes paid on passenger and freight transportation purchased before October 1, 1997, and occurring after expiration of the taxes.

The provisions reinstating the general aviation gasoline excise tax would be effective for gasoline removed during the period beginning seven days after the date of enactment and ending after September 30, 1997. The provision reinstating the general aviation jet fuel excise tax would be effective for fuels sold by producers during the same period. Floor stocks taxes would be imposed on these fuels held beyond the removal or producer level on the date which is seven days after the date of enactment.

The provisions relating to transfer of receipts to the Airport Trust Fund and the modification of the Treasury Department's excise tax deposit regulations would be effective on the date of enactment.