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AIRPORT AND AIRWAY TRUST FUND FINANCING ACT OF 2007

SEPTEMBER 19, 2007.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 3539]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3539) to amend the Internal Revenue Code of 1986 to extend financing for the Airport and Airway Trust Fund, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Airport and Airway Trust Fund Financing Act of 2007".

SEC. 2. EXTENSION AND MODIFICATION OF TAXES FUNDING AIRPORT AND AIRWAY TRUST FUND.

(a) RATE OF TAX ON AVIATION-GRADE KEROSENE AND AVIATION GASOLINE.—

(1) AVIATION-GRADE KEROSENE.—Subparagraph (A) of section 4081(a)(2) of the Internal Revenue Code of 1986 (relating to rates of tax) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) in the case of aviation-grade kerosene, 35.9 cents per gallon.".

(2) AVIATION GASOLINE.—Clause (ii) of section 4081(a)(2)(A) of such Code is amended by striking "19.3 cents" and inserting "24.1 cents".

(3) FUEL REMOVED DIRECTLY INTO FUEL TANK OF AIRPLANE USED IN NON-COMMERCIAL AVIATION.—Subparagraph (C) of section 4081(a)(2) of such Code is amended to read as follows:

"(C) TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.— In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation by a person registered for such use under section 4101, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.".

(4) CONFORMING AMENDMENTS.—

(A) Clause (iii) of section 4081(a)(2)(A) of such Code is amended by inserting "other than aviation-grade kerosene" after "kerosene".

(B) The following provisions of such Code are each amended by striking "kerosene" and inserting "aviation-grade kerosene":

(i) Section 4081(a)(3)(A)(ii).

(ii) Section 4081(a)(3)(A)(iv).

(iii) Section 4081(a)(3)(D).

(C) Section 4081(a)(3)(D) of such Code is amended—

(i) by striking "paragraph (2)(C)(i)" in clause (i) and inserting "paragraph (2)(C)", and

(ii) by striking "paragraph (2)(C)(ii)" in clause (ii) and inserting "paragraph (2)(A)(iv)".

(D) Section 4081(a)(4) of such Code is amended in the heading by striking "KEROSENE" and inserting "AVIATION-GRADE KEROSENE".

(E) Section 4081(d)(2) of such Code is amended by inserting ", (a)(2)(A)(iv)," after "subsections (a)(2)(A)(ii)".

(b) EXTENSION.—

(1) FUELS TAXES.—Paragraph (2) of section 4081(d) of such Code is amended by striking "gallon—" and all that follows and inserting "gallon after September 30, 2011".

(2) TAXES ON TRANSPORTATION OF PERSONS AND PROPERTY.—

(A) PERSONS.—Clause (ii) of section 4261(j)(1)(A) of such Code is amended by striking "September 30, 2007" and inserting "September 30, 2011".

(B) PROPERTY.—Clause (ii) of section 4271(d)(1)(A) of such Code is amended by striking "September 30, 2007" and inserting "September 30, 2011".

(c) EXEMPTION FOR AVIATION-GRADE KEROSENE REMOVED INTO AN AIRCRAFT.—Subsection (e) of section 4082 of such Code is amended—

(1) by striking "kerosene" and inserting "aviation-grade kerosene",

(2) by striking "section 4081(a)(2)(A)(iii)" and inserting "section 4081(a)(2)(A)(iv)", and

(3) by striking "KEROSENE" in the heading and inserting "AVIATION-GRADE KEROSENE".

(d) RETAIL TAX ON AVIATION FUEL.—

(1) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—Paragraph (2) of section 4041(c) of such Code is amended by inserting "at the rate specified in subsection (a)(2)(A)(iv) thereof" after "section 4081".

(2) RATE OF TAX.—Paragraph (3) of section 4041(c) of such Code is amended to read as follows:

"(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax in effect under section 4081(a)(2)(A)(iv) (4.3 cents per gallon with respect to any sale or use for commercial aviation).".

(e) REFUNDS RELATING TO AVIATION-GRADE KEROSENE.—

(1) KEROSENE USED IN COMMERCIAL AVIATION.—Clause (ii) of section 6427(l)(4)(A) of such Code is amended by striking "specified in section 4041(c) or 4081(a)(2)(A)(iii), as the case may be," and inserting "so imposed".

(2) KEROSENE USED IN AVIATION.—Paragraph (4) of section 6427(l) of such Code is amended—

(A) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B), and

(B) by amending subparagraph (B), as redesignated by subparagraph (A), to read as follows:

"(B) PAYMENTS TO ULTIMATE, REGISTERED VENDOR.—With respect to any kerosene used in aviation (other than kerosene to which paragraph (6) applies), if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay (without interest) the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

"(i) is registered under section 4101, and

"(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).".

(3) AVIATION-GRADE KEROSENE NOT USED IN AVIATION.—Subsection (l) of section 6427 of such Code is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) REFUNDS FOR AVIATION-GRADE KEROSENE NOT USED IN AVIATION.—If tax has been imposed under section 4081 at the rate specified in section 4081(a)(2)(A)(iv) and the fuel is used other than in an aircraft, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount

equal to the amount of tax imposed on such fuel reduced by the amount of tax that would be imposed under section 4041 if no tax under section 4081 had been imposed.".

(4) CONFORMING AMENDMENTS.—

(A) Section 6427(i)(4) of such Code is amended—

(i) by striking "(4)(C)" the first two places it occurs and inserting "(4)(B)", and

(ii) by striking ", (l)(4)(C)(ii), and" and inserting "and".

(B) Section 4082(d)(2)(B) of such Code is amended by striking "6427(l)(5)(B)" and inserting "6427(l)(6)(B)".

(f) AIRPORT AND AIRWAY TRUST FUND.—

(1) EXTENSION OF TRUST FUND AUTHORITIES.—

(A) EXPENDITURES FROM TRUST FUND.—Paragraph (1) of section 9502(d) of such Code is amended—

(i) in the matter preceding subparagraph (A) by striking "October 1, 2007" and inserting "October 1, 2011", and

(ii) in subparagraph (A) by inserting "or the FAA Reauthorization Act of 2007" before the semicolon at the end.

(B) LIMITATION ON TRANSFERS TO TRUST FUND.—Paragraph (2) of section 9502(f) of such Code is amended by striking "October 1, 2007" and inserting "October 1, 2011".

(2) TRANSFERS TO TRUST FUND.—Subparagraph (C) of section 9502(b)(1) of such Code is amended to read as follows:

"(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and".

(3) TRANSFERS ON ACCOUNT OF CERTAIN REFUNDS.—

(A) IN GENERAL.—Subsection (d) of section 9502 of such Code is amended—

(i) in paragraph (2) by striking "(other than subsection (l)(4) thereof)", and

(ii) in paragraph (3) by striking "(other than payments made by reason of paragraph (4) of section 6427(l))".

(B) CONFORMING AMENDMENTS.—

(i) Section 9503(b)(4) of such Code is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting a comma, and by inserting after subparagraph (D) the following:

"(E) section 4081 to the extent attributable to the rate specified in clause (ii) or (iv) of section 4081(a)(2)(A), or

"(F) section 4041(c).".

(ii) Section 9503(c) of such Code is amended by striking the last paragraph (relating to transfers from the Trust Fund for certain aviation fuel taxes).

(iii) Section 9502(a) of such Code is amended by striking ", section 9503(c)(7),".

(4) TRANSFERS ON ACCOUNT OF AVIATION-GRADE KEROSENE NOT USED IN AVIATION.—Section 9502(d) of such Code is amended by adding at the end the following new paragraph:

"(7) TRANSFERS FROM AIRPORT AND AIRWAY TRUST FUND ON ACCOUNT OF AVIATION-GRADE KEROSENE NOT USED IN AVIATION.—The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the Highway Trust Fund amounts as determined by the Secretary of the Treasury equivalent to amounts transferred to the Airport and Airway Trust Fund with respect to aviation-grade kerosene not used in aviation.".

(5) EXPENDITURES FOR AIR TRAFFIC CONTROL MODERNIZATION.—Section 9502(d) of such Code, as amended by this Act, is amended by adding at the end the following new paragraph:

"(8) EXPENDITURES FOR AIR TRAFFIC CONTROL MODERNIZATION.—The following amounts may be used only for making expenditures to carry out air traffic control modernization:

"(A) So much of the amounts appropriated under subsection (b)(1)(C) as the Secretary estimates are attributable to—

"(i) 14.1 cents per gallon of the tax imposed at the rate specified in section 4081(a)(2)(A)(iv) in the case of aviation-grade kerosene used other than in commercial aviation (as defined in section 4083(b)), and

"(ii) 4.8 cents per gallon of the tax imposed at the rate specified in section 4081(a)(2)(A)(ii) in the case of aviation gasoline used other than in commercial aviation (as so defined).

"(B) Any amounts credited to the Airport and Airway Trust Fund under section 9602(b) with respect to amounts described in this paragraph.".

(g) EFFECTIVE DATE.—

(1) MODIFICATIONS.—Except as provided in paragraph (2), the amendments made by this section shall apply to fuels removed, entered, or sold after December 31, 2007.

(2) EXTENSIONS.—The amendments made by subsections (b) and (f)(1) shall take effect on the date of the enactment of this Act.

(h) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—In the case of aviation fuel which is held on January 1, 2008, by any person, there is hereby imposed a floor stocks tax on aviation fuel equal to—

(A) the tax which would have been imposed before such date on such fuel had the amendments made by this section been in effect at all times before such date, reduced by

(B) the sum of—

(i) the tax imposed before such date on such fuel under section 4081 of the Internal Revenue Code of 1986, as in effect on such date, and

(ii) in the case of kerosene held exclusively for such person's own use, the amount which such person would (but for this clause) reasonably expect (as of such date) to be paid as a refund under section 6427(l) of such Code with respect to such kerosene.

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

(A) LIABILITY FOR TAX.—A person holding aviation fuel on January 1, 2008, shall be liable for such tax.

(B) TIME AND METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid on April 30, 2008, and in such manner as the Secretary of the Treasury shall prescribe.

(3) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to the Airport and Airway Trust Fund, the tax imposed by this subsection shall be treated as imposed by the provision of section 4081 of the Internal Revenue Code of 1986 which applies with respect to the aviation fuel involved.

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

(A) AVIATION FUEL.—The term "aviation fuel" means aviation-grade kerosene and aviation gasoline, as such terms are used within the meaning of section 4081 of the Internal Revenue Code of 1986.

(B) HELD BY A PERSON.—Aviation fuel 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).

(C) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or the Secretary's delegate.

(5) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to any aviation fuel held by any person exclusively for any use to the extent a credit or refund of the tax is allowable under the Internal Revenue Code of 1986 for such use.

(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on any aviation fuel held on January 1, 2008, by any person if the aggregate amount of such 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 subparagraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account any aviation fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (6).

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

(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 to 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 prin-

ciples of subparagraph (A) shall apply to a group of persons under common control if 1 or more of such persons is not a corporation.

(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code on the aviation fuel involved shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

PURPOSE

The bill, H.R. 3539 (the "Airport and Airway Trust Fund Financing Act of 2007"), extends the financing for the Airport and Airway Trust Fund, among other purposes.

SUMMARY

The bill extends the present-law taxes regarding the transportation of passengers by air and the transportation of cargo by air. It also increases the fuel taxes for fuel used in noncommercial aviation. Under the bill, aviation-grade kerosene is subject to a tax of 35.9 cents per gallon plus the present-law addition of 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. Aviation gasoline is subject to a tax of 24.1 cents per gallon plus the present-law addition of 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. The bill dedicates the increased revenues attributable to the rate changes to air traffic systems modernization.

B. BACKGROUND AND NEED FOR LEGISLATION

The taxes dedicated to the Airport and Airway Trust Fund generally do not apply after September 30, 2007. The Trust Fund expenditure authority also terminates on October 1, 2007.

C. LEGISLATIVE HISTORY

Background

H.R. 3539, the Airport and Airway Trust Fund Financing Act of 2007, was introduced in the House of Representatives on September 17, 2007, and was referred to the Committee on Ways and Means.

Committee action

On August 1, 2007, the Subcommittee on Select Revenue Measures of the Committee on Ways and Means conducted a hearing on aviation taxes.

The Committee on Ways and Means marked up H.R. 3539 on September 18, 2007, and ordered the bill, as amended, favorably reported.

II. EXPLANATION OF THE BILL

A. Extension of Airport and Airway Trust Fund Tax and Expenditure Provisions

PRESENT LAW

Taxes on transportation of persons by air

The Internal Revenue Code (the "Code") imposes an excise tax on both domestic and certain international transportation of passengers by air.[1] Amounts equivalent to these taxes are transferred to the Airport and Airway Trust Fund ("AATF"). The taxes do not apply after September 30, 2007.[2]

Domestic air passenger excise tax

Domestic air passenger transportation generally is subject to a two-part excise tax. The first component is an ad valorem tax imposed at the rate of 7.5 percent of the amount paid for the transportation. The second component is a flight segment tax. For 2007, the flight segment tax rate is $3.40.[3] A flight segment is defined as transportation involving a single take-off and a single landing. For example, travel from New York to San Francisco, with an intermediate stop in Chicago, consists of two flight segments (without regard to whether the passenger changes aircraft in Chicago).

The flight segment component of the tax does not apply to segments to or from qualified "rural airports." For any calendar year, a rural airport is defined as an airport that in the second preceding calendar year had fewer than 100,000 commercial passenger departures, and meets one of the following three additional requirements (1) the airport is not located within 75 miles of another airport that had more than 100,000 such departures in that year, (2) the airport is receiving payments under the Federal "essential air service" program, or (3) the airport is not connected by paved roads to another airport.[4]

The domestic air passenger excise tax applies to "taxable transportation." Taxable transportation means transportation by air that begins in the United States or in the portion of Canada or Mexico that is not more than 225 miles from the nearest point in the continental United States and ends in the United States or in such 225-mile zone. If the domestic transportation is paid for outside of the United States, it is taxable only if it begins and ends in the United States.

For purposes of the domestic air passenger excise tax, taxable transportation does not include "uninterrupted international air transportation." Uninterrupted international air transportation is any transportation that does not both begin and end in the United

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[1] Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

[2] Sec. 4261(j)(l)(A)(ii). The person making the payment (generally the passenger) is liable for the tax; airlines and others receiving payments are liable for remitting tax and are primarily liable if they fail to collect the tax. Secs. 4261(d) and 4263(c).

[3] Sec. 4261(b)(1) and 4261(d)(4). The Code provides for a $3 tax indexed annually for inflation, effective each January 1st, resulting in the current rate of $3.40.

[4] In the case of an airport qualifying as "rural" because it is not connected by paved roads to another airport, only departures for flight segments of 100 miles or more are considered in calculating whether the airport has fewer than 100,000 commercial passenger departures. The Department of Transportation has published a list of airports that meet the definition of rural airports. See Rev. Proc. 2005–45.

States or in the 225-mile zone and does not have a layover time of more than 12 hours. The tax on international air passenger transportation is discussed below.

Use of international air facilities

For 2007, international air passenger transportation is subject to a tax of $15.10 per arrival or departure in lieu of the taxes imposed on domestic air passenger transportation if the transportation begins or ends in the United States.[5] The definition of international transportation includes certain purely domestic transportation that is associated with an international journey. Under these rules, a passenger traveling on separate domestic segments integral to international travel is exempt from the domestic passenger taxes on those segments if the stopover time at any point within the United States does not exceed 12 hours.

In the case of a domestic segment beginning or ending in Alaska or Hawaii, the tax applies to departures only and is $7.50 for calendar year 2007.

"Free" travel

Both the domestic air passenger tax and the use of international air facilities tax apply only to transportation for which an amount is paid. Thus, free travel, such as that awarded in "frequent flyer" programs and nonrevenue travel by airline industry employees, is not subject to tax. However, amounts paid to air carriers (in cash or in kind) for the right to award free or reduced-fare transportation are treated as amounts paid for taxable air transportation and are subject to the 7.5 percent ad valorem tax (but not the flight segment tax or the use of international air facilities tax). Examples of such payments are purchases of miles by credit card companies and affiliates (including airline affiliates) for use as "rewards" to cardholders.

Disclosure of air passenger transportation taxes on tickets and in advertising

Transportation providers are subject to special penalties if they do not separately disclose the amount of the passenger taxes on tickets and in advertising. Failure to satisfy these disclosure requirements is a misdemeanor, upon conviction of which the guilty party is fined not more than $100 per violation.[6]

Tax on transportation of property (cargo) by air

Amounts equivalent to the taxes received from the transportation of property by air are transferred to the AATF. Domestic air cargo transportation is subject to a 6.25 percent ad valorem excise tax on the amount paid for the transportation.[7] The tax applies only to transportation that both begins and ends in the United States. Unlike the air passenger taxes, only shippers (the persons paying for the transportation) are liable for payment of the air cargo tax.

[5] Secs. 4261(c) and 4261(d)(4). The international air facilities tax rate of $12 is indexed annually for inflation, effective each January 1, resulting in the current rate of $15.10.
[6] Sec. 7275.
[7] Sec. 4271.

There is no disclosure requirement for the air cargo tax. This tax does not apply after September 30, 2007.[8]

Aviation fuel taxes

The Code imposes excise taxes on gasoline used in commercial aviation and noncommercial aviation, and on jet fuel (kerosene) and other aviation fuels used in commercial aviation and noncommercial aviation. Amounts equivalent to these taxes are transferred to the AATF. With the exception of 4.4 cents per gallon (which includes the Leaking Underground Storage Tank Trust Fund tax), the fuel taxes will not apply after September 30, 2007. Table 1 below summarizes the taxes on fuel used in aviation:

TABLE 1.—TAXES ON FUEL USED IN AVIATION

Fuel type	Tax rate (excluding 0.1 cent for Leaking Underground Storage Tank Trust Fund tax) (cents per gallon)
Jet fuel and liquids other than aviation gasoline:	
Commercial aviation	4.3
Noncommercial aviation	21.8
Aviation gasoline:	
Commercial	4.3
Noncommercial	19.3

Trust Fund expenditure provisions

In general

The AATF was created in 1970 to finance a major portion of the Federal expenditures on national aviation programs. Prior to that time, these expenditures had been financed with General Fund monies. The statutory provisions relating to the AATF were placed in the Code in 1982.[9]

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

The current expenditure purposes for the AATF are:

1. Obligations incurred under provisions of previous aviation authorizing legislation enacted since 1970, as those provisions were in effect on the date of enactment of the Vision 100—Century of Aviation Reauthorization Act (December 12, 2003);[12]

[8] Sec. 4271(d).

[9] Sec. 9502.

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

[11] Id.

[12] The Acts (or provisions of Acts) pursuant to which aviation trust fund expenditures are allowed are Title I of the Airport and Airway Development Act of 1970; the Airport and Airway Development Act Amendments of 1976; the Aviation Safety and Noise Abatement Act of 1979; the Fiscal Year 1981 Airport Development Authorization Act; the provisions of the Airport and Airway Improvement Act of 1982; the Airport and Airway Safety and Capacity Expansion Act

2. Obligations incurred under part A of subtitle VII of Title 49, United States Code (generally, FAA programmatic provisions), which are attributable to planning, research and development, construction, or operation and maintenance of—

(a) Air traffic control,

(b) Air navigation,

(c) Communications, or

(d) Supporting services for the airway system; and

3. Obligations incurred for administrative expenses of the Department of Transportation that are attributable to activities described in items (1) and (2).

No expenditures are permitted to be made from the AATF after September 30, 2007. Because the purposes for which AATF funds are permitted to be expended are fixed as of the date of enactment of the Vision 100—Century of Aviation Reauthorization Act (December 12, 2003), the Code must be amended in order to accommodate new purposes. In addition, the Code contains a special enforcement provision to prevent expenditure of AATF monies for purposes not authorized in section 9502.[13] This provision provides that, should such unapproved expenditures occur, no further excise tax receipts will be transferred to the AATF. Rather, the taxes will continue to be imposed but the receipts will be retained in the General Fund. This enforcement provision provides specifically that it applies not only to unauthorized expenditures under the current Code provisions, but also to expenditures pursuant to future legislation that may provide for them unless either the legislation providing for the expenditure amends section 9502's expenditure authorization provisions or otherwise authorizes the expenditure as part of a revenue Act.

Specific AATF expenditure programs

Authorized expenditures for the following airport and airway programs are included under the general purposes described above.

1. *Airport Improvement Program (AIP).*—

(a) *Airport planning*.—Planning for airport systems for airport master plans; also, airport noise compatibility planning for air carrier airports eligible for terminal development costs.

(b) *Airport construction*.—Construction, improvement, or repair of a public airport (includes removal of airport hazards and construction of physical barriers and landscaping to diminish noise).[14]

(c) *Airport terminal facilities*.—Non-revenue-producing public-use areas that are directly related to movement of passengers and baggage at certified air carrier airports; also, development of revenue-producing areas and construction of nonrevenue-producing parking

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of 1987; the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990; the Aviation Safety and Capacity Expansion Act of 1990; the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992; the Airport Improvement Program Temporary Extension Act of 1994; Federal Aviation Administration Authorization Act of 1994; Federal Aviation Reauthorization Act of 1996; the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 providing for payments from the Airport and Airway Trust Fund; the Interim Federal Aviation Administration Authorization Act; section 6002 of the 1999 Emergency Supplemental Appropriations Act; Public Law 106–59; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; the Aviation and Transportation Security Act; and the Vision 100—Century of Aviation Reauthorization Act.

[13] Sec. 9502(f)(1).

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

lots for nonhub airports (subject to certification that the grant will not defer needed development with respect to safety, security, or capacity).

(d) *Land acquisition*.—Includes land or property interests for airport noise control purposes; also includes acquisition of land for, or work necessary to construct, pads suitable for aircraft deicing (subject to certain limitations).

(e) *Airport-related equipment*.—Airport security equipment required by Department of Transportation regulations, snow removal equipment, noise suppressing equipment, firefighting equipment, navigation aids, and safety equipment required for airport certification; also includes construction or purchase of capital equipment necessary for compliance by an airport with the Americans with Disabilities Act, the Clean Air Act, or the Federal Water Pollution Control Act, other than capital equipment that would primarily benefit a revenue-producing area of the airport used by a nonaeronautical business.

(f) *Airport noise compatibility programs*.—Includes sound-proofing of public buildings; local governmental units are eligible for project grants as well as airports.

2. *Facilities and Equipment Program (F&E)*.—Costs of acquiring, establishing, and improving air navigation facilities.

3. *Research, Engineering, Development, and Demonstration Program (R&D)*.—Projects in connection with FAA research and development activities.

4. *Operations and Maintenance Programs (O&M)*.—Operations and maintenance of air navigation facilities, including air traffic control and flight checks; services provided under international agreements relating to the U.S. share of joint provision of air navigation services; weather reporting services provided to the FAA by the National Oceanic and Atmospheric Administration.

5. *Small Community Air Service Development Pilot Program*.—For payments to ensure that eligible localities receiving airline service at the time of deregulation continue to have airline service.

6. *Vocational Technical Institutions*.—Grants to up to four vocational technical institutions for the acquisition of facilities for the advanced training of maintenance technicians for air carrier aircraft.

7. *Airway Science Curriculum Grants*.—Grants for higher education airway science study programs, including equipment, buildings, and associated facilities.

8. *Civil Aircraft Security Research and Development*.—Grants relating to technologies and procedures to counteract terrorist activities against civil aviation.

REASONS FOR CHANGE

The Committee believes it is appropriate to further extend the taxes that finance the Airport and Airway Trust Fund.

EXPLANATION OF PROVISION

The provision extends the taxes imposed on the transportation of persons by air and on the transportation of property by air through September 30, 2011. The provision extends the taxes imposed on aviation gasoline and aviation kerosene (with modifications described below) through September 30, 2011. The provision extends

the expenditure authority for the AATF through September 30, 2011, and conforms the purposes for which AATF funds are permitted to be expended to include those obligations authorized under the reauthorization legislation of 2007.[15]

EFFECTIVE DATE

The provision is effective on the date of enactment.

B. Taxation of Aviation-Grade Kerosene and Aviation Gasoline

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,[16] (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.[17] 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.[18] 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.[19]

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.[20] 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.[21]

Kerosene for use in aviation

In general

Present law generally imposes a tax of 24.3 cents per gallon on kerosene. However, reduced rates apply for kerosene removed di-

[15] The provision is intended to cover H.R. 2698, the "Federal Aviation Research and Development Reauthorization Act of 2007," and H.R. 2881, the "FAA Reauthorization Act of 2007."

[16] A "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.

[17] Sec. 4081(a)(1).

[18] Sec. 4081(a)(1)(B).

[19] In 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).

[20] Sec. 4083(a).

[21] Sec. 4041(c).

rectly from a terminal into the fuel tank of an aircraft.[22] For kerosene removed directly from a terminal into the fuel tank of an aircraft for use in commercial aviation, the tax rate is 4.3 cents per gallon.[23] For kerosene removed directly from a terminal into the fuel tank of an aircraft for use in noncommercial aviation, the tax rate is 21.8 cents per gallon.[24]

"Commercial aviation" generally means any use of an aircraft in the business of transporting by air persons or property for compensation or hire.[25] 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 24.3 cents per gallon. (This is generally 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 (21.8 cents per gallon for noncommercial aviation, 4.3 cents per gallon for commercial aviation, and 0.1 cent per gallon for an exempt use).[26]

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 24.3 cents per gallon rate and the noncommercial aviation rate of 21.8 cents per gallon.[27] For commercial aviation and exempt use (other than State and local gov-

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[22] If 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. In order 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 (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).

[23] Tax is imposed at this rate if the commercial aircraft operator is registered with the IRS, and the fuel terminal is located within a secured area of an airport. The IRS has published a list of 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) (adopting the list from H.R. Conf. Rep. No. 755, 108th Cong., 2d Sess. 692 n. 718 (2004) with modifications) 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 21.8 cents per gallon if the fuel is removed directly from the terminal into the fuel tank of an aircraft.

[24] As noted above, the fuels excise taxes (including aviation fuels taxes) consist of two components: an AATF rate and a Leaking Underground Storage Tank Trust Fund rate. Except where specifically stated, the rates stated in this document are the AATF rates (i.e. do not include the 0.1 cent per gallon Leaking Underground Storage Tank Trust Fund rate). For kerosene removed directly from a terminal into the fuel tank of an aircraft for an exempt use (such as foreign trade or for the exclusive use of a State or local government), only the Leaking Underground Storage Tank Trust Fund tax of 0.1 cent per gallon applies.

[25] Sec. 4083(b).

[26] Sec. 6427(1)(4).

[27] Sec. 6427(1)(4)(C)(ii).

ernment 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.[28] For State and local government use, the registered ultimate vendor is the proper claimant.[29]

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 AATF 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 generally applicable rate of 24.4 cents per gallon (including the Leaking Underground Storage Tank Trust Fund tax). 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 AATF 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 generally applicable rate and the aviation rate, the AATF will not be credited for fuel used in aviation that was taxed at the 24.3 cents per gallon rate.

Aviation gasoline

The tax on aviation gasoline is 19.3 cents per gallon. If aviation gasoline is used in commercial aviation, the ultimate purchaser may obtain a refund in the amount of 15 cents per gallon, such that the tax rate on such gasoline is 4.3 cents per gallon.[30]

REASON FOR CHANGE

The Committee is concerned about 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. The Committee has provided for an increase in the taxes imposed on aviation-grade kerosene and aviation gasoline used in noncommercial aviation to ensure that funding is available to alleviate congestion through modernization of the air traffic control system. The Committee will continue to look at ways to make these taxes more equitable.

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[28] Sec. 6427(1)(4)(C)(i).

[29] See secs. 6427(1)(5). Special rules apply if the kerosene is purchased with a credit card issued to a State or local government.

[30] Sec. 6421(f)(2). 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). Sec. 6416(a); sec. 6420 (farming purposes); sec. 6421(c); and sec. 6430.

EXPLANATION OF PROVISION

The provision creates a separate category of kerosene for tax purposes: aviation-grade kerosene.[31] 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.[32] Under the provision, aviation-grade kerosene used for noncommercial aviation will bear the full rate of tax. The provision subjects aviation gasoline to a tax of 24.1 cents per gallon (increased from 19.3 cents per gallon) plus 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. The rate of tax for fuel used in commercial aviation and exempt use remains unchanged for both aviation-grade kerosene and aviation gasoline.[33]

Because the tax on aviation-grade kerosene is equal to the applicable rate of tax for noncommercial aviation, 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 AATF for kerosene used in aviation. Instead, the taxes imposed on aviation-grade kerosene will be credited to the AATF only. As a result, the AATF, rather than the Highway Trust Fund, will reimburse the General Fund for any refunds paid with respect to the use of aviation-grade kerosene for a nontaxable purpose. The provision also provides a refund mechanism for aviation-grade kerosene used for a taxable purpose other than in an aircraft and the related-trust fund accounting.

In the case of aviation fuel (i.e., aviation-grade kerosene and aviation gasoline) held on January 1, 2008, 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 (1) the tax actually imposed on such fuel and (2) for fuel held by a person for his own use, the amount that such person would reasonably expect to be paid as a refund. The tax is to be paid by April 30, 2008, and in such manner as the Secretary shall prescribe.

The floor stocks tax does not apply to fuel held in the fuel tank of an aircraft on January 1, 2008. Nor does it 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-subsidiary, 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 pro-

[31] Aviation-grade kerosene means, as defined by the Internal Revenue Service, 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.

[32] The backup tax on liquids (other than aviation gasoline) used in aviation under section 4041(c) is conformed to reflect the higher rate of tax.

[33] 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.

posal. For purposes of transferring amounts to the Airport and Airway Trust Fund, the floor stocks taxes are treated as if imposed by the provision of section 4081 with respect to the aviation fuel involved.

EFFECTIVE DATE

The provision is generally effective for fuel removed, entered, or sold after December 31, 2007. The floor stocks tax is effective January 1, 2008.

C. Expenditures for Air Traffic Control Modernization

PRESENT LAW

Under present law, there is no special set aside of AATF funds for air traffic control modernization.

REASONS FOR CHANGE

The Committee has provided for an increase in the taxes imposed on aviation-grade kerosene and aviation gasoline used in noncommercial aviation to ensure that funding is available to alleviate congestion through modernization of the air traffic control system. To ensure that the funds are not diverted to other purposes, such as the everyday operations of the FAA, the Committee requires that the increased funding be used for air traffic control modernization.

EXPLANATION OF PROVISION

The provision requires that the amounts received in the AATF (including interest) attributable to the increase in tax for noncommercial aviation use of aviation-grade kerosene (14.1 cents per gallon) and aviation gasoline (4.8 cents per gallon) be used, subject to appropriations, for making expenditures to carry out air traffic control modernization.

EFFECTIVE DATE

The provision is effective for fuel removed, entered, or sold after December 31, 2007.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 3539, the "Airport and Airway Trust Fund Financing Act of 2007."

The bill, H.R. 3539, as amended, was ordered favorably reported by voice vote (with a quorum being present). The Committee accepted an amendment in the nature of a substitute by Chairman Rangel.

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made con-

cerning the effects on the budget of the revenue provisions of the bill, H.R. 3539 as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2008–2017:

ESTIMATED REVENUE AND TRUST FUND EFFECTS OF H.R. 3539,
THE "AIRPORT AND AIRWAY TRUST FUND FINANCING ACT OF 2007,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2008 - 2017

[Millions of Dollars]

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008-12	2008-17
I. Revenue Effects													
1. Extension of all the current air transportation and aviation fuels tax (sunset 9/30/11)	10/1/07	*No Revenue Effect*											
2. Non-commercial aviation-grade kerosene (jet fuel) 35.9 cents per gallon, including floor stocks (sunset 9/30/11)	[1]	112	161	166	170	174	179	184	189	195	200	782	1,729
3. Non-commercial aviation gasoline 24.1 cents per gallon, including floor stocks (sunset 9/30/11)	[1]	6	8	8	9	9	9	9	9	9	9	40	85
4. Expenditures for air traffic control modernization	freosa 12/31/07	*No Revenue Effect*											
Total of Revenue Effects		**118**	**169**	**174**	**178**	**183**	**188**	**193**	**198**	**204**	**209**	**822**	**1,815**
II. Trust Fund Effects													
1. Leaking Underground Storage Tank Trust Fund	DOE	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	-1
2. Airport and Airways Trust Fund	DOE	157	226	232	238	244	251	257	264	272	279	1,096	2,420
3. General fund	DOE	-39	-56	-58	-59	-61	-63	-64	-66	-68	-70	-274	-605
Total of Trust Fund Effects		**118**	**169**	**174**	**178**	**183**	**188**	**193**	**198**	**204**	**209**	**822**	**1,815**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. Date of enactment is assumed to be October 1, 2007.

Legend for "Effective" column:
DOE = date of enactment
freosa = fuel removed, entered, or sold after

[1] The provision is generally effective for fuel removed, entered, or sold after December 31, 2007. The floor stocks tax provision is effective January 1, 2008. The floor stocks taxes are to be paid April 30, 2008.
[2] Loss of less than $500,000.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

H.R. 3539—Airport and Airway Trust Fund Financing Act of 2007

Summary: H.R. 3539 would extend, through fiscal year 2011, several existing taxes that are dedicated to the Airport and Airway Trust Fund. Effective January 1, 2008, the bill also would increase the excise tax rates on noncommercial aviation-grade kerosene and aviation gasoline. The Joint Committee on Taxation (JCT) estimates that enacting H.R. 3539 would increase revenue by $822 million over the 2008–2012 period and by about $1.8 billion over the 2008–2017 period, relative to the current baseline projection for taxes dedicated to the trust fund.

The bill also would extend, through fiscal year 2011, the authority to expend amounts from the trust fund (including interest) for major programs administered by the Federal Aviation Administration (FAA). In doing so, the Congressional Budget Office (CBO) estimates that the bill would authorize appropriations totaling $54.2 billion over the 2008–2011 period. Assuming appropriation actions consistent with the bill, CBO estimates that implementing H.R. 3539 would increase discretionary spending by $7.7 billion in 2008 and by $51.0 billion over the 2008–2012 period. Enacting the bill would not affect direct spending.

Because H.R. 3539 would increase the tax on noncommercial aviation-grade kerosene (jet fuel) to 35.9 cents per gallon, including floor stock, JCT has determined that the bill contains a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA). JCT also has determined that the bill contains no intergovernmental mandates as defined in UMRA.

Estimated costs to the Federal Government: The estimated budgetary impact of H.R. 3539 is shown in Table 1. The costs of this legislation fall within budget function 400 (transportation).

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 3539

	By fiscal year, in millions of dollars—					
	2007	2008	2009	2010	2011	2012
CHANGES IN REVENUES [1]						
Estimated Revenues	0	118	169	174	178	183
SPENDING SUBJECT TO APPROPRIATION						
Spending from the Airport and Airway Trust Fund under Current Law:						
Authorization Level [2]	11,846	0	0	0	0	0
Estimated Outlays	12,310	4,714	1,944	774	214	35
Proposed Changes:						
Estimated Authorization Level	0	12,524	13,218	13,876	14,532	0

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 3539—Continued

	By fiscal year, in millions of dollars—					
	2007	2008	2009	2010	2011	2012
Estimated Outlays	0	7,740	11,074	12,857	13,895	5,366
Spending from the Airport and Airway Trust Fund under H.R. 3539:						
Estimated Authorization Level [2]	11,846	12,524	13,218	13,876	14,532	0
Estimated Outlays	12,310	12,454	13,018	13,631	14,109	5,401

Sources: Congressional Budget Office and Joint Committee on Taxation.
[1] Estimated changes in revenue through 2017 are displayed in Table 2.
[2] The 2007 level is the amount of discretionary budgetary resources provided from the Airport and Airway Trust Fund for that year for major FAA programs. Discretionary budgetary resources include appropriations for FAA operations, facilities and equipment, and research programs, as well as limitations on the obligations of contract authority for the Airport Improvement Program. It does not include additional amounts appropriated to the FAA from the General Fund.

Basis of estimate: For this estimate, JCT and CBO assume that H.R. 3539 will be enacted near the start of fiscal year 2008 and that appropriation actions consistent with the bill will be taken in each fiscal year.

Revenues

The existing excise taxes that are dedicated to the Airport and Airway Trust Fund are scheduled to expire on September 30, 2007. The taxes consist of levies on transportation of persons and property by air, use of international air facilities, and use of aviation fuels and are estimated to generate revenues of over $11 billion in fiscal year 2007. The bill would extend at the current rate, through fiscal year 2011, all of the taxes except those on certain aviation fuels. The bill would increase the rates of tax on noncommercial aviation-grade kerosene and aviation gasoline effective January 1, 2008, through fiscal year 2011.

Under the projection rules in section 257 of the Balanced Budget and Emergency Deficit Control Act, which are followed for Congressional scorekeeping purposes, estimates of the revenue effects of legislation assume that expiring excise taxes dedicated to a trust fund are extended indefinitely and are measured relative to a baseline that assumes the expiring excise taxes are extended at the same rates that would be in place immediately before their scheduled expiration. As a result, the estimated increase in revenue from the bill results from the increase in the excise tax rates, which are assumed to remain in effect throughout the 2008–2017 period.

JCT estimates that enacting the higher tax rates in H.R. 3539 would increase revenues by $118 million in 2008, $822 million over the 2008–2012 period, and $1.8 billion over the next 10 years, as shown in Table 2. Those amounts are net of reductions to income and payroll taxes.

TABLE 2.—ESTIMATED REVENUES UNDER H.R. 3539

	By fiscal year, in millions of dollars—											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017
Estimated Revenues	118	169	174	178	183	188	193	198	204	209	822	1,815

Spending subject to appropriation

By extending the authority to expend amounts from the Airport and Airway Trust Fund, the bill would authorize appropriations to-

taling $54.2 billion over the 2008–2011 period for major FAA programs, CBO estimates. Under the bill, any increased revenues resulting from higher tax rates on noncommercial aviation-grade kerosene and aviation gasoline would be authorized to be used exclusively for activities related to modernizing the nation's air traffic control system. Of the total amount authorized to be appropriated under the bill, CBO estimates that about $850 million would support such activities. In total, assuming appropriation actions consistent with H.R. 3539, CBO estimates that implementing the bill would increase discretionary spending by $7.7 billion in 2008 and by $51.0 billion over the 2008–2012 period, with remaining spending of $3.2 billion occurring in later years. That estimate is based on historical spending patterns for FAA programs.

Intergovernmental and private-sector impact: Because H.R. 3539 would increase the tax on noncommercial aviation-grade kerosene (jet fuel) to 35.9 cents per gallon, including floor stock, JCT has determined that the bill contains a private-sector mandate as defined in UMRA. JCT has determined that the bill contains no intergovernmental mandates as defined in UMRA.

Estimate prepared by: Federal Revenues: Barbara Edwards; Federal Spending: Megan Carroll.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis; Peter H. Fontaine, Assistant Director for Budget Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

E. PAY-GO Rule

In compliance with clause 10 of the rule XXI of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 3539, as reported: the provisions affecting revenues have the net effect of reducing the deficit or increasing the surplus for either: (1) The period comprising the current fiscal year and the five fiscal years beginning with the fiscal year that ends in the following calendar year; and (2) the period comprising the current fiscal year and the ten fiscal years beginning with the fiscal year that ends in the following calendar year.

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

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it is appropriate and timely to enact the provisions included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII 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 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *").

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (Pub. L. No. 104–4). The Committee has determined that the tax provisions of the bill contain one unfunded private sector mandate: (1) Non-commercial aviation-grade kerosene (jet fuel) 35.9 cents per gallon, including floor stocks (sunset September 30, 2011). The costs required to comply with each Federal private sector mandate generally are no greater than the aggregate estimated budget effects of the provision.

The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Clause 5 of rule XXI of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." 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 increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring 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 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

amend the Code and that have "widespread applicability" to individuals or small businesses.

G. Limited Tax Benefits

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Ways and Means Committee has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that rule.

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