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AIRPORT AND AIRWAY TRUST FUND REAUTHORIZATION ACT OF 2011

FEBRUARY 14, 2011.—Ordered to be printed

Mr. BAUCUS, from the Committee on Finance,
submitted the following

R E P O R T

[To accompany S. 340]

The Committee on Finance, having considered an original bill to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, and for other purposes, reports favorably thereon and recommends that the bill do pass.

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I. LEGISLATIVE BACKGROUND

The taxes dedicated to the Airport and Airway Trust Fund generally do not apply after March 31, 2011. The Airport and Airway Trust Fund expenditure authority also terminates on March 31, 2011.

On February 3, 2011, the Committee on Finance held hearings on the status of the Airport and Airway Trust Fund. The Committee heard from Gerald Dillingham, Director, Physical Infrastructure Issues, Government Accountability Office (“GAO”), regarding the financial condition of the Airport and Airway Trust Fund.¹ That testimony indicated that for fiscal year 2010, FAA expenditures totaled roughly \$15.5 billion, with the Airport and Airway Trust Fund covering approximately \$10.2 billion, or 66 percent of those expenditures. The GAO testimony indicated that the FAA’s investment in NextGen, the new satellite-based air traffic management system is expected to be between \$11 billion to \$12 billion through 2018 and that FAA plans call for building or expanding runways at the nation’s 35 busiest airports to handle the additional capacity associated with NextGen.

In addition, the GAO testimony indicated that the uncommitted balance of the Airport and Airway Trust Fund has declined significantly in recent years, from \$7.35 billion in fiscal year 2001 to just \$770 million in fiscal year 2010. The testimony suggested that, in light of the decline in the uncommitted balance, better matching of actual revenues to the appropriation from the Trust Fund would help ensure that Trust Fund revenues are sufficient to cover the obligations that FAA has authority to incur. One approach suggested by the GAO testimony would be to appropriate less than 100 percent of the forecasted revenues.

The Senate Committee on Finance marked up an original bill, S. 340 (the “Airport and Airway Trust Fund Reauthorization Act of 2011”) on February 8, 2011, and, with a majority and quorum present, ordered the bill favorably reported on that date. This report describes the provisions of the bill.

II. EXPLANATION OF THE BILL

A. EXTENSION OF TAXES FUNDING THE AIRPORT AND AIRWAY TRUST FUND

(Sec. 2 of the bill and secs. 4081, 4261, and 4271 of the Code²)

PRESENT LAW

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

¹ Government Accountability Office, Airport and Airway Trust Fund: Declining Balance Raises Concerns Over Ability to Meet Future Demands (February 3, 2011).

² All references to section numbers are to the Internal Revenue Code of 1986, as amended (the “Code”) unless otherwise indicated.

Tax (and Code section)	Tax rates
Domestic air passengers (sec. 4261)	7.5 percent of fare, plus \$3.70 (2011) per domestic flight segment generally. ³
International travel facilities tax (sec. 4261)	\$16.30 (2011) per arrival or departure. ⁴
Amounts paid for right to award free or reduced rate passenger air transportation (sec. 4261).	7.5 percent of amount paid.
Air cargo (freight) transportation (sec. 4271)	6.25 percent of amount charged for domestic transportation; no tax on international cargo transportation.
Aviation fuels (sec. 4081): ⁵	
<i>Commercial aviation</i>	4.3 cents per gallon.
<i>Non-commercial (general) aviation:</i>	
Aviation gasoline	19.3 cents per gallon.
Jet fuel	21.8 cents per gallon.

³ The domestic flight segment portion of the tax is adjusted annually (effective each January 1) for inflation (adjustments based on the changes in the consumer price index (the "CPI")).

⁴ The international travel facilities tax rate is adjusted annually for inflation (measured by changes in the CPI).

⁵ Like most other taxable motor fuels, aviation fuels are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank ("LUST") Trust Fund.

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

REASONS FOR CHANGE

To ensure an uninterrupted funding source, the Committee believes it is appropriate to extend further the taxes that finance the Airport and Airway Trust Fund.

EXPLANATION OF PROVISION

The provision extends the present-law Airport and Airway Trust Fund excise taxes through September 30, 2013.

EFFECTIVE DATE

The provision takes effect on April 1, 2011.

B. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

(Sec. 3 of the bill and sec. 9502 of the Code)

PRESENT LAW

In general

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

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

1. Airport Improvement Program ("AIP") (airport planning, construction, noise compatibility programs, and safety projects);
2. Facilities and Equipment ("F&E") program (costs of acquiring, establishing, and improving the air traffic control facilities);

3. Research, Engineering, and Development (“RED”) program (FAA research and development activities);
4. FAA Operations and Maintenance (“O&M”) programs; and
5. Certain other aviation-related programs specified in authorizing acts.

Part of the O&M programs is financed from General Fund monies as well. Of the total FAA appropriations, the General Fund contribution has ranged from 15 to 24 percent in recent years.⁶

Limits on Airport and Airway Trust Fund expenditures

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

REASONS FOR CHANGE

The Committee believes that reauthorizing the Airport and Airway Trust Fund expenditure authority will support jobs throughout the aviation industry, such as financing airport construction projects across the country. Reauthorizing the FAA legislation and making investments to modernize the air traffic control system is estimated to create 280,000 jobs in airports throughout the country.

EXPLANATION OF PROVISION

The provision authorizes expenditures from the Airport and Airway Trust Fund through September 30, 2013. The provision also amends the list of authorizing statutes to include the “FAA Air Transportation Modernization and Safety Improvement Act,” which sets forth aviation program expenditure purposes through September 30, 2013.

EFFECTIVE DATE

The provision takes effect on April 1, 2011.

⁶ Congressional Budget Office, Financing Federal Aviation Programs: Statement of Robert A. Sunshine before the House Committee on Ways and Means (May 7, 2009) at 3.

C. MODIFICATION OF EXCISE TAX ON KEROSENE USED IN AVIATION
(Sec. 4 of the bill and secs. 4081, 4082, 6427, 9502, and 9503 of the Code)

PRESENT LAW

In general

Under section 4081, an excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal,⁷ (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not registered with the IRS to receive untaxed fuel, unless there was a prior taxable removal or entry.⁸ The tax does not apply to any removal or entry of taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel (excluding deep draft vessels), and the operator of such terminal or refinery are registered with the Secretary.⁹ If the bulk transfer exception applies, tax is not imposed until the fuel “breaks bulk,” i.e., when it is removed from the terminal, typically by rail car or truck, for delivery to a smaller wholesale facility or retail outlet, or removed directly from the terminal into the fuel tank of an aircraft.¹⁰

The term “taxable fuel” means gasoline, diesel fuel (including any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle or train), and kerosene.¹¹ The term includes kerosene used in aviation (jet fuel) as well as aviation gasoline.

Section 4041(c) provides a back-up tax for liquids (other than aviation gasoline) that are sold for use as a fuel in aircraft and that have not been previously taxed under section 4081.

Kerosene for use in aviation

In general

Present law generally imposes a total tax of 24.4 cents per gallon on kerosene. However, reduced rates apply for kerosene removed directly from a terminal into the fuel tank of an aircraft.¹² For ker-

⁷A “terminal” is a taxable fuel storage and distribution facility that is supplied by pipeline or vessel and from which taxable fuel may be removed at a rack. A “rack” is a mechanism capable of delivering taxable fuel into a means of transport other than a pipeline or vessel. A terminal can be located at an airport, or fuel may be delivered to the airport from a terminal located off the airport grounds.

⁸Sec. 4081(a)(1).

⁹Sec. 4081(a)(1)(B).

¹⁰In general, the party liable for payment of the taxes when the fuel breaks bulk at the terminal is the “position holder,” the person shown on the records of the terminal facility as holding the inventory position in the fuel. However, when fuel is removed directly into the fuel tank of an aircraft for use in commercial aviation, the person who uses the fuel is liable for the tax. The fuel is treated as used when such fuel is removed into the fuel tank. Sec. 4081(a)(4).

¹¹Sec. 4083(a).

¹²If certain conditions are met, present law permits the removal of kerosene from a refueler truck, tanker, or tank wagon to be treated as a removal from a terminal for purposes of determining whether kerosene is removed directly into the fuel tank of an aircraft. A refueler truck, tanker, or tank wagon is treated as part of a terminal if: (1) the terminal is located within an airport; (2) any kerosene which is loaded in such truck, tanker, or wagon at such terminal is for delivery only into aircraft at the airport in which such terminal is located; and (3) no vehicle licensed for highway use is loaded with kerosene at such terminal, except in exigent circumstances identified by the Secretary in regulations. To qualify for the special rule, a refueler truck, tanker, or tank wagon must: (1) have storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft; (2) not be registered for highway use; and

osene removed directly from a terminal into the fuel tank of an aircraft for use in commercial aviation, the tax rate is 4.4 cents per gallon.¹³ For kerosene removed directly from a terminal into the fuel tank of an aircraft for use in noncommercial aviation, the tax rate is 21.9 cents per gallon. All of these tax rates include 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. For kerosene removed directly from a terminal into the fuel tank of an aircraft for an exempt use (such as for the exclusive use of a State or local government), generally only the Leaking Underground Storage Tank Trust Fund tax of 0.1 cent per gallon applies.

“Commercial aviation” generally means any use of an aircraft in the business of transporting by air persons or property for compensation or hire.¹⁴ Commercial aviation does not include transportation exempt from the ticket taxes and air cargo taxes by reason of sections 4281 or 4282 or by reason of section 4261(h) or 4261(i). Thus, small aircraft operating on nonestablished lines (sec. 4281), air transportation for affiliated group members (sec. 4282), air transportation for skydiving (sec. 4261(h)), and certain air transportation by seaplane (sec. 4261(i)) are excluded from the definition of commercial aviation, and accordingly are subject to the tax regime applicable to noncommercial aviation.

Refunds and credits to obtain the appropriate aviation tax rate

If the kerosene is not removed directly into the fuel tank of an aircraft, the fuel is taxed at 24.4 cents per gallon, the rate applied to diesel fuel and kerosene used in highway vehicles. A claim for credit or payment may be made for the difference between the tax paid and the appropriate aviation rate (21.9 cents per gallon for noncommercial aviation, 4.4 cents per gallon for commercial aviation, and 0.1 cent per gallon for an exempt use).¹⁵

For noncommercial aviation, other than for exempt use, only the registered ultimate vendor may make the claim for the 2.5-cent-per-gallon difference between the 24.4 cents per gallon rate and the noncommercial aviation rate of 21.9 cents per gallon.¹⁶ For commercial aviation and exempt use (other than State and local government use), the ultimate purchaser may make a claim for the difference in tax rates, or the ultimate purchaser may waive the right to make the claim for payment to the ultimate vendor.¹⁷ For State and local government use, the registered ultimate vendor is the proper claimant.¹⁸

(3) be operated by the terminal operator (who operates the terminal rack from which the fuel is unloaded) or by a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or tank wagon. Sec. 4081(a)(3).

¹³ Tax is imposed at this rate if the commercial aircraft operator is registered with the Internal Revenue Service (“IRS”), and the fuel terminal is located within a secured area of an airport. The IRS has identified airports with secured areas in which a terminal is located. See Notice 2005-4, 2005-1 C.B. 289, at sec. 4(d)(2)(ii) (2005) and Notice 2005-80, 2005-2 C.B. 953, at sec. 3(c)(2) (2005). If the fuel terminal is located at an unsecured airport, the fuel is taxed at 21.9 cents per gallon if the fuel is removed directly from the terminal into the fuel tank of an aircraft.

¹⁴ Sec. 4083(b).

¹⁵ Sec. 6427(l)(4).

¹⁶ Sec. 6427(l)(4)(C)(ii).

¹⁷ Sec. 6427(l)(4)(C)(i).

¹⁸ See sec. 6427(l)(5). Special rules apply if the kerosene is purchased with a credit card issued to a State or local government.

Commercial aviation claimants are permitted to credit their fuel tax claims against their other excise tax liabilities, thereby reducing the amount of excise tax to be paid with the excise tax return.

Transfers between the Highway Trust Fund and the Airport and Airway Trust Fund to account for aviation use

Kerosene that is not removed directly from the terminal into an airplane (e.g., the jet fuel is transferred from the terminal by highway vehicle to the airport) is taxed at the highway fuel rate of 24.4 cents per gallon. The Highway Trust Fund is credited with 24.3 cents per gallon of the 24.4 cents per gallon imposed. The remaining 0.1 cent is credited to the Leaking Underground Storage Tank Trust Fund. If a claim for payment is later made indicating that the fuel was used in aviation, the Secretary then transfers to the Airport and Airway Trust Fund 4.3 cents per gallon for commercial aviation use and 21.8 cents per gallon for noncommercial aviation use. These transfers initially are based on estimates, and proper adjustments are made in amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred. Thus, to the extent claims for credit or payment are not made for the difference between the highway rate and the aviation rate, the Airport and Airway Trust Fund will not be credited for fuel used in aviation that was taxed at the 24.4 cents per gallon rate.

Aviation gasoline

The tax on aviation gasoline is 19.4 cents per gallon (including a 0.1 cent per gallon Leaking Underground Storage Tank Trust Fund component). If aviation gasoline is used in commercial aviation, the ultimate purchaser may obtain a credit or payment in the amount of 15 cents per gallon, such that the tax rate on such gasoline is 4.4 cents per gallon.¹⁹ If aviation gasoline is sold for an exempt use, a credit or refund is allowable for all but the Leaking Underground Storage Tank Trust Fund tax (0.1 cent per gallon).²⁰

REASONS FOR CHANGE

The Committee believes that modernization of the air traffic control system must be adequately funded and that all aircraft making use of FAA resources should bear an appropriate share of the cost. The Committee has provided for an increase in the taxes imposed on aviation-grade kerosene used in noncommercial aviation to help provide the resources needed to fund the modernization of the air traffic control system.

EXPLANATION OF PROVISION

The provision creates a separate category of kerosene for tax purposes: aviation-grade kerosene.²¹ Aviation-grade kerosene is taxed at 35.9 cents per gallon plus 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. Under the provision, aviation-grade kerosene used in noncommercial aviation will be taxed

¹⁹ Sec. 6421(f)(2).

²⁰ Sec. 6416(a); sec. 6420 (farming purposes); sec. 6421(c); and sec. 6430.

²¹ Aviation-grade kerosene means, as defined by the IRS, kerosene-type jet fuel covered by ASTM specification D1655, or military specification MIL-DTL-5624 (Grade JP-5), or MIL-DTL-83133E (Grade JP-8). See section 4(b) of Notice 2005-4.

at the full rate. The rate of tax for aviation-grade kerosene used in commercial aviation and exempt use remains unchanged.²²

Because the tax on aviation-grade kerosene used in noncommercial aviation is equal to the full rate of tax collected, the provision repeals the ultimate vendor refund provisions for noncommercial aviation. In addition, the provision eliminates the inter-fund transfers from the Highway Trust Fund to the Airport and Airway Trust Fund for kerosene used in aviation. Instead, the taxes imposed on aviation-grade kerosene will be credited to the Airport and Airway Trust Fund only.²³ The provision also provides a refund mechanism for aviation-grade kerosene used for a taxable purpose other than in an aircraft.

In the case of aviation-grade kerosene held on April 1, 2011, by any person, a floor stocks tax is imposed equal to the tax that would have been imposed if the increased rates had been in effect before such date less the tax actually imposed on such fuel. The tax is to be paid at such time and in such manner as the Secretary shall prescribe.

The floor stocks tax does not apply to fuel held exclusively for any use to the extent a refund or credit of tax is allowable under the Code. The floor stocks tax does not apply if the amount of fuel held by a person does not exceed 2,000 gallons.

For purposes of the floor stocks tax, a controlled group is treated as one person. "Controlled group" for these purposes means a parent-subsidary, brother-sister, or combined corporate group with more than 50-percent ownership with respect to either combined voting power or total value. Under regulations, similar principles may apply to a group of persons under common control where one or more persons are not a corporation.

All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 also apply to the floor stocks taxes to the extent not inconsistent with the provisions of the provision. For purposes of determining receipts to the Airport and Airway Trust Fund, the floor stocks tax is treated as if it were a tax listed in section 9502(b)(1) (governing transfers of tax receipts to the Airport and Airway Trust Fund).

EFFECTIVE DATE

The provision is generally effective for fuel removed, entered, or sold after March 31, 2011. The floor stocks tax is effective April 1, 2011.

D. AIR TRAFFIC CONTROL SYSTEM MODERNIZATION ACCOUNT

(Sec. 5 of the bill, and sec. 9502 of the Code)

PRESENT LAW

Under present law, there is no special sub-account of the Airport and Airway Trust Fund to which funds are dedicated for air traffic control system modernization.

²² Accordingly, commercial aviation use will continue to be subject to a tax of 4.4 cents per gallon and exempt use will be subject to 0.1 cent per gallon.

²³ The 0.1 per gallon will continue to be transferred to the Leaking Underground Storage Tank Trust Fund.

REASONS FOR CHANGE

The Committee is concerned with the congestion at our airports and in our airways. The Committee believes that action must be taken to address increasing air travel delays, passenger frustrations, and safety concerns. Given these concerns, the Committee believes it is important to set aside specific funds within the Airport and Airway Trust Fund for air traffic control system modernization so that this important work can move forward.

EXPLANATION OF PROVISION

The provision creates an Air Traffic Control System Modernization Account (“Modernization sub-account”) within the Airport and Airway Trust Fund to ensure sufficient funding is provided for modernization of the air traffic control system. The Modernization sub-account is supported through annual transfers of \$400 million from the Airport and Airway Trust Fund that are attributable to the taxes on aviation-grade kerosene. The funds are available, subject to appropriation, for expenditures relating to the modernization of the air traffic control system. Use of the funds also may include facility and equipment account expenditures.

EFFECTIVE DATE

The provision is effective on the date of enactment.

E. TREATMENT OF FRACTIONAL OWNERSHIP AIRCRAFT PROGRAMS

(Sec. 6 of the bill and new sec. 4043 of the Code)

PRESENT LAW

For excise tax purposes, fractional ownership aircraft flights are treated as commercial aviation. As commercial aviation, for 2011, such flights are subject to the ad valorem tax of 7.5 percent of the amount paid for the transportation, a \$3.70 segment tax, and tax of 4.4 cents per gallon on fuel. For international flights, fractional ownership flights pay the \$16.30 international travel facilities tax.

For purposes of the FAA safety regulations, fractional ownership aircraft programs are treated as a special category of general aviation.²⁴

REASONS FOR CHANGE

The Committee notes that the IRS and FAA classify flights on aircraft that are part of a fractional ownership program differently. Under the FAA safety regulations, such flights are considered general aviation, while the IRS classifies such flights as commercial aviation for tax purposes. The Committee wishes to make clear that fractional flights should be considered as noncommercial aviation for tax purposes. In keeping with the Committee’s view that the burden of funding a modernized system should be broadly shared, the Committee believes it is appropriate to subject such flights to the increased fuel taxes applicable to noncommercial aviation provided by the bill (35.9 cents per gallon), as well as an additional fuel surtax of 14.1 cents per gallon.

²⁴ 14 C.F.R. Part 91, subpart k.

EXPLANATION OF PROVISION

Under the provision, transportation as part of a fractional ownership aircraft program is not classified as commercial aviation for Federal excise tax purposes. Instead, such flights would be subject to the increased Airport and Airway Trust Fund fuel tax rate for noncommercial aviation and an additional fuel surtax of 14.1 cents per gallon. For this purpose, a “fractional ownership aircraft program” is defined as a program in which:

- A single fractional ownership program manager provides fractional ownership program management services on behalf of the fractional owners;
- Two or more airworthy aircraft are part of the program;
- There are one or more fractional owners per program aircraft, with at least one program aircraft having more than one owner;
- Each fractional owner possesses at least a minimum fractional ownership interest in one or more program aircraft;²⁵
- There exists a dry-lease aircraft exchange arrangement among all of the fractional owners;²⁶ and
- There are multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

The fuel taxes are dedicated to the Airport and Airway Trust Fund. Consistent with the general extension of the taxes dedicated to the Airport and Airway Trust Fund, the provision sunsets September 30, 2013.

EFFECTIVE DATE

The provision is effective for taxable transportation provided after, and fuel used after, March 31, 2011.

F. TERMINATION OF EXEMPTION FOR SMALL JET AIRCRAFT ON NONESTABLISHED LINES

(Sec. 7 of the bill and sec. 4281 of the Code)

PRESENT LAW

Under present law, transportation by aircraft with a certificated maximum takeoff weight of 6,000 pounds or less is exempt from the excise taxes imposed on the transportation of persons by air and the transportation of cargo by air when operating on a non-established line. Similarly, when such aircraft are operating on a flight for the sole purpose of sightseeing, the taxes imposed on the transportation of persons or cargo by air do not apply.

²⁵ A “minimum fractional ownership interest” means: (1) A fractional ownership interest equal to or greater than one-sixteenth (1/16) of at least one subsonic, fixed wing or powered lift program aircraft; or (2) a fractional ownership interest equal to, or greater than one-thirty-second (1/32) of a least one rotorcraft program aircraft. A “fractional ownership interest” is (1) the ownership interest in a program aircraft; (2) the holding of a multi-year leasehold interest in a program aircraft; or (3) the holding of a multi-year leasehold interest that is convertible into an ownership interest in a program aircraft.

²⁶ A “dry-lease aircraft exchange” means an arrangement, documented by the written program agreements, under which the program aircraft are available, on an as-needed basis without crew, to each fractional owner.

REASONS FOR CHANGE

The present-law tax exemption for small aircraft operating on nonestablished lines does not reflect the technological advances allowing for the construction of lightweight jet aircraft. The Committee believes that such aircraft use FAA resources and utilize facilities receiving assistance from the Airport and Airway Trust Fund. Consistent with the intent of the bill that all aircraft making use of FAA resources bear an appropriate share of the cost, the Committee finds that it is proper to remove jet aircraft from this exemption.

EXPLANATION OF PROVISION

The provision repeals the exemption as it applies to turbine engine powered aircraft (jet aircraft).

EFFECTIVE DATE

The provision is effective for transportation provided after March 31, 2011.

G. TRANSPARENCY IN PASSENGER TAX DISCLOSURES

(Sec. 8 of the bill and sec. 7275 of the Code)

PRESENT LAW

Transportation providers are subject to special penalties relating to the disclosure of the amount of the passenger taxes on tickets and in advertising. The ticket is required to show the total amount paid for such transportation and the tax. The same requirements apply to advertisements. In addition, if the advertising separately states the amount to be paid for the transportation or the amount of taxes, the total shall be stated at least as prominently as the more prominently stated of the tax or the amount paid for transportation. Failure to satisfy these disclosure requirements is a misdemeanor, upon conviction of which the guilty party is fined not more than \$100 per violation.²⁷

There is no prohibition against airlines including other charges in the required passenger taxes disclosure (e.g., fuel surcharges retained by the commercial airline). In practice, some but not all airlines include such other charges in the required passenger taxes disclosure.

REASONS FOR CHANGE

The Committee believes that separating charges payable to a government entity from those paid to a transportation provider will reduce confusion on the part of consumers.

EXPLANATION OF PROVISION

The provision prohibits all transportation providers from including amounts other than the passenger taxes imposed by section 4261 in the required disclosure of passenger taxes on tickets and in advertising when the amount of such tax is separately stated.

²⁷ Sec. 7275.

Disclosure elsewhere on tickets and in advertising (e.g., as an amount paid for transportation) of non-tax charges is allowed.

EFFECTIVE DATE

The provision is effective for transportation provided after March 31, 2011.

H. TAX-EXEMPT PRIVATE ACTIVITY BOND FINANCING FOR FIXED-WING EMERGENCY MEDICAL AIRCRAFT

(Sec. 9 of the bill and sec. 147(e) of the Code)

PRESENT LAW

Interest on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes.²⁸ Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. In general, private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals).²⁹ The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (“qualified bonds”) and other Code requirements are met.³⁰

Section 147(e) of the Code provides, in part, that a private activity bond is not a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is used for airplanes.³¹ The Internal Revenue Service has ruled that a helicopter is not an “airplane” for purposes of section 147(e).³²

A fixed-wing aircraft providing air transportation for emergency medical services and that is equipped for, and exclusively dedicated on that flight to, acute care emergency medical services is exempt from the air transportation excise taxes imposed by sections 4261 and 4271.³³

REASONS FOR CHANGE

The Committee believes it is appropriate to correct the disparity by which tax-exempt bond financing may be used for helicopters providing emergency medical care but not for airplanes.

EXPLANATION OF PROVISION

The provision amends section 147(e) so that the prohibition on the use of proceeds for airplanes does not apply to any fixed-wing aircraft equipped for, and exclusively dedicated to, providing acute

²⁸ Sec. 103(a).

²⁹ See sec. 141 defining “private activity bond.”

³⁰ See sec. 103(b) and sec. 141(e).

³¹ Other prohibited facilities include any skybox, or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. Sec. 147(e).

³² Rev. Rul. 2003-116, 2003-46 I.R.B. 1083, 2003-2 C.B. 1083 (November 17, 2003) (released: October 29, 2003).

³³ Sec. 4261(g)(2).

care emergency medical services (within the meaning of section 4261(g)(2)).

EFFECTIVE DATE

The provision is effective for obligations issued after the date of enactment.

I. PROTECTION OF AIRPORT AND AIRWAY TRUST FUND SOLVENCY (Sec. 10 of the bill and sec. 9502 of the Code)

PRESENT LAW

The uncommitted cash balance in the Airport and Airway Trust Fund has declined significantly in recent years. At the end of Fiscal Year 2001, the uncommitted cash balance was \$7.3 billion. At the end of Fiscal Year 2010, the balance was approximately \$770 million.³⁴

The current statutory formula requires that estimated Airport and Airway Trust Fund receipts each year must equal trust fund expenditures. However, amounts appropriated from the Airport and Airway Trust Fund are based on revenue receipt projections and have exceeded the amounts actually deposited into the Airport and Airway Trust Fund, resulting in declines in the uncommitted cash balance.

REASONS FOR CHANGE

The FAA's fiscal year appropriation from the Airport and Airway Trust Fund is based on the forecasted level of trust fund revenues, including interest on trust fund balances, projected for the coming fiscal year. Each year's forecast is based on information available in the first quarter of the preceding fiscal year. Thus, if the forecast is overly optimistic and revenues fall short of the forecast for that fiscal year, the appropriation to spend from the trust fund will exceed revenues actually deposited. This provision will provide for the long-term fiscal health of the trust fund by providing that only 90 percent of the forecasted revenues for a given fiscal year are made available for appropriation.

EXPLANATION OF PROVISION

The provision amends section 9502 to limit the budgetary resources initially made available each fiscal year from the Airport and Airway Trust Fund to 90 percent, rather than 100 percent, of forecasted revenues for that year.

EFFECTIVE DATE

The provision is effective for fiscal years 2012 and 2013.

III. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made con-

³⁴ Government Accountability Office, Airport and Airway Trust Fund: Declining Balance Raises Concerns Over Ability to Meet Future Demands (February 3, 2011) at p. 5.

cerning the estimated budget effects of the revenue provisions of the “Airport and Airway Trust Fund Reauthorization Act of 2011,” as reported.

ESTIMATED REVENUE EFFECTS OF THE "AIRPORT AND AIRWAY TRUST FUND REAUTHORIZATION ACT OF 2011," AS REPORTED BY THE SENATE COMMITTEE ON FINANCE

Provision	Effective	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2011-15	2011-16	2011-20	2011-21
[Fiscal Years 2011-2021, in millions of dollars]																
1. Extension of taxes funding Airport and Airway Trust Fund (sunset 9/30/13)	4/1/11								No revenue effect							
2. Extension of Airport and Airway Trust Fund expenditure authority (sunset 9/30/13)	4/1/11								No revenue effect							
3. Modification of excise tax on kerosene used in aviation (sunset 9/30/13) (35.9 cpg for noncommercial aviation)	freosa 3/31/11	25	56	58	2	.....	.....	.....	.....	.....	.....	.....	141	141	141	141
4. Air Traffic Control System Modernization Account	DOE															
5. Treatment of fractional ownership aircraft program (treated as non-commercial aviation: 35.9 cpg fuel tax, plus 14.1 cpg fuel surtax, exemption from taxes on commercial aviation) (sunset 9/30/13)		2	31	22	-4	.....	.....	.....	.....	.....	.....	.....	51	51	51	51
6. Termination of exemption for small jet aircraft operated on nonestablished lines or for sightseeing	ttpa 3/31/11	(1)	1	1	1	1	1	1	1	1	2	2	4	6	10	13
7. Transparency in passenger tax disclosures	ttpa 3/31/11								Negligible revenue effect							
8. Tax-exempt bond financing for fixed-wing emergency medical aircraft	oia DOE	(2)	(2)	-1	-1	-2	-2	-3	-3	-4	-5	-5	-4	-6	-21	-26
9. Protection of Airport and Airway Trust Fund Solvency	fyba 9/30/11								No revenue effect							
NET TOTAL		27	88	80	-2	-1	-1	-2	-2	-3	-3	-3	192	192	181	179

NOTE: Details may not add to totals due to rounding. Date of enactment is assumed to be March 1, 2011.

Source: Joint Committee on Taxation.

(1) Gain of less than \$500,000.

(2) Loss of less than \$500,000.

Legend for "Effective" column: DOE = date of enactment; freosa = fuels removed, entered, or sold after; fuba = fuel used after; fyba = fiscal years beginning after; oia = obligations issued after; ttpa = taxable transportation provided after.

B. BUDGET AUTHORITY AND TAX EXPENDITURES

Budget authority

In compliance with section 308(a)(1) of the Budget Act, the Committee states that the provisions of the bill as reported do not involve new or increased budget authority.

Tax expenditures

In compliance with section 308(a)(2) of the Budget Act, the Committee states that the revenue-reducing provisions of the bill involve increased tax expenditures (see revenue table in Part A, above). The revenue-increasing provisions of the bill involve reduced tax expenditures (see revenue table in part A, above).

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a statement on the bill. The letter from the Congressional Budget Office has not been received, and therefore will be provided separately.

IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of Rule XXVI of the standing rules of the Senate, the Committee states that, with a majority and quorum present, the “Airport and Airway Trust Fund Reauthorization Act of 2011,” was ordered favorably reported by voice vote on February 8, 2011.

V. REGULATORY IMPACT AND OTHER MATTERS

A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill as amended.

Impact on individuals and businesses, personal privacy and paperwork

The bill increases the tax on aviation-grade kerosene for non-commercial aviation, and removes flights by jet aircraft from the exemption for small aircraft operating on nonestablished lines, which may cause such flights to be subject to the air passenger and air cargo excise taxes. For individuals and businesses engaged in activities subject to these taxes, the provisions should not result in additional recordkeeping responsibilities beyond that required for present law. The provisions increasing revenues to the Airport and Airway Trust Fund will fund improvements to the air traffic control system from which individuals and businesses using such system will benefit. The bill does not have any impact on personal privacy.

B. UNFUNDED MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the bill contains no unfunded mandates. The tax provisions of the reported bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments within the meaning of Public Law 104-4, the Unfunded Mandates Reform Act of 1995.

C. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (the “IRS Reform Act”) requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the “Code”) and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that have “widespread applicability” to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

