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HOUSE OF REPRESENTATIVES
REPORT
114–793

AMENDING THE INTERNAL REVENUE CODE OF 1986 TO EXEMPT AMOUNTS PAID FOR AIRCRAFT MANAGEMENT SERVICES FROM THE EXCISE TAXES IMPOSED ON TRANSPORTATION BY AIR

SEPTEMBER 27, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRADY of Texas, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3608]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3608) to amend the Internal Revenue Code of 1986 to exempt amounts paid for aircraft management services from the excise taxes imposed on transportation by air, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. AMOUNTS PAID FOR AIRCRAFT MANAGEMENT SERVICES.

(a) IN GENERAL.—Section 4261(e) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(5) AMOUNTS PAID FOR AIRCRAFT MANAGEMENT SERVICES.—

"(A) IN GENERAL.—No tax shall be imposed by this section or section 4271 on any amounts paid by an aircraft owner for aircraft management services related to—

"(i) maintenance and support of the aircraft owner's aircraft; or

"(ii) flights on the aircraft owner's aircraft.

"(B) AIRCRAFT MANAGEMENT SERVICES.—For purposes of subparagraph (A), the term 'aircraft management services' includes assisting an aircraft owner with administrative and support services, such as scheduling, flight planning, and weather forecasting; obtaining insurance; maintenance, storage and fueling of aircraft; hiring, training, and provision of pilots and crew; establishing and complying with safety standards; or such other services necessary to support flights operated by an aircraft owner.

"(C) LESSEE TREATED AS AIRCRAFT OWNER.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'aircraft owner' includes a person who leases the aircraft other than under a disqualified lease.

"(ii) DISQUALIFIED LEASE.—For purposes of clause (i), the term 'disqualified lease' means a lease from a person providing aircraft management services with respect to such aircraft (or a related person (within the meaning of section 465(b)(3)(C)) to the person providing such services), if such lease is for a term of 31 days or less.

"(D) PRO RATA ALLOCATION.—If any amount paid to a person represents in part an amount paid for services not described in subparagraph (A), the tax imposed by subsection (a), if applicable to such amount, shall be applied to such payment on a pro rata basis.

"(E) CERTAIN PAYMENTS TREATED AS MADE BY AIRCRAFT OWNER.—In the case of an aircraft owner which is wholly-owned by another person, amounts paid by such other person on behalf of such aircraft owner shall be treated for purposes of this paragraph as having been paid directly by such aircraft owner.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid after the date of the enactment of this Act.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 3608, as reported by the Committee on Ways and Means, exempts payments by an aircraft owner for aircraft management services associated with the owner's aircraft from commercial aviation excise taxes, effectively codifying current IRS practices.

B. BACKGROUND AND NEED FOR LEGISLATION

While the Committee continues to work on comprehensive tax reform as a critical means of promoting economic growth and job creation, the Committee believes it is important to provide immediate clarity and certainty on tax issues affecting small businesses. The

Committee believes that a statutory rule specifying the treatment of aircraft management services payments under aviation excise taxes will provide such clarity and certainty.

C. Legislative History

Background

H.R. 3608 was introduced on September 24, 2015, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 3608 on July 13, 2016, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The treatment of aircraft management services for aviation excise tax purposes was discussed at a Subcommittee on Tax Policy Member Day Hearing on Tax Legislation on May 12, 2016.

II. EXPLANATION OF THE BILL

A. Exemption From Excise Tax of Certain Amounts Paid for Aircraft Management Services (sec. 1 of the bill and secs. 4261 and 4271 of the Code)

PRESENT LAW

Taxes dedicated to the Airport and Airway Trust Fund

Excise taxes are imposed on amounts paid for commercial air passenger and freight transportation and on fuels used in commercial and noncommercial (i.e., transportation that is not "for hire") aviation to fund the Airport and Airway Trust Fund.[1]

For domestic commercial passenger aviation, the excise taxes consist of a 7.5 percent ad valorem tax on the amount paid for transportation (sometimes referred to as the "ticket tax"), a $4 per-segment fee,[2] and a 4.3 cents per gallon fuel tax.[3] For commercial freight aviation, the excise taxes are an ad valorem tax of 6.25 percent of the amount paid for transportation,[4] as well as the 4.3 cents per gallon fuel tax (there is no segment fee).

For noncommercial aviation, the tax is imposed only on fuel, at a rate of 19.3 cents per gallon for gasoline and 21.8 cents per gallon for jet fuel.[5]

In the case of a fractional ownership aircraft program, flights under such program are exempted from the taxes levied on commercial passenger aviation,[6] and instead such flights are subject both to the fuel taxes for noncommercial aviation and a surtax of 14.1 cents per gallon.[7]

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[1] Sec. 9502 and 49 U.S.C. 48101 et. seq.
[2] Sec. 4261; Rev. Proc. 2015–53, 2015–44 I.R.B. 615.
[3] Sec. 4081.
[4] Sec. 4271.
[5] Sec. 4081.
[6] Sec. 4261(j).
[7] Sec. 4043.

Tax on domestic air transportation

In determining whether a flight constitutes taxable transportation and whether the amounts paid for such transportation are subject to tax, the Internal Revenue Service ("IRS") has generally looked at the nature of the payments being made and who has "possession, command, and control" of the aircraft based on the relevant facts and circumstances.[8]

Applicability of Federal excise tax to aircraft management services

Generally, an aircraft management services company ("management company") has as its business purpose the management of aircraft owned by other persons ("aircraft owners"). In this function, management companies provide aircraft owners with administrative and support services (such as scheduling, flight planning, and weather forecasting), aircraft maintenance services, the provision of pilots and crew, and compliance with regulatory standards. Although the particular arrangements between management companies and aircraft owners may vary, aircraft owners generally pay management companies a monthly fee to cover the fixed expenses of maintaining the aircraft (such as insurance, maintenance, and recordkeeping) and a variable fee to cover the cost of using the aircraft (such as the provision of pilots, crew, and fuel).

In addition to general management, aircraft owners frequently contract with management companies to place the owner's aircraft into a fleet of aircraft to be leased to third parties when not being used by the owner.

The applicability of Federal excise tax to amounts paid for aircraft management services has been the subject of litigation and has also been addressed in an IRS Chief Counsel Advice memorandum.[9] In the Chief Counsel Advice, the IRS concluded under certain factual scenarios that aircraft management fees are generally considered amounts paid for taxable transportation of a person because possession, command, and control of the aircraft have been ceded by the aircraft owner to the management company under the terms of a management agreement. The IRS stated that control of the pilots is a factor in determining who has possession, command and control of the aircraft. In the scenarios described in the Chief Counsel Advice, while the aircraft is titled in the name of the owner, the pilots and crew are management company employees and receive their pay, benefits, and income tax reporting documents from the management company. In addition to selecting and training the pilots and crew, the management company performs all of the maintenance on the aircraft and is responsible for ensuring that all Federal Aviation Administration maintenance and related recordkeeping requirements are satisfied. Due to these factors, the IRS concluded that the management company had pos-

[8] 8 See, e.g., Rev. Rul. 60–311, 1960–2 C.B. 341, which held that, because the company in question retains the elements of possession, command, and control of the aircraft and performs all services in connection with the operation of the aircraft, the company is, in fact, furnishing taxable transportation to the lessee and the tax on the transportation of persons applies to the portion of the total payment that is allocable to the transportation of persons, provided such allocation is made on a fair and reasonable basis. If no allocation is made, the tax applies to the total payment for the lease of the aircraft.

[9] CCA 2012–10026 (March, 2012).

session, command and control of the aircraft and, as a result, was furnishing taxable transportation to the owner.

Because the IRS concluded that the management company provided all of the essential elements necessary for providing transportation by air and the owner relinquished possession, command, and control to the management company, the management company was determined to be providing taxable transportation to the owner and was therefore required to collect the appropriate Federal excise tax from the aircraft owner and remit it to the IRS.

In a 2015 opinion,[10] an Ohio district court held that the existing revenue rulings (in effect for the tax period April 1, 2005, through June 30, 2009, the period that was the subject of the litigation) regarding the possession, command and control test failed to provide precise and not speculative notice of a collection obligation as it related to whole-aircraft management contracts.[11] As a result, the court ruled as a matter of law that because precise and not speculative notice was not received, the aircraft management company plaintiff did not have a collection obligation with respect to the Federal excise tax on payments received for whole-aircraft management services.

REASONS FOR CHANGE

The Committee believes that the ticket tax should not be levied on amounts paid for aircraft management services when the management company is providing such services with respect to an aircraft owner's own aircraft. The Committee believes that establishing a bright-line ownership test will provide the necessary clarity to taxpayers and the IRS as to whether any such payments fall within the scope of amounts paid for taxable transportation.

EXPLANATION OF PROVISION

The provision exempts certain payments related to the management and maintenance of aircraft from the Federal excise taxes imposed on transportation of persons and property.

Exempt payments are those amounts paid by an aircraft owner for management services related to maintenance and support of the aircraft or flights on the owner's aircraft. Applicable services include support activities related to the aircraft itself, such as its storage, maintenance, and refueling, and those related to its operation, such as the hiring and training of pilots and crew, as well as administrative services such as scheduling, flight planning, weather forecasting, and establishing and complying with safety standards.

Payments for flight services are exempt only to the extent that they are attributable to flights on an aircraft owner's own aircraft.[12] Thus, if an aircraft owner makes a payment to a manage-

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[10] *Netjets Large Aircraft Inc. v. United States,* 116 A.F.T.R. 2d. 2015–6776 (S.D. Ohio, 2015).

[11] The district court held that such notice is required to persons having a deputy tax collection obligation under the rationale of the Supreme Court's holding in *Central Illinois Public Service Company v. United States,* 435 U.S. 21 (1978).

[12] The provision does not define "aircraft owner," but the intent of the provision is to incorporate common law definitions of tax ownership into such a determination. Thus, under the provision, in order to be considered an "aircraft owner" with respect to an individual aircraft, an owner must generally, as an individual owner or together with co-owners, possess the meaningful benefits and burdens of ownership *see, e.g., Frank Lyon Co. v. U.S.,* 435 U.S. 561, 572-73 (1978); *Altria Group, Inc. v. U.S.,* 658 F.3d 276, 285 (2d Cir. 2011); *Wells Fargo & Co. v. U.S.,*

Continued

ment company for the provision of a pilot and the pilot provides his services on the aircraft owner's aircraft, such payment is not subject to Federal excise tax. However, if the pilot provides his services to the aircraft owner on an aircraft other than the aircraft owner's (for instance, on an aircraft that is part of a fleet of aircraft available for third-party charter services), then such payment is subject to Federal excise tax.

The provision provides a pro rata allocation rule in the event that a monthly payment made to a management company is allocated in part to exempt services and flights on the aircraft owner's aircraft and in part to flights on aircraft other than the aircraft owner's. In such a circumstance, Federal excise tax must be collected on that portion of the payment attributable to flights on aircraft not owned by the aircraft owner.

Under the provision, a lessee of an aircraft is considered an aircraft owner provided that the lease is not a "disqualified lease." A disqualified lease is any lease of an aircraft from a management company (or a related party) for a term of 31 days or less.

In the case of an aircraft owner that is an entity wholly-owned by a person (such as in the case of a limited liability company wholly-owned by an individual), an amount paid by the owner of the entity to an aircraft management company shall be considered as paid directly by the aircraft owner for purposes of determining the exemption from Federal excise tax imposed on amounts paid for transportation by air. This is meant to accommodate individuals who, for insurance or other business reasons, own aircraft through a wholly-owned business entity.

EFFECTIVE DATE

The provision is effective for amounts paid after the date of enactment.

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641 F.3d 1319, 1325 (Fed. Cir. 2011); *Torres v. Commissioner,* 88 T.C. 702, 720 (1987); see also Conference Report to accompany H.R. 4170, Deficit Reduction Act of 1984, H.R. Rep. No. 98-432 pt. 2, March 5, 1984, pp. 789, 806 ("In general, for Federal income tax purposes, the owner of property must possess meaningful burdens and benefits of ownership."). In applying the meaningful benefits and burdens standard, aircraft ownership should be determined by reference to whether the incidents of ownership are present, which include: (1) legal or beneficial title to the aircraft, *Grodt & McKay Realty, Inc. v. Commissioner,* 77 T.C. 1221, 1236-37 (1981); *Salty Brine I, Ltd. v. U.S.,* 761 F.3d 484, 492 (5th Cir. 2014); (2) the right of possession of the aircraft, *Keith v. Commissioner,* 115 T.C. 605, 611 (2000); (3) an intent to acquire equity in the aircraft, Coleman v. Commissioner, 16 F.3d 821, 828 (7th Cir. 1994); (4) the risk of loss or damage to the aircraft, *Upham v. Commissioner,* 923 F.2d 1328, 1334 (8th Cir. 1991); (5) the responsibility to pay for the aircraft's maintenance and operating costs, Rev. Rul. 79–264, 1979–2 C.B. 92, 1979; (6) a duty to pay taxes levied on the aircraft, *Ibid.*; (7) the risk of destruction or loss of the aircraft, Ibid.; and (8) the risk of diminution in value of the aircraft from depreciation. *Ibid*.

Under this standard, which H.R. 3608 does not modify, ownership of stock in a commercial airline does not qualify an individual as an "aircraft owner" of a commercial airline's aircraft, and amounts paid for transportation on such flights remain subject to the tax imposed by section 4261. Similarly, participation in a fractional ownership program does not constitute "aircraft ownership" for under this standard. Amounts paid to a fractional ownership aircraft program for transportation are exempt from the ticket tax imposed under section 4261(j) if the aircraft is operating under subpart K of part 91 of title 14 of the Code of Federal Regulations ("subpart K"), and flights under such a program are subject to both the fuel tax levied on non-commercial aviation and an additional fuel surtax under section 4043. A property arrangement that seeks to circumvent the surtax by operating outside of subpart K, such as by allowing an individual the right to use any airplane in a fleet of aircraft through an aircraft interchange agreement or through the holding of nominal shares of a fleet of aircraft, does not reflect tax ownership of the aircraft flown upon, and consequently does not constitute ownership for the purposes of the provision.

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 vote of the Committee on Ways and Means in its consideration of H.R. 3608, a bill to amend the Internal Revenue Code of 1986 to exempt amounts paid for aircraft management services from the excise taxes imposed on transportation by air, on July 13, 2016.

The bill, H.R. 3608, as amended, was ordered favorably reported to the House of Representatives by a voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 3608, as reported.

The provision is estimated to reduce Federal fiscal year budget receipts by less than $500,000 for the period 2017–2026.

Pursuant to clause 8 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 gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not "major legislation" for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

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. The Committee further states that there are no new or increased tax expenditures.

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.

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 19, 2016.

Hon. Kevin Brady,
Chairman Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for HR. 3608, a bill to amend the Internal Revenue Code of 1986 to exempt amounts paid for aircraft

management services from the excise taxes imposed on transportation by air.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Peter Huether.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 3608—A bill to amend the Internal Revenue Code of 1986 to exempt amounts paid for aircraft management services from the excise taxes imposed on transportation by air

H.R. 3608 would amend the Internal Revenue Code to exempt certain aircraft management fees from the excise taxes imposed on transportation of persons and property by air. The exemption would apply to certain fees charged for maintenance and support by a firm that manages a client's personal aircraft. The fees that would be excluded from taxation include those for storage and maintenance of the aircraft, for hiring and training of pilots, and for flight planning and other administrative services.

Enacting H.R. 3608 would reduce revenues; therefore, pay-as-you-go procedures apply. However, the staff of the Joint Committee on Taxation (JCT) estimates that enacting the bill would reduce revenues by an insignificant amount, less than $500,000, over the 2016–2026 period.

CBO and JCT estimate that enacting the bill would not increase net direct spending in any of the four 10-year periods beginning in 2027, and would increase on-budget deficits over those periods by very small amounts.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Peter Huether. The estimate was approved by Mark Booth, Unit Chief, Revenue Estimating.

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 was as a result of the Committee's review of the provisions of H.R. 3608 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

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. Information Relating to Unfunded Mandates

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

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

D. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) 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 bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. Tax Complexity Analysis

The following statement is made pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives. Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 ("IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) 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 of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, 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 Internal Revenue Code of 1986 and that have "widespread applicability" to individuals or small businesses, within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pur-

suant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. Disclosure of Directed Rule Makings

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

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

A. Text of Existing Law Amended or Repealed by the Bill, as Reported

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

INTERNAL REVENUE CODE OF 1986

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 33—FACILITIES AND SERVICES

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Subchapter C—Transportation by Air

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PART I—PERSONS

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SEC. 4261. IMPOSITION OF TAX.

(a) In General.—There is hereby imposed on the amount paid for taxable transportation of any person a tax equal to 7.5 percent of the amount so paid.

(b) Domestic Segments of Taxable Transportation.—

(1) In general.—There is hereby imposed on the amount paid for each domestic segment of taxable transportation by air a tax in the amount determined in accordance with the following table for the period in which the segment begins:

In the case of segments beginning:	The tax is:
After September 30, 1997, and before October 1, 1998	$1.00
After September 30, 1998, and before October 1, 1999	$2.00
After September 30, 1999, and before January 1, 2000	$2.25
During 2000	$2.50
During 2001	$2.75
During 2002 or thereafter	$3.00.

(2) DOMESTIC SEGMENT.—For purposes of this section, the term "domestic segment" means any segment consisting of 1 takeoff and 1 landing and which is taxable transportation described in section 4262(a)(1).

(3) CHANGES IN SEGMENTS BY REASON OF REROUTING.—If—

(A) transportation is purchased between 2 locations on specified flights, and

(B) there is a change in the route taken between such 2 locations which changes the number of domestic segments, but there is no change in the amount charged for such transportation,

the tax imposed by paragraph (1) shall be determined without regard to such change in route.

(c) USE OF INTERNATIONAL TRAVEL FACILITIES.—

(1) IN GENERAL.—There is hereby imposed a tax of $12.00 on any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins or ends in the United States.

(2) EXCEPTION FOR TRANSPORTATION ENTIRELY TAXABLE UNDER SUBSECTION (A).—This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282).

(3) SPECIAL RULE FOR ALASKA AND HAWAII.—In any case in which the tax imposed by paragraph (1) applies to a domestic segment beginning or ending in Alaska or Hawaii, such tax shall apply only to departures and shall be at the rate of $6.

(d) BY WHOM PAID.—Except as provided in section 4263(a), the taxes imposed by this section shall be paid by the person making the payment subject to the tax.

(e) SPECIAL RULES.—

(1) SEGMENTS TO AND FROM RURAL AIRPORTS.—

(A) EXCEPTION FROM SEGMENT TAX.—The tax imposed by subsection (b)(1) shall not apply to any domestic segment beginning or ending at an airport which is a rural airport for the calendar year in which such segment begins or ends (as the case may be).

(B) RURAL AIRPORT.—For purposes of this paragraph, the term "rural airport" means, with respect to any calendar year, any airport if—

(i) there were fewer than 100,000 commercial passengers departing by air (in the case of any airport described in clause (ii)(III), on flight segments of at least 100 miles) during the second preceding calendar year from such airport, and

(ii) such airport—

(I) is not located within 75 miles of another airport which is not described in clause (i),

(II) is receiving essential air service subsidies as of the date of the enactment of this paragraph, or

(III) is not connected by paved roads to another airport.

(2) AMOUNTS PAID OUTSIDE THE UNITED STATES.—In the case of amounts paid outside the United States for taxable transportation, the taxes imposed by subsections (a) and (b) shall apply only if such transportation begins and ends in the United States.

(3) AMOUNTS PAID FOR RIGHT TO AWARD FREE OR REDUCED RATE AIR TRANSPORTATION.—

(A) IN GENERAL.—Any amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air shall be treated for purposes of subsection (a) as an amount paid for taxable transportation, and such amount shall be taxable under subsection (a) without regard to any other provision of this subchapter.

(B) CONTROLLED GROUP.—For purposes of subparagraph (A), a corporation and all wholly owned subsidiaries of such corporation shall be treated as 1 corporation.

(C) REGULATIONS.—The Secretary shall prescribe rules which reallocate items of income, deduction, credit, exclusion, or other allowance to the extent necessary to prevent the avoidance of tax imposed by reason of this paragraph. The Secretary may prescribe rules which exclude from the tax imposed by subsection (a) amounts attributable to mileage awards which are used other than for transportation of persons by air.

(4) INFLATION ADJUSTMENT OF DOLLAR RATES OF TAX.—

(A) IN GENERAL.—In the case of taxable events in a calendar year after the last nonindexed year, the $3.00 amount contained in subsection (b) and each dollar amount contained in subsection (c) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting the year before the last nonindexed year for "calendar year 1992" in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of 10 cents, such increase shall be rounded to the nearest multiple of 10 cents.

(B) LAST NONINDEXED YEAR.—For purposes of subparagraph (A), the last nonindexed year is—

(i) 2002 in the case of the $3.00 amount contained in subsection (b), and

(ii) 1998 in the case of the dollar amounts contained in subsection (c).

(C) TAXABLE EVENT.—For purposes of subparagraph (A), in the case of the tax imposed by subsection (b), the begin-

ning of the domestic segment shall be treated as the taxable event.

(D) SPECIAL RULE FOR AMOUNTS PAID FOR DOMESTIC SEGMENTS BEGINNING AFTER 2002.—If an amount is paid during a calendar year for a domestic segment beginning in a later calendar year, then the rate of tax under subsection (b) on such amount shall be the rate in effect for the calendar year in which such amount is paid.

(f) EXEMPTION FOR CERTAIN USES.—No tax shall be imposed under subsection (a) or (b) on air transportation—

(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.

(g) EXEMPTION FOR AIR AMBULANCES PROVIDING CERTAIN EMERGENCY MEDICAL TRANSPORTATION.—No tax shall be imposed under this section or section 4271 on any air transportation for the purpose of providing emergency medical services—

(1) by helicopter, or

(2) by a fixed-wing aircraft equipped for and exclusively dedicated on that flight to acute care emergency medical services.

(h) EXEMPTION FOR SKYDIVING USES.—No tax shall be imposed by this section or section 4271 on any air transportation exclusively for the purpose of skydiving.

(i) EXEMPTION FOR SEAPLANES.—No tax shall be imposed by this section or section 4271 on any air transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airways Trust Fund.

(j) EXEMPTION FOR AIRCRAFT IN FRACTIONAL OWNERSHIP AIRCRAFT PROGRAMS.—No tax shall be imposed by this section or section 4271 on any air transportation if tax is imposed under section 4043 with respect to the fuel used in such transportation. This subsection shall not apply after July 15, 2016.

(k) 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 July 15, 2016, 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.

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B. CHANGES IN EXISTING LAW PROPOSED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed 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 italics, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) 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 (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 33—FACILITIES AND SERVICES

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Subchapter C—Transportation by Air

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PART I—PERSONS

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SEC. 4261. IMPOSITION OF TAX.

(a) IN GENERAL.—There is hereby imposed on the amount paid for taxable transportation of any person a tax equal to 7.5 percent of the amount so paid.

(b) DOMESTIC SEGMENTS OF TAXABLE TRANSPORTATION.—

(1) IN GENERAL.—There is hereby imposed on the amount paid for each domestic segment of taxable transportation by air a tax in the amount determined in accordance with the following table for the period in which the segment begins:

In the case of segments beginning:	The tax is:
After September 30, 1997, and before October 1, 1998	$1.00
After September 30, 1998, and before October 1, 1999	$2.00
After September 30, 1999, and before January 1, 2000	$2.25
During 2000	$2.50
During 2001	$2.75
During 2002 or thereafter	$3.00.

(2) DOMESTIC SEGMENT.—For purposes of this section, the term "domestic segment" means any segment consisting of 1 takeoff and 1 landing and which is taxable transportation described in section 4262(a)(1).

(3) CHANGES IN SEGMENTS BY REASON OF REROUTING.—If—

(A) transportation is purchased between 2 locations on specified flights, and

(B) there is a change in the route taken between such 2 locations which changes the number of domestic segments, but there is no change in the amount charged for such transportation,

the tax imposed by paragraph (1) shall be determined without regard to such change in route.

(c) USE OF INTERNATIONAL TRAVEL FACILITIES.—

(1) IN GENERAL.—There is hereby imposed a tax of $12.00 on any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins or ends in the United States.

(2) EXCEPTION FOR TRANSPORTATION ENTIRELY TAXABLE UNDER SUBSECTION (A).—This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282).

(3) SPECIAL RULE FOR ALASKA AND HAWAII.—In any case in which the tax imposed by paragraph (1) applies to a domestic segment beginning or ending in Alaska or Hawaii, such tax shall apply only to departures and shall be at the rate of $6.

(d) BY WHOM PAID.—Except as provided in section 4263(a), the taxes imposed by this section shall be paid by the person making the payment subject to the tax.

(e) SPECIAL RULES.—

(1) SEGMENTS TO AND FROM RURAL AIRPORTS.—

(A) EXCEPTION FROM SEGMENT TAX.—The tax imposed by subsection (b)(1) shall not apply to any domestic segment beginning or ending at an airport which is a rural airport for the calendar year in which such segment begins or ends (as the case may be).

(B) RURAL AIRPORT.—For purposes of this paragraph, the term "rural airport" means, with respect to any calendar year, any airport if—

(i) there were fewer than 100,000 commercial passengers departing by air (in the case of any airport described in clause (ii)(III), on flight segments of at least 100 miles) during the second preceding calendar year from such airport, and

(ii) such airport—

(I) is not located within 75 miles of another airport which is not described in clause (i),

(II) is receiving essential air service subsidies as of the date of the enactment of this paragraph, or

(III) is not connected by paved roads to another airport.

(2) AMOUNTS PAID OUTSIDE THE UNITED STATES.—In the case of amounts paid outside the United States for taxable transportation, the taxes imposed by subsections (a) and (b) shall apply only if such transportation begins and ends in the United States.

(3) AMOUNTS PAID FOR RIGHT TO AWARD FREE OR REDUCED RATE AIR TRANSPORTATION.—

(A) IN GENERAL.—Any amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air shall be treated for purposes of subsection (a) as an amount paid for taxable transportation, and such amount shall be taxable under subsection (a) without regard to any other provision of this subchapter.

(B) CONTROLLED GROUP.—For purposes of subparagraph (A), a corporation and all wholly owned subsidiaries of such corporation shall be treated as 1 corporation.

(C) REGULATIONS.—The Secretary shall prescribe rules which reallocate items of income, deduction, credit, exclusion, or other allowance to the extent necessary to prevent the avoidance of tax imposed by reason of this paragraph. The Secretary may prescribe rules which exclude from the tax imposed by subsection (a) amounts attributable to mileage awards which are used other than for transportation of persons by air.

(4) INFLATION ADJUSTMENT OF DOLLAR RATES OF TAX.—

(A) IN GENERAL.—In the case of taxable events in a calendar year after the last nonindexed year, the $3.00 amount contained in subsection (b) and each dollar amount contained in subsection (c) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting the year before the last nonindexed year for "calendar year 1992" in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of 10 cents, such increase shall be rounded to the nearest multiple of 10 cents.

(B) LAST NONINDEXED YEAR.—For purposes of subparagraph (A), the last nonindexed year is—

(i) 2002 in the case of the $3.00 amount contained in subsection (b), and

(ii) 1998 in the case of the dollar amounts contained in subsection (c).

(C) TAXABLE EVENT.—For purposes of subparagraph (A), in the case of the tax imposed by subsection (b), the begin-

ning of the domestic segment shall be treated as the taxable event.

(D) SPECIAL RULE FOR AMOUNTS PAID FOR DOMESTIC SEGMENTS BEGINNING AFTER 2002.—If an amount is paid during a calendar year for a domestic segment beginning in a later calendar year, then the rate of tax under subsection (b) on such amount shall be the rate in effect for the calendar year in which such amount is paid.

(5) AMOUNTS PAID FOR AIRCRAFT MANAGEMENT SERVICES.—

(A) IN GENERAL.—No tax shall be imposed by this section or section 4271 on any amounts paid by an aircraft owner for aircraft management services related to—

(i) maintenance and support of the aircraft owner's aircraft; or

(ii) flights on the aircraft owner's aircraft.

(B) AIRCRAFT MANAGEMENT SERVICES.—For purposes of subparagraph (A), the term "aircraft management services" includes assisting an aircraft owner with administrative and support services, such as scheduling, flight planning, and weather forecasting; obtaining insurance; maintenance, storage and fueling of aircraft; hiring, training, and provision of pilots and crew; establishing and complying with safety standards; or such other services necessary to support flights operated by an aircraft owner.

(C) LESSEE TREATED AS AIRCRAFT OWNER.—

(i) IN GENERAL.—For purposes of this paragraph, the term "aircraft owner" includes a person who leases the aircraft other than under a disqualified lease.

(ii) DISQUALIFIED LEASE.—For purposes of clause (i), the term "disqualified lease" means a lease from a person providing aircraft management services with respect to such aircraft (or a related person (within the meaning of section 465(b)(3)(C)) to the person providing such services), if such lease is for a term of 31 days or less.

(D) PRO RATA ALLOCATION.—If any amount paid to a person represents in part an amount paid for services not described in subparagraph (A), the tax imposed by subsection (a), if applicable to such amount, shall be applied to such payment on a pro rata basis.

(E) CERTAIN PAYMENTS TREATED AS MADE BY AIRCRAFT OWNER.—In the case of an aircraft owner which is wholly-owned by another person, amounts paid by such other person on behalf of such aircraft owner shall be treated for purposes of this paragraph as having been paid directly by such aircraft owner.

(f) EXEMPTION FOR CERTAIN USES.—No tax shall be imposed under subsection (a) or (b) on air transportation—

(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.

(g) EXEMPTION FOR AIR AMBULANCES PROVIDING CERTAIN EMERGENCY MEDICAL TRANSPORTATION.—No tax shall be imposed under this section or section 4271 on any air transportation for the purpose of providing emergency medical services—

(1) by helicopter, or

(2) by a fixed-wing aircraft equipped for and exclusively dedicated on that flight to acute care emergency medical services.

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(k) 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 July 15, 2016, 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.

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VII. ADDITIONAL VIEWS

There are a great number of important tax priorities that the Committee should consider—like legislation to stem the tide of inversions, and legislation to fix errors made when the Congress considered expiring tax legislation at the end of last year—but the July 13th markup did not consider any of those important priorities. Indeed, not even a month ago, Republicans released a very broad brush "Blueprint" outlining their tax priorities, but even that isn't being considered. In fact, this provision is nowhere to be found in the Republicans' tax reform Blueprint, which calls into question the seriousness of the Committee's efforts with respect to consideration of this bill.

In the few days before the Congress leaves for the August District work period, the Republicans have chosen to ignore these important items, and instead decided to use the Committee's precious time to move forward a very narrowly targeted bill. The Committee has not heard testimony from experts at IRS, Treasury, the Federal Aviation Administration, or any stakeholders to discuss the merits of this bill, whether our current aviation tax system, a patchwork of excise taxes on tickets, varying fuel taxes, and certain per-journey fees, is functioning as it should. It is correct that this bill was mentioned at a Subcommittee Member Day hearing in May by its sponsor, but a deeper examination of H.R. 3608 and how the provisions in the bill fit into our larger aviation tax system has been rejected by the Majority.

It is disappointing that the Chairman did not select for consideration legislation that has enjoys broad bipartisan support in both the House and the Senate tax-writing Committees. The Consolidated Appropriations Act mistakenly omitted for long-term extension certain renewable energy technologies; this would be the perfect opportunity to correct that mistake. Yet instead the Committee considered one narrow bill that is targeted to a small subset of taxpayers that engage in the business of providing aircraft owners with management services. There are many taxpayers—hard-working Americans—that are affected by provisions that the Committee should focus its time and its work on, and instead we focus on taxpayers that own private planes.

For these reasons, Democrats have many reservations about this legislation.

SANDER M. LEVIN
Ranking Member.

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