

Public Law 105-2  
105th Congress, H.R. 668  
February 28, 1997

An Act to amend the Internal Revenue Code of 1986 to reinstate the Airport and Airway Trust Fund excise taxes, and other purposes.

Airport and  
Airway Trust  
Fund Tax  
Reinstatement  
Act of 1997.  
26 USC 1 note.  
26 USC 1 *et seq.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

(a) **SHORT TITLE.**—This Act may be cited as the “Airport and Airway Trust Fund Tax Reinstatement Act of 1997”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

**SEC. 2. REINSTATEMENT OF AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES.**

(a) **FUEL TAXES.**—

(1) **AVIATION FUEL.**—Subparagraph (A) of section 4091(b)(3) is amended to read as follows:

“(A) The rate of tax specified in paragraph (1) shall be 4.3 cents per gallon—

“(i) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

“(ii) after September 30, 1997.”.

(2) **AVIATION GASOLINE.**—Subsection (d) of section 4081 is amended by striking the paragraph (3) added by section 1609(a) of the Small Business Job Protection Act of 1996 and by striking paragraphs (1) and (2) and inserting the following new paragraphs:

“(1) **IN GENERAL.**—The rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) shall be 4.3 cents per gallon after September 30, 1999.

“(2) **AVIATION GASOLINE.**—The rate of tax specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon—

“(A) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

“(B) after September 30, 1997.”.

(3) **NONCOMMERCIAL AVIATION.**—Paragraph (3) of section 4041(c) is amended to read as follows:

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“(3) TERMINATION.—The rate of the taxes imposed by paragraph (1) shall be 4.3 cents per gallon—

“(A) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

“(B) after September 30, 1997.”.

(b) TICKET TAXES.—

(1) PERSONS.—Subsection (g) of section 4261 is amended to read as follows:

“(g) APPLICATION OF TAXES.—

“(1) IN GENERAL.—The taxes imposed by this section shall apply to—

“(A) transportation beginning during the period—

“(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

“(ii) ending on September 30, 1997, and

“(B) amounts paid during such period for transportation beginning after such period.

“(2) REFUNDS.—If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.”.

(2) PROPERTY.—Subsection (d) of section 4271 is amended to read as follows:

“(d) APPLICATION OF TAX.—

“(1) IN GENERAL.—The tax imposed by subsection (a) shall apply to—

“(A) transportation beginning during the period—

“(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

“(ii) ending on September 30, 1997, and

“(B) amounts paid during such period for transportation beginning after such period.

“(2) REFUNDS.—If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.”.

(c) TRANSFERS TO AIRPORT AND AIRWAY TRUST FUND.—

(1) IN GENERAL.—Subsection (b) of section 9502 is amended to read as follows:

“(b) TRANSFERS TO AIRPORT AND AIRWAY TRUST FUND.—There are hereby appropriated to the Airport and Airway Trust Fund amounts equivalent to—

“(1) the taxes received in the Treasury under—

“(A) subsections (c) and (e) of section 4041 (relating to aviation fuels),

“(B) sections 4261 and 4271 (relating to transportation by air),

“(C) section 4081 (relating to gasoline) with respect to aviation gasoline (to the extent that the rate of the tax on such gasoline exceeds 4.3 cents per gallon), and

Appropriation  
authorization.

“(D) section 4091 (relating to aviation fuel) to the extent attributable to the Airport and Airway Trust Fund financing rate, and

“(2) the amounts determined by the Secretary of the Treasury to be equivalent to the amounts of civil penalties collected under section 47107(n) of title 49, United States Code.”.

(2) TERMINATION OF FINANCING RATE.—Paragraph (3) of section 9502(f) is amended to read as follows:

“(3) TERMINATION.—Notwithstanding the preceding provisions of this subsection, the Airport and Airway Trust Fund financing rate shall be zero with respect to taxes imposed during any period that the rate of the tax imposed by section 4091(b)(1) is 4.3 cents per gallon.”.

(d) FLOOR STOCKS TAXES ON AVIATION GASOLINE AND AVIATION FUEL.—

(1) IMPOSITION OF TAX.—In the case of any aviation liquid on which tax was imposed under section 4081 or 4091 of the Internal Revenue Code of 1986 before the tax effective date and which is held on such date by any person, there is hereby imposed a floor stocks tax of—

(A) 15 cents per gallon in the case of aviation gasoline, and

(B) 17.5 cents per gallon in the case of aviation fuel.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding, on the tax effective date, any aviation liquid to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the first day of the 5th month beginning after the tax effective date.

(3) DEFINITIONS.—For purposes of this subsection—

(A) TAX EFFECTIVE DATE.—The term “tax effective date” means the date which is 7 days after the date of the enactment of this Act.

(B) AVIATION LIQUID.—The term “aviation liquid” means aviation gasoline and aviation fuel.

(C) AVIATION GASOLINE.—The term “aviation gasoline” has the meaning given such term in section 4081 of such Code.

(D) AVIATION FUEL.—The term “aviation fuel” has the meaning given such term by section 4093 of such Code.

(E) HELD BY A PERSON.—Aviation liquid shall be considered as “held by a person” if title thereto has passed to such person (whether or not delivery to the person has been made).

(F) SECRETARY.—The term “Secretary” means the Secretary of the Treasury or the Secretary’s delegate.

(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to—

(A) aviation liquid held by any person on the tax effective date exclusively for any use for which a credit or refund of the entire tax imposed by section 4081 or 4091 of such Code (as the case may be) is allowable for such

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liquid purchased on or after such tax effective date for such use, or

(B) aviation fuel held by any person on the tax effective date exclusively for any use described in section 4092(b) of such Code.

(5) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on any aviation liquid held on the tax effective date by any person if the aggregate amount of such liquid (determined separately for aviation gasoline and aviation fuel) held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

Applicability.

(B) EXEMPT FUEL.—Any liquid to which the tax imposed by paragraph (1) does not apply by reason of paragraph (4) shall not be taken into account under subparagraph (A).

(C) CONTROLLED GROUPS.—For purposes of this paragraph—

(i) CORPORATIONS.—

(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

(II) CONTROLLED GROUP.—The term “controlled group” has the meaning given such term by subsection (a) of section 1563 of such Code; except that for such purposes, the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

Regulations.  
Applicability.

(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 or 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stocks taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091, as the case may be.

(e) EFFECTIVE DATES.—

(1) FUEL TAXES.—The amendments made by subsection (a) shall apply to periods beginning on or after the 7th day after the date of the enactment of this Act.

26 USC 4041  
note.

(2) TICKET TAXES.—

(A) IN GENERAL.—The amendments made by subsection (b) shall apply to transportation beginning on or after such 7th day.

26 USC 4261  
note.

(B) EXCEPTION FOR CERTAIN PAYMENTS.—Except as provided in subparagraph (C), the amendments made by subsection (b) shall not apply to any amount paid before such 7th day.

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(C) PAYMENTS OF PROPERTY TRANSPORTATION TAX WITHIN CONTROLLED GROUP.—In the case of the tax imposed by section 4271 of the Internal Revenue Code of 1986, subparagraph (B) shall not apply to any amount paid by 1 member of a controlled group for transportation furnished by another member of such group. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as members of a controlled group.

(f) APPLICATION OF LOOK-BACK SAFE HARBOR FOR DEPOSITS.—Nothing in the look-back safe harbor prescribed in Treasury Regulation section 40.6302(c)-1(c)(2) shall be construed to permit such safe harbor to be used with respect to any tax unless such tax was imposed throughout the look-back period.

Approved February 28, 1997.

AIRPORT AND AIRWAY TRUST FUND TAX REINSTATEMENT  
ACT OF 1997

FEBRUARY 13, 1997.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means,  
submitted the following

REPORT

[To accompany H.R. 668]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 668) to amend the Internal Revenue Code of 1986 to reinstate the Airport and Airway Trust Fund excise taxes, and for other purposes, having considered the same, report favorably thereon without amendment, and recommend that the bill do pass.

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## I. SUMMARY AND BACKGROUND

### A. Summary

H.R. 668, as reported by the Committee on Ways and Means, provides for reinstatement of the excise taxes which fund the Airport and Airway Trust Fund (the "Airport Trust Fund") during the period beginning seven days after the date of enactment and ending after September 30, 1997. The bill further provides for transfer of all revenues derived from these taxes (including those deposited and currently scheduled to be deposited in the Treasury but which cannot be transferred under present law) to the Airport Trust Fund, and includes provisions to ensure prompt deposit of tax receipts with the Treasury once the excise taxes are reinstated.

### B. Background and Need For Legislation

The operations and capital programs of the Federal Aviation Administration (the "FAA") are financed with appropriations from both the Airport Trust Fund and the General Fund. In general, capital programs are financed from the Airport Trust Fund and operational expenses (e.g., air traffic controllers) are financed from a mix of General Fund and Airport Trust Fund revenues. The Airport Trust Fund taxes were last imposed during the period from August 27, 1996, through December 31, 1996. Receipts from these taxes that were received in the Treasury Department before January 1, 1997, are authorized to be deposited in the Airport Trust Fund.

Recently, it was learned that the Treasury Department, which credits revenues to the Airport Trust Fund based on estimated receipts, has credited the Airport Trust Fund approximately \$1.2 billion of tax receipts from transportation sold during the months of September, October, and November, 1996, which has not as yet been received by the Treasury Department. The delay in receipts was caused by air carriers that (with Internal Revenue Service approval) delayed remitting taxes collected from their customers during this period until the air carriers file their quarterly excise tax returns for the fourth quarter of 1996 on February 28, 1997. The Treasury Department now must withdraw these amounts from the Airport Trust Fund.

As a result of this reduction in the Airport Trust Fund's balance, the uncommitted monies in the Airport Trust Fund will be sufficient only to fund the FAA's operating expenses through the end of the 1997 fiscal year, plus capital programs (at previously anticipated levels) through March 1997. Further, because this information reflects only the best available estimates and because of provisions of certain contracts for multiple phase projects, the FAA may be required to stop making new capital commitments and to begin providing notice that it intends to terminate other contracts by March 1, 1997, or earlier, absent legislative action.

By reinstating both the prior-law excise taxes and the authority to transfer tax revenues to the Airport Trust Fund, the bill will enable the FAA to avoid possible shut-down of its capital programs and to finance the agency's activities and programs at least through the end of the 1997 fiscal year.

## C. Legislative History

### *Committee bill*

H.R. 668 was introduced by Chairman Archer on February 11, 1997. The bill was considered in a Committee on Ways and Means markup on February 12, 1997, and was ordered favorably reported, without amendment, by voice vote.

### *Legislative hearing*

The Committee on Ways and Means held a public hearing on February 5, 1997, on the solvency of the Airport Trust Fund and the impact of the recently discovered information regarding the delay in deposit of air transportation excise taxes on FAA operations and capital programs. The Committee received testimony from representatives of the Departments of the Treasury and Transportation.

## II. EXPLANATION OF THE BILL

### *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.

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.<sup>1</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 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 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.)

On February 7, 1997, the Treasury Department announced that it will modify its regulations, effective for taxes imposed after February 10, 1997. (See, Treasury Notice 97-15, February 7, 1997.) The modified regulations will provide that the look-back safe harbor is not available for calculating deposits of taxes that were not in effect throughout the look-back quarter. Thus, a situation similar to that which arose with respect to air transportation taxes imposed in 1996 could not occur again because those taxes would not have been in effect throughout the second preceding calendar quarter. The Treasury Department notice does not change the deposit rules applicable to air transportation taxes imposed during the fourth quarter of 1996.

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<sup>1</sup> Air carriers generally make this election because it allows them to delay remitting tax beyond the date when remittance otherwise would be required.

### ***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.

The Treasury Department credited the Airport Trust Fund with approximately \$1.2 billion based on incorrect estimates of excise tax deposits. Subsequently, the Treasury learned that the air carriers would not remit taxes imposed in September, October, and November of 1996 to the Treasury until February 28, 1997. 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.

### ***Explanation of Provisions***

#### ***Reinstate air transportation excise taxes***

The bill reinstates the air transportation excise taxes that expired after December 31, 1996, during the period beginning seven days after the date of enactment and ending after September 30, 1997.

#### ***Transfer revenues to the Airport Trust Fund***

The bill authorizes the Treasury Department to transfer to the Airport Trust Fund receipts attributable to excise taxes described above that are imposed on commercial and general aviation. This will 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 the date of enactment.

#### ***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 will be made inapplicable when tax was not imposed throughout the look back period. In such a case, taxpayers could continue to use an alternative safe harbor that provides that no underpayment penalty is imposed as long as the taxpayer has paid at least 95 percent of the current quarter's liability. The Treasury

Department has recently announced that it will modify its regulations in this manner for taxes imposed after February 10, 1997.

### *Effective Date*

The provisions reinstating the commercial air transportation excise taxes are effective for (1) transportation beginning during the period beginning seven days after the date of enactment and ending after September 30, 1997, and (2) amounts paid during such period for transportation beginning after September 30, 1997. If the air transportation excise taxes are not extended 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, for transportation that occurs at a time when the taxes are not in effect. No tax is imposed on any payment made before seven days after the date of enactment (other than certain payments for freight transportation made between related parties), even if the transportation occurs during the period beginning seven days after the date of enactment and ending after September 30, 1997.

The provisions reinstating the general aviation gasoline excise tax are 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 is effective for fuels sold by producers during the same period. Floor stocks taxes are 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 are effective on the date of enactment. Consistent with Treasury Notice 97-15, described above, the modification to the Treasury Department's excise tax deposit regulations will not affect deposits of taxes imposed during the fourth quarter of 1996; those deposits will continue to be made under the Treasury Department regulations as in effect when liability for the taxes arose.

## **III. VOTE OF THE COMMITTEE**

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made concerning the vote on the motion to report the bill. The bill (H.R. 668) was ordered favorably reported, without amendment, by voice vote on February 12, 1997, with a quorum present.

## **IV. BUDGET EFFECTS OF THE BILL**

### **A. Committee Estimates**

In compliance with clause 7(a) of Rule XIII of the rules of the House of Representatives, the following statement is made concerning the estimated budget effects of the bill as reported.

The bill, as reported, is estimated to increase net budget receipts by \$2.7 billion for fiscal years 1997 and 1998. (See the following revenue table.)

ESTIMATED BUDGET EFFECTS OF AN EXTENSION OF THE AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES THROUGH SEPTEMBER 30, 1997; FISCAL YEARS 1997-2007

[In millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997-02	1997-07
Extension of Airport and Airway Trust Fund excise taxes through 9/30/97 ...	tp7data DOE	2,730	- 54										2,676	2,676

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

Legend for "Effective" column: tp7data DOE=tickets purchased 7 days after date of enactment for travel 7 days after date of enactment

## B. Budget Authority and Tax Expenditures

### *Budget authority*

In compliance with subdivision (B) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill as reported involve no new or increased budget authority.

### *Tax expenditures*

In compliance with subdivision (B) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill as reported involve no new or increased tax expenditures.

## C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with subdivision (C) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, requiring cost estimate prepared by the Congressional Budget Office, the Committee advises that the Congressional Budget Office has submitted the following statement on this bill.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, February 12, 1997.

Hon. BILL ARCHER,  
Chairman, Committee on Ways and Means,  
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office and the Joint Committee on Taxation (JCT) have reviewed H.R. 668, the "Airport and Airway Trust Fund Tax Reinstatement Act of 1997," as ordered reported by the House Committee on Ways and Means on February 12, 1997. H.R. 668 would reinstate the Airport and Airway Trust Fund excise taxes through September 30, 1997. The JCT estimates that this bill would increase governmental receipts by \$2.730 billion in fiscal year 1997 and would decrease revenues by \$0.054 billion in fiscal year 1998. The revenue effects of the bill are summarized in the table below.

#### REVENUE EFFECTS OF THE AIRPORT AND AIRWAY TRUST FUND REINSTATEMENT ACT OF 1997

[By fiscal year, in billions of dollars]

	1997	1998	1999	2000	2001	2002-07
Proposed changes .....	2.730	-0.054	0.000	0.000	0.000	0.000

In accordance with the requirements of Public Law 104-4, the Unfunded Mandates Reform Act of 1995, JCT has determined that the bill contains an intergovernmental mandate. The provision to reinstate the Airport and Airway Trust Fund excise taxes through September 30, 1997, imposes a federal intergovernmental mandate because State, local, and tribal governments will be required to pay the requisite taxes for commercial air travel by their employees. JCT estimates that the direct costs of complying with this federal

intergovernmental mandate will not exceed \$50 million in any of the first five fiscal years.

In addition, JCT has determined that the bill contains a federal private sector mandate. The bill would impose direct costs on the private sector of more than \$100 million in fiscal year 1997. The JCT estimates the direct mandate cost of the tax increase in the bill would total no more than \$2,730 million in 1997, as shown below:

FEDERAL PRIVATE SECTOR MANDATES

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001
Direct cost of tax increase .....	2,730	-54	0	0	0

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting receipts or direct spending through 1998. Because the bill would affect receipts, pay-as-you-go procedures would apply to the bill. These effects are summarized in the table below.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1997	1998
Changes in receipts .....	2,730	-54
Changes in outlays .....	(1)	Not applicable

If you wish further details, please feel free to contact me or your staff may wish to contact Stephanie Weiner.

Sincerely,

JUNE E. O'NEILL, *Director.*

**V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE**

**A. Committee Oversight Findings and Recommendations**

With respect to subdivision (A) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was the result of the Committee's oversight activities concerning the status of the balance of the Airport Trust Fund and the need for expeditious reinstatement of the existing Airport Trust Fund excise taxes to provide adequate funding during fiscal year 1997 for the operations and capital programs of the FAA that the Committee concluded that it is appropriate to enact the provisions contained in the bill as reported.

The Committee on Ways and Means held a public hearing on this subject on February 5, 1997.

**B. Summary of Findings and Recommendations of the Committee on Government Reform and Oversight**

With respect to subdivision (D) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, the Committee advises that no oversight findings or recommendations have been submitted to

this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in the bill.

### **C. Constitutional Authority Statement**

With respect to clause 2(1)(4) of rule XI of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 7 ("All bills for raising revenue shall originate in the House of Representatives") and Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts \* \* \* of the United States").

### **D. Information Relating to Unfunded Mandates**

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104-4).

The Committee has determined that the provisions to extend the Airport and Airway Trust Fund excise taxes through September 30, 1997, impose a Federal mandate on the private sector and a Federal intergovernmental mandate. The costs required to comply with the Federal private sector mandate generally are no greater than the revenue estimate for the provisions. The provisions enable the FAA to avoid possible shutdown of its capital programs and to finance the agency's activities and programs at least through the end of the 1997 fiscal year. The Committee believes these benefits of the provisions are greater than the costs required to comply with the Federal mandates contained in the bill.

The provisions to reinstate the Airport and Airway Trust Fund taxes through September 30, 1997, impose a Federal intergovernmental mandate because State, local, and tribal governments will be required to pay the requisite excise taxes for commercial air travel by State, local, and tribal government employees. The staff of the Joint Committee on Taxation estimates that the direct costs of complying with this Federal intergovernmental mandate will not exceed \$50,000,000 in either the first fiscal year or in any one of the 4 fiscal years following the first fiscal year. The Committee intends that the Federal intergovernmental mandate be unfunded because the Airport and Airway Trust Fund excise taxes are intended to fund the maintenance of U.S. airports and airways and the Committee believes that it is appropriate for State, local, and tribal governments to continue to bear their allocable share of the responsibility for such funding.

The provisions reinstating the Airport and Airway Trust Fund excise taxes are imposed both on the private sector and on State, local, and tribal governments and, thus, do not affect the competitive balance between such governments and the private sector.

### **E. Applicability of House rule XXI5(c)**

Rule XXI5(c) of the Rules of the House of Representatives provides, in part, that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members." The Committee has

carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increase within the meaning of the rule (as the bill only concerns reinstatement of prior-law Airport Trust Fund excise taxes and transfers of such tax revenues to the Airport Trust Fund).

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

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**INTERNAL REVENUE CODE OF 1986**

\* \* \* \* \*

**Subtitle D—Miscellaneous Excise Taxes**

\* \* \* \* \*

**CHAPTER 31—RETAIL EXCISE TAXES**

\* \* \* \* \*

**Subchapter B—Special Fuels**

\* \* \* \* \*

**SEC. 4041. IMPOSITION OF TAX.**

(a) \* \* \*

\* \* \* \* \*

(c) **NONCOMMERCIAL AVIATION.—**

(1) \* \* \*

\* \* \* \* \*

[(3) **TERMINATION.**—The taxes imposed by paragraph (1) shall apply during the period beginning on September 1, 1982, and ending on December 31, 1995, and during the period beginning on the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and ending on December 31, 1996. The termination under the preceding sentence shall not apply to so much of the tax imposed by paragraph (1) as does not exceed 4.3 cents per gallon.]

(3) **TERMINATION.**—*The rate of the taxes imposed by paragraph (1) shall be 4.3 cents per gallon—*

*(A) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and*

*(B) after September 30, 1997.*

\* \* \* \* \*

**CHAPTER 32—MANUFACTURERS EXCISE TAXES**

\* \* \* \* \*

**Subchapter A—Automotive and Related Items**

\* \* \* \* \*

**PART III—PETROLEUM PRODUCTS**

\* \* \* \* \*

**Subpart A—Gasoline and Diesel Fuel**

\* \* \* \* \*

**SEC. 4081. IMPOSITION OF TAX.**

(a) \* \* \*

\* \* \* \* \*

(d) **TERMINATION.—**

[(1) **IN GENERAL.**—On and after October 1, 1999, the rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) (other than the tax on aviation gasoline) shall be 4.3 cents per gallon.

[(2) **AVIATION GASOLINE.**—On and after January 1, 1997, the rate specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon.]

*(1) IN GENERAL.—The rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) shall be 4.3 cents per gallon after September 30, 1999.*

*(2) AVIATION GASOLINE.—The rate of tax specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon—*

*(A) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and*

*(B) after September 30, 1997.*

(3) **LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.**—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall not apply after December 31, 1995.

[(3) **AVIATION GASOLINE.**—After December 31, 1996, the rate of tax specified in subsection (a)(2)(A)(i) on aviation gasoline shall be 4.3 cents per gallon.]

\* \* \* \* \*

**Subpart B—Aviation Fuel**

\* \* \* \* \*

**SEC. 4091. IMPOSITION OF TAX.**

(a) \* \* \*

(b) **RATE OF TAX.—**

(1) \* \* \*

\* \* \* \* \*

(3) TERMINATION.—

[(A) The rate of tax specified in paragraph (1) shall be 4.3 cents per gallon—

[(i) after December 31, 1995, and before the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996, and

[(ii) after December 31, 1996.]

(A) The rate of tax specified in paragraph (1) shall be 4.3 cents per gallon—

(i) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(ii) after September 30, 1997.

\* \* \* \* \*

**CHAPTER 33—FACILITIES AND SERVICES**

\* \* \* \* \*

**Subchapter C—Transportation By Air**

\* \* \* \* \*

**PART I—PERSONS**

\* \* \* \* \*

**SEC. 4261. IMPOSITION OF TAX.**

(a) \* \* \*

\* \* \* \* \*

[(g) TERMINATION.—The taxes imposed by this section shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997.]

(g) APPLICATION OF TAXES.—

(1) IN GENERAL.—The taxes imposed by this section shall apply to—

(A) transportation beginning during the period—

(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(ii) ending on September 30, 1997, and

(B) amounts paid during such period for transportation beginning after such period.

(2) REFUNDS.—If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid

*under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.*

\* \* \* \* \*

**PART II—PROPERTY**

\* \* \* \* \*

**SEC. 4271. IMPOSITION OF TAX.**

(a) \* \* \*

\* \* \* \* \*

[(d) **TERMINATION.**—The tax imposed by subsection (a) shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997.]

(d) **APPLICATION OF TAX.**—

(1) **IN GENERAL.**—*The tax imposed by subsection (a) shall apply to—*

(A) *transportation beginning during the period—*

(i) *beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and*

(ii) *ending on September 30, 1997, and*

(B) *amounts paid during such period for transportation beginning after such period.*

(2) **REFUNDS.**—*If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.*

\* \* \* \* \*

**Subtitle H—Financing of Presidential Election Campaigns**

\* \* \* \* \*

**CHAPTER 98—TRUST FUND CODE**

\* \* \* \* \*

**Subchapter A—Establishment of Trust Funds**

\* \* \* \* \*

**SEC. 9502. AIRPORT AND AIRWAY TRUST FUND.**

(a) \* \* \*

[(b) **TRANSFER TO AIRPORT AND AIRWAY TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.**—There is hereby appropriated to the Airport and Airway Trust Fund—

[(1) amounts equivalent to the taxes received in the Treasury after August 31, 1982, and before January 1, 1997, under subsections (c) and (e) of section 4041 (taxes on aviation fuel) and under sections 4261 and 4271 (taxes on transportation by air);

[(2) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after August 31, 1982, and before January 1, 1997, under section 4081 (to the extent of 15 cents per gallon), with respect to gasoline used in aircraft;

[(3) amounts determined by the Secretary to be equivalent to the taxes received in the Treasury before January 1, 1997, under section 4091 (to the extent attributable to the Airport and Airway Trust Fund financing rate); and

[(4) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after August 31, 1982, and before January 1, 1997, under section 4071, with respect to tires of the types used on aircraft.]

(b) *TRANSFERS TO AIRPORT AND AIRWAY TRUST FUND.*—*There are hereby appropriated to the Airport and Airway Trust Fund amounts equivalent to—*

(1) *the taxes received in the Treasury under—*

(A) *subsections (c) and (e) of section 4041 (relating to aviation fuels),*

(B) *sections 4261 and 4271 (relating to transportation by air),*

(C) *section 4081 (relating to gasoline) with respect to aviation gasoline (to the extent that the rate of the tax on such gasoline exceeds 4.3 cents per gallon), and*

(D) *section 4091 (relating to aviation fuel) to the extent attributable to the Airport and Airway Trust Fund financing rate, and*

(2) *the amounts determined by the Secretary of the Treasury to be equivalent to the amounts of civil penalties collected under section 47107(n) of title 49, United States Code.*

\* \* \* \* \*

(f) *DEFINITION OF AIRPORT AND AIRWAY TRUST FUND FINANCING RATE.*—*For purposes of this section—*

(1) \* \* \*

\* \* \* \* \*

[(3) *TERMINATION.*—*Notwithstanding the preceding provisions of this subsection, the Airport and Airway Trust Fund financing rate shall be zero with respect to—*

[(A) *taxes imposed after December 31, 1995, and before the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and*

[(B) *taxes imposed after December 31, 1996.]*

(3) *TERMINATION.*—*Notwithstanding the preceding provisions of this subsection, the Airport and Airway Trust Fund financing rate shall be zero with respect to taxes imposed*

*during any period that the rate of the tax imposed by section 4091(b)(1) is 4.3 cents per gallon.*

\* \* \* \* \*

○

AIRPORT AND AIRWAY TRUST FUND TAX REINSTATEMENT  
ACT OF 1997

FEBRUARY 5, 1997.—Ordered to be printed

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

REPORT

[To accompany S. 279]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 279) to amend the Internal Revenue Code of 1986 to reinstate the Airport and Airway Trust Fund excise taxes, and for other purposes, having considered the same, reports favorably thereon without amendment, and recommends that the bill do pass.

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## I. SUMMARY AND BACKGROUND

### A. SUMMARY

S. 279, as reported by the Committee on Finance, provides for reinstatement of the excise taxes which fund the Airport and Airway Trust Fund (the "Airport Trust Fund") during the period beginning seven days after the date of enactment and ending after September 30, 1997. The bill further provides for transfer of all revenues derived from these taxes (including those deposited and currently scheduled to be deposited in the Treasury but which cannot be transferred under present law) to the Airport Trust Fund, and includes provisions to ensure prompt deposit of tax receipts with the Treasury once the excise taxes are reinstated.

### B. BACKGROUND AND REASONS FOR LEGISLATION

The operations and capital programs of the Federal Aviation Administration (the "FAA") are financed with appropriations from both the Airport Trust Fund and the General Fund. In general, capital programs are financed from the Airport Trust Fund and operational expenses (e.g., air traffic controllers) are financed from a mix of General Fund and Airport Trust Fund revenues. The Airport Trust Fund taxes were last imposed during the period from August 27, 1996, through December 31, 1996. Receipts from these taxes that were received in the Treasury Department before January 1, 1997, are authorized to be deposited in the Airport Trust Fund.

Recently, it was learned that the Treasury Department, which credits revenues to the Airport Trust Fund based on estimated receipts, has credited the Airport Trust Fund approximately \$1.2 billion of tax receipts from transportation sold during the months September, October, and November, 1996, which has not as yet been received by the Treasury Department. The delay in receipts was caused by air carriers that (with Internal Revenue Service approval) delayed remitting taxes collected from their customers during this period until the air carriers file their quarterly excise tax returns for the fourth quarter of 1996 on February 28, 1997. The Treasury Department now must withdraw these amounts from the Airport Trust Fund.

As a result of this reduction in the Airport Trust Fund's balance, the uncommitted monies in the Trust Fund will be sufficient only to fund the FAA's operating expenses through the end of the 1997 fiscal year, plus capital programs (at previously anticipated levels) through March 1997. Further, because this information reflects only the best available estimates and because of provisions of certain contracts for multiple phase projects, the FAA may be required to stop making new capital commitments and to begin providing notice that it intends to terminate other contracts by March 1, 1997, or earlier, absent legislative action.

By reinstating both the prior-law excise taxes and the authority to transfer tax revenues to the Airport Trust Fund, the bill will enable the FAA to avoid possible shut-down of its capital programs and to finance the agency's activities and programs at least through the end of the 1997 fiscal year.

## C. LEGISLATIVE HISTORY

### COMMITTEE BILL

S. 279 was introduced by Senators Roth and Moynihan on February 5, 1997. The bill was considered in a Committee on Finance markup on February 5, 1997, and was ordered favorably reported by unanimous voice vote.

### LEGISLATIVE HEARING

The Committee on Finance held a public hearing on February 4, 1997, on the effects on the FAA budget of the expired air transportation excise taxes and of the recently discovered information regarding the deposit of such taxes collected by the air carriers from consumers during the months of September, October, and November 1996. The hearing also received testimony on the issue of possible restructuring of aviation excise taxes.

## II. EXPLANATION OF THE BILL

### 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.

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.<sup>1</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 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 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.

The Treasury Department credited the Airport Trust Fund with approximately \$1.2 billion based on incorrect estimates of excise tax deposits. Subsequently, the Treasury learned that the air car-

<sup>1</sup> Air carriers generally make this election because it allows them to delay remitting tax beyond the date when remittance otherwise would be required.

riers would not remit taxes attributable to the fourth quarter of 1996 to the Treasury until February 28, 1997. 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.

#### EXPLANATION OF PROVISIONS

##### REINSTATE AIR TRANSPORTATION EXCISE TAXES

The bill reinstates the air transportation excise taxes that expired after December 31, 1996, during the period beginning seven days after the date of enactment and ending after September 30, 1997.

##### TRANSFER REVENUES TO THE AIRPORT TRUST FUND

The bill authorizes the Treasury Department to transfer to the Airport Trust Fund receipts attributable to excise taxes described above that are imposed on commercial and general aviation. This will 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 the date of enactment.

##### 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 will 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 the taxpayer has paid at least 95 percent of the current quarter's liability.

##### EFFECTIVE DATE

The provisions reinstating the commercial air transportation excise taxes are effective for (1) transportation beginning during the period beginning seven days after the date of enactment and ending after September 30, 1997, and (2) amounts paid during such period for transportation beginning after September 30, 1997. If the air transportation excise taxes are not extended 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, for transportation that occurs at

a time when the taxes are not in effect. No tax is imposed on any payment made before seven days after the date of enactment (other than certain payments for freight transportation made between related parties), even if the transportation occurs during the period beginning seven days after the date of enactment and ending after September 30, 1997.

The provisions reinstating the general aviation gasoline excise tax are 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 is effective for fuels sold by producers during the same period. Floor stocks taxes are 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 are effective on the date of enactment.

For any transportation beginning before the date of enactment, present law continues to apply.

### 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 concerning the estimated budget effects of the bill as reported.

The bill, as reported, is estimated to increase net budget receipts by \$2.7 billion for fiscal years 1997 and 1998. (See the following revenues table.)

*Estimated Budget Effects of an Extension of the Airport and Airway Trust Fund  
Excise Taxes Through Sept. 30, 1997; Effective tp7data DOE<sup>1</sup>*

(In millions of dollars; fiscal years 1997-2007)

1997 .....	2,730
1998 .....	- 54
1999 .....	
2000 .....	
2001 .....	
2002 .....	
2003 .....	
2004 .....	
2005 .....	
2006 .....	
2007 .....	
1997-2002 .....	2,676
1997-2007 .....	2,676

<sup>1</sup> tp7data DOE=tickets purchased 7 days after date of enactment for travel 7 days after date of enactment.

Note.—Details may not add to totals due to rounding.

#### 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 involve no new or increased budget authority.

## TAX EXPENDITURES

In compliance with section 308(a)(2) of the Budget Act, the Committee states that the provisions of the bill as reported involve no new or increased tax expenditures.

## C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has submitted the following statement on this bill:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, February 5, 1997.*

Hon. WILLIAM V. ROTH, Jr.  
*Chairman, Committee on Finance,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office and the Joint Committee on Taxation (JCT) have reviewed the "Airport and Airway Trust Fund Reinstatement Act of 1997," as ordered reported by the Senate Committee on Finance on February 5, 1997. The bill would reinstate the Airport and Airway Trust Fund excise taxes through September 30, 1997. The JCT estimates that this bill would increase governmental receipts by \$2.730 billion in fiscal year 1997 and would decrease revenues by \$0.054 billion in fiscal year 1998. The revenue effects of the bill are summarized in the table below.

## REVENUE EFFECTS OF THE AIRPORT AND AIRWAY TRUST FUND REINSTATEMENT ACT OF 1997

(By fiscal year, in billions of dollars)

	1997	1998	1999	2000	2001	2002-2007
Proposed changes .....	2.730	-0.054	0.000	0.000	0.000	0.000

In accordance with the requirements of Public Law 104-4, the Unfunded Mandates Reform Act of 1995, JCT has determined that the bill contains an intergovernmental mandate. The provision to reinstate the Airport and Airway Trust Fund excise taxes through September 30, 1997, imposes a federal intergovernmental mandate because State, local, and tribal governments will be required to pay the requisite taxes for commercial air travel by their employers. JCT estimates that the direct costs of complying with this federal intergovernmental mandate will not exceed \$50 million in any of the first five fiscal years.

In addition, JCT has determined that the bill contains a federal private sector mandate. The bill would impose direct costs on the private sector of more than \$100 million in fiscal year 1997. The JCT estimates the direct mandate cost of the tax increase in the bill would total \$2,730 million in 1997, as shown below:

## FEDERAL PRIVATE SECTOR MANDATES

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001
Direct cost of tax increase .....	2,730	-54	0	0	0

Please refer to the enclosed letter for a more detailed account of these mandates.

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting receipts or direct spending through 1998. Because the bill would affect receipts, pay-as-you-go procedures would apply to the bill. There effects are summarized in the table below.

## PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1997	1998
Changes in receipts .....	2,730	-54
Changes in outlays .....	Not Applicable	

If you wish further details, please feel free to contact me or your staff may wish to contact Stephanie Weiner.

Sincerely,

JUNE E. O'NEILL, *Director.*

CONGRESS OF THE UNITED STATES,  
JOINT COMMITTEE ON TAXATION,  
Washington, DC, February 5, 1997.

Mrs. JUNE O'NEILL,  
*Director, Congressional Budget Office,  
U.S. Congress, Washington, DC.*

DEAR MRS. O'NEILL: We have reviewed the provision approved by the Senate Finance Committee on February 5, 1997, to extend the Airport and Airway Trust Fund excise taxes through September 30, 1997. In accordance with the requirements of Public Law 104-4, the Unfunded Mandates Reform Act of 1995 (the "Unfunded Mandates Act"), we have determined that this provision contains Federal private sector and intergovernmental mandates. The attached revenue table reflects amounts that are no greater than the aggregate estimated amounts that the private sector will be required to spend in order to comply with the Federal private sector mandates imposed by the provision.

In addition, this provision imposes a Federal intergovernmental mandate because State, local, and tribal governments will be required to pay the requisite taxes for commercial air travel by State, local, and tribal government employees. The staff of the Joint Committee on Taxation estimates that the direct costs of complying with this Federal intergovernmental mandate will not exceed \$50,000,000 in either the first fiscal year or in any of the 4 fiscal years following the first fiscal year.

If you would like to discuss this matter in further detail, please feel free to contact me. Thank you for your cooperation in this matter.

Sincerely,

KENNETH J. KIES, *Chief of Staff.*

#### IV. VOTE OF THE COMMITTEE

In compliance with paragraph 7(b) of the Rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the vote of the motion to report the bill. The bill was ordered favorably reported, without amendment, by unanimous voice vote on February 5, 1997, with a quorum present.

One proposed amendment by Senator Graham to extend the Airport Trust Fund excise taxes through December 31, 1997 was defeated by voice vote.

#### 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 possible regulatory impact that might be incurred in carrying out the bill as reported.

##### IMPACT ON INDIVIDUALS AND BUSINESSES

The bill reinstates the Airport Trust Fund excise taxes that were in effect before January 1, 1997, for the period beginning seven days after the date of enactment through September 30, 1997. This will involve imposition and collection of the air passenger and air freight excise taxes by commercial air carriers as well as the timely remittance of the excise taxes to the Federal Government. Depending on whether these excise taxes are partially or fully passed on to consumers in the price, the consumers may or may not incur higher air fares during the tax extension period.

Likewise, the reimposition of the excise taxes on noncommercial aviation may or may not result in some price increase on non-commercial aviation users, depending on price competitive factors now and since the prior taxes expired on January 1, 1997.

##### IMPACT ON PERSONAL PRIVACY AND PAPERWORK

The bill as reported will have no impact on personal privacy. The reinstatement of the Airport Trust Fund excise taxes will result in the continuation of filing quarterly excise tax returns and semi-monthly deposits by commercial air carriers and by users of non-commercial aviation fuels.

##### B. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104-4).

The Committee has determined that the provisions to extend the Airport and Airway Trust Fund excise taxes through September 30, 1997, impose a Federal mandate on the private sector and a Federal intergovernmental mandate. The costs required to comply with

the Federal private sector mandate generally are no greater than the revenue estimate for the provisions. The provisions enable the FAA to avoid possible shutdown of its capital programs and to finance the agency's activities and programs at least through the end of the 1997 fiscal year. The Committee believes these benefits of the provisions are greater than the costs required to comply with the Federal mandates contained in the bill.

The provisions to reinstate the Airport and Airway Trust Fund taxes through September 30, 1997, impose a Federal intergovernmental mandate because State, local, and tribal governments will be required to pay the requisite excise taxes for commercial air travel by State, local, and tribal government employees. The staff of the Joint Committee on Taxation estimates that the direct costs of complying with this Federal intergovernmental mandate will not exceed \$50,000,000 in either the first fiscal year or in any one of the 4 fiscal years following the first fiscal year. The Committee intends that the Federal intergovernmental mandate be unfunded because the Airport and Airway Trust Fund excise taxes are intended to fund the maintenance of U.S. airports and airways and the Committee believes that it is appropriate for State, local, and tribal governments to bear their allocable share of the responsibility for such funding.

The provisions reinstating the Airport and Airway Trust Fund excise taxes are imposed both on the private sector and on State, local, and tribal governments and, thus, do not affect the competitive balance between such governments and the private sector.

## **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).