

105TH CONGRESS
1ST SESSION

H. R. 823

To amend the Internal Revenue Code of 1986 to reinstate the Airport and Airway Trust Fund excise taxes and to suspend the 4.3-cent general revenue portion of such taxes during the reinstatement period.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 1997

Mr. HILLEARY introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to reinstate the Airport and Airway Trust Fund excise taxes and to suspend the 4.3-cent general revenue portion of such taxes during the reinstatement period.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

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

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
 2 wise expressly provided, whenever in this Act an amend-
 3 ment or repeal is expressed in terms of an amendment
 4 to, or repeal of, a section or other provision, the reference
 5 shall be considered to be made to a section or other provi-
 6 sion of the Internal Revenue Code of 1986.

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

9 (a) FUEL TAXES.—

10 (1) AVIATION FUEL.—Subparagraph (A) of sec-
 11 tion 4091(b)(3) is amended to read as follows:

12 “(A) The rate of tax specified in para-
 13 graph (1) shall be 4.3 cents per gallon—

14 “(i) after December 31, 1996, and be-
 15 fore the date which is 7 days after the date
 16 of the enactment of the Airport and Air-
 17 way Trust Fund Tax Reinstatement Act of
 18 1997, and

19 “(ii) after September 30, 1997.”

20 (2) AVIATION GASOLINE.—Subsection (d) of
 21 section 4081 is amended by striking the paragraph
 22 (3) added by section 1609(a) of the Small Business
 23 Job Protection Act of 1996 and by striking para-
 24 graphs (1) and (2) and inserting the following new
 25 paragraphs:

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

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

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

11 “(B) after September 30, 1997.”

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

14 “(3) TERMINATION.—The rate of the taxes im-
15 posed by paragraph (1) shall be 4.3 cents per gal-
16 lon—

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

21 “(B) after September 30, 1997.”

22 (b) TICKET TAXES.—

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

25 “(g) APPLICATION OF TAXES.—

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

3 “(A) transportation beginning during the
4 period—

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

8 “(ii) ending on September 30, 1997,
9 and
10 and

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

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

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

21 “(d) APPLICATION OF TAX.—

22 “(1) IN GENERAL.—The tax imposed by sub-
23 section (a) shall apply to—

24 “(A) transportation beginning during the
25 period—

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

4
5 “(ii) ending on September 30, 1997,
6 and

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

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

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

17 (1) IN GENERAL.—Subsection (b) of section
18 9502 is amended to read as follows:

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

22 “(1) the taxes received in the Treasury under—
23 “(A) subsections (c) and (e) of section
24 4041 (relating to aviation fuels),

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

3 “(C) section 4081 (relating to gasoline)
4 with respect to aviation gasoline (to the extent
5 that the rate of the tax on such gasoline ex-
6 ceeds 4.3 cents per gallon), and

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

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

14 (2) TERMINATION OF FINANCING RATE.—Para-
15 graph (3) of section 9502(f) is amended to read as
16 follows:

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

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

1 (1) IMPOSITION OF TAX.—In the case of any
2 aviation liquid on which tax was imposed under sec-
3 tion 4081 or 4091 of the Internal Revenue Code of
4 1986 before the tax effective date and which is held
5 on such date by any person, there is hereby imposed
6 a floor stocks tax of—

7 (A) 15 cents per gallon in the case of avia-
8 tion gasoline, and

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

11 (2) LIABILITY FOR TAX AND METHOD OF PAY-
12 MENT.—

13 (A) LIABILITY FOR TAX.—A person hold-
14 ing, on the tax effective date, any aviation liq-
15 uid to which the tax imposed by paragraph (1)
16 applies shall be liable for such tax.

17 (B) METHOD OF PAYMENT.—The tax im-
18 posed by paragraph (1) shall be paid in such
19 manner as the Secretary shall prescribe.

20 (C) TIME FOR PAYMENT.—The tax im-
21 posed by paragraph (1) shall be paid on or be-
22 fore the first day of the 5th month beginning
23 after the tax effective date.

24 (3) DEFINITIONS.—For purposes of this sub-
25 section—

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

5 (B) AVIATION LIQUID.—The term “avia-
6 tion liquid” means aviation gasoline and avia-
7 tion fuel.

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

11 (D) AVIATION FUEL.—The term “aviation
12 fuel” has the meaning given such term by sec-
13 tion 4093 of such Code.

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

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

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

23 (A) aviation liquid held by any person on
24 the tax effective date exclusively for any use for

1 which a credit or refund of the entire tax im-
2 posed by section 4081 or 4091 of such Code (as
3 the case may be) is allowable for such liquid
4 purchased on or after such tax effective date for
5 such use, or

6 (B) aviation fuel held by any person on the
7 tax effective date exclusively for any use de-
8 scribed in section 4092(b) of such Code.

9 (5) EXCEPTION FOR CERTAIN AMOUNTS OF
10 FUEL.—

11 (A) IN GENERAL.—No tax shall be im-
12 posed by paragraph (1) on any aviation liquid
13 held on the tax effective date by any person if
14 the aggregate amount of such liquid (deter-
15 mined separately for aviation gasoline and avia-
16 tion fuel) held by such person on such date does
17 not exceed 2,000 gallons. The preceding sen-
18 tence shall apply only if such person submits to
19 the Secretary (at the time and in the manner
20 required by the Secretary) such information as
21 the Secretary shall require for purposes of this
22 paragraph.

23 (B) EXEMPT FUEL.—Any liquid to which
24 the tax imposed by paragraph (1) does not

1 apply by reason of paragraph (4) shall not be
2 taken into account under subparagraph (A).

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

5 (i) CORPORATIONS.—

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

9 (II) CONTROLLED GROUP.—The
10 term “controlled group” has the
11 meaning given such term by sub-
12 section (a) of section 1563 of such
13 Code; except that for such purposes,
14 the phrase “more than 50 percent”
15 shall be substituted for the phrase “at
16 least 80 percent” each place it ap-
17 pears in such subsection.

18 (ii) NONINCORPORATED PERSONS
19 UNDER COMMON CONTROL.—Under regula-
20 tions prescribed by the Secretary, prin-
21 ciples similar to the principles of clause (i)
22 shall apply to a group of persons under
23 common control where 1 or more of such
24 persons is not a corporation.

1 (6) OTHER LAWS APPLICABLE.—All provisions
2 of law, including penalties, applicable with respect to
3 the taxes imposed by section 4081 or 4091 of such
4 Code shall, insofar as applicable and not inconsistent
5 with the provisions of this subsection, apply with re-
6 spect to the floor stocks taxes imposed by paragraph
7 (1) to the same extent as if such taxes were imposed
8 by such section 4081 or 4091, as the case may be.
9 (e) EFFECTIVE DATES.—

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

14 (2) TICKET TAXES.—

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

18 (B) EXCEPTION FOR CERTAIN PAY-
19 MENTS.—Except as provided in subparagraph
20 (C), the amendments made by subsection (b)
21 shall not apply to any amount paid before such
22 7th day.

23 (C) PAYMENTS OF PROPERTY TRANSPOR-
24 TATION TAX WITHIN CONTROLLED GROUP.—In
25 the case of the tax imposed by section 4271 of

1 the Internal Revenue Code of 1986, subpara-
 2 graph (B) shall not apply to any amount paid
 3 by 1 member of a controlled group for transpor-
 4 tation furnished by another member of such
 5 group. For purposes of the preceding sentence,
 6 all persons treated as a single employer under
 7 subsection (a) or (b) of section 52 of the Inter-
 8 nal Revenue Code of 1986 shall be treated as
 9 members of a controlled group.

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

16 **SEC. 3. REPEAL OF 4.3-CENT INCREASE IN FUEL TAX RATES**
 17 **ENACTED BY THE OMNIBUS BUDGET REC-**
 18 **ONCILIATION ACT OF 1993 AND DEDICATED**
 19 **TO GENERAL FUND OF THE TREASURY DUR-**
 20 **ING PERIOD TICKET TAXES IN EFFECT.**

21 (a) IN GENERAL.—Section 4081 (relating to imposi-
 22 tion of tax on gasoline and diesel fuel) is amended by add-
 23 ing at the end the following new subsection:

1 “(f) REPEAL OF 4.3-CENT INCREASE IN FUEL TAX
 2 RATES ENACTED BY THE OMNIBUS BUDGET RECONCILI-
 3 ATION ACT OF 1993 AND DEDICATED TO GENERAL FUND
 4 OF THE TREASURY.—

5 “(1) IN GENERAL.—During the applicable pe-
 6 riod, each rate of tax referred to in paragraph (2)
 7 shall be reduced by 4.3 cents per gallon.

8 “(2) RATES OF TAX.—The rates of tax referred
 9 to in this paragraph are the rates of tax otherwise
 10 applicable under—

11 “(A) subsection (a)(2)(A) (relating to gas-
 12 oline and diesel fuel),

13 “(B) sections 4091(b)(3)(A) and
 14 4092(b)(2) (relating to aviation fuel),

15 “(C) section 4042(b)(2)(C) (relating to
 16 fuel used on inland waterways),

17 “(D) paragraph (1) or (2) of section
 18 4041(a) (relating to diesel fuel and special
 19 fuels), and

20 “(E) section 4041(m)(1)(A)(i) (relating to
 21 certain methanol or ethanol fuels).

22 “(3) COMPARABLE TREATMENT FOR COM-
 23 PRESSED NATURAL GAS.—No tax shall be imposed
 24 by section 4041(a)(3) on any sale or use during the
 25 applicable period.

1 “(4) COMPARABLE TREATMENT UNDER CER-
2 TAIN REFUND RULES.—In the case of fuel on which
3 tax is imposed during the applicable period, each of
4 the rates specified in sections 6421(f)(2)(B),
5 6421(f)(3)(B)(ii), 6427(b)(2)(A), 6427(l)(3)(B)(ii),
6 and 6427(l)(4)(B) shall be reduced by 4.3 cents per
7 gallon.

8 “(5) COORDINATION WITH HIGHWAY TRUST
9 FUND DEPOSITS.—In the case of fuel on which tax
10 is imposed during the applicable period, each of the
11 rates specified in subparagraphs (A)(i) and (C)(i) of
12 section 9503(f)(3) shall be reduced by 4.3 cents per
13 gallon.

14 “(6) APPLICABLE PERIOD.—For purposes of
15 this subsection, the term ‘applicable period’ means
16 the period after the 6th day after the date of the en-
17 actment of this subsection and before October 1,
18 1997.”

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall take effect on the date of the enactment
21 of this Act.

22 **SEC. 4. FLOOR STOCK REFUNDS.**

23 (a) IN GENERAL.—If—

1 (1) before the tax repeal date, tax has been im-
2 posed under section 4081 or 4091 of the Internal
3 Revenue Code of 1986 on any liquid, and

4 (2) on such date such liquid is held by a dealer
5 and has not been used and is intended for sale,
6 there shall be credited or refunded (without interest) to
7 the person who paid such tax (hereafter in this section
8 referred to as the “taxpayer”) an amount equal to the ex-
9 cess of the tax paid by the taxpayer over the amount of
10 such tax which would be imposed on such liquid had the
11 taxable event occurred on such date.

12 (b) TIME FOR FILING CLAIMS.—No credit or refund
13 shall be allowed or made under this section unless—

14 (1) claim therefor is filed with the Secretary of
15 the Treasury before the date which is 6 months
16 after the tax repeal date, and

17 (2) in any case where liquid is held by a dealer
18 (other than the taxpayer) on the tax repeal date—

19 (A) the dealer submits a request for refund
20 or credit to the taxpayer before the date which
21 is 3 months after the tax repeal date, and

22 (B) the taxpayer has repaid or agreed to
23 repay the amount so claimed to such dealer or
24 has obtained the written consent of such dealer

1 to the allowance of the credit or the making of
2 the refund.

3 (c) EXCEPTION FOR FUEL HELD IN RETAIL
4 STOCKS.—No credit or refund shall be allowed under this
5 section with respect to any liquid in retail stocks held at
6 the place where intended to be sold at retail.

7 (d) DEFINITIONS.—For purposes of this section—

8 (1) the terms “dealer” and “held by a dealer”
9 have the respective meanings given to such terms by
10 section 6412 of such Code; except that the term
11 “dealer” includes a producer, and

12 (2) the term “tax repeal date” means the 7th
13 day after the date of the enactment of this Act.

14 (e) CERTAIN RULES TO APPLY.—Rules similar to the
15 rules of subsections (b) and (c) of section 6412 of such
16 Code shall apply for purposes of this section.

17 **SEC. 5. FLOOR STOCKS TAX.**

18 (a) IMPOSITION OF TAX.—In the case of any liquid
19 on which tax was imposed under section 4081 or 4091
20 of the Internal Revenue Code of 1986 before October 1,
21 1997, and which is held on such date by any person, there
22 is hereby imposed a floor stocks tax of 4.3 cents per gal-
23 lon.

24 (b) LIABILITY FOR TAX AND METHOD OF PAY-
25 MENT.—

1 (1) LIABILITY FOR TAX.—A person holding a
2 liquid on October 1, 1997, to which the tax imposed
3 by subsection (a) applies shall be liable for such tax.

4 (2) METHOD OF PAYMENT.—The tax imposed
5 by subsection (a) shall be paid in such manner as
6 the Secretary shall prescribe.

7 (3) TIME FOR PAYMENT.—The tax imposed by
8 subsection (a) shall be paid on or before March 31,
9 1998.

10 (c) DEFINITIONS.—For purposes of this section—

11 (1) HELD BY A PERSON.—A liquid shall be con-
12 sidered as “held by a person” if title thereto has
13 passed to such person (whether or not delivery to
14 the person has been made).

15 (2) GASOLINE AND DIESEL FUEL.—The terms
16 “gasoline” and “diesel fuel” have the respective
17 meanings given such terms by section 4083 of such
18 Code.

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

22 (4) SECRETARY.—The term “Secretary” means
23 the Secretary of the Treasury or his delegate.

24 (d) EXCEPTION FOR EXEMPT USES.—The tax im-
25 posed by subsection (a) shall not apply to gasoline, diesel

1 fuel, or aviation fuel held by any person exclusively for
2 any use to the extent a credit or refund of the tax imposed
3 by section 4081 or 4091 of such Code is allowable for such
4 use.

5 (e) EXCEPTION FOR FUEL HELD IN VEHICLE
6 TANK.—No tax shall be imposed by subsection (a) on gas-
7 oline or diesel fuel held in the tank of a motor vehicle or
8 motorboat.

9 (f) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—
10 (1) IN GENERAL.—No tax shall be imposed by
11 subsection (a)—

12 (A) on gasoline held on October 1, 1997,
13 by any person if the aggregate amount of gaso-
14 line held by such person on such date does not
15 exceed 4,000 gallons, and

16 (B) on diesel fuel or aviation fuel held on
17 such date by any person if the aggregate
18 amount of diesel fuel or aviation fuel held by
19 such person on such date does not exceed 2,000
20 gallons.

21 The preceding sentence shall apply only if such per-
22 son submits to the Secretary (at the time and in the
23 manner required by the Secretary) such information
24 as the Secretary shall require for purposes of this
25 paragraph.

1 (2) EXEMPT FUEL.—For purposes of para-
2 graph (1), there shall not be taken into account fuel
3 held by any person which is exempt from the tax im-
4 posed by subsection (a) by reason of subsection (d)
5 or (e).

6 (3) CONTROLLED GROUPS.—For purposes of
7 this subsection—

8 (A) CORPORATIONS.—

9 (i) IN GENERAL.—All persons treated
10 as a controlled group shall be treated as 1
11 person.

12 (ii) CONTROLLED GROUP.—The term
13 “controlled group” has the meaning given
14 to such term by subsection (a) of section
15 1563 of such Code; except that for such
16 purposes the phrase “more than 50 per-
17 cent” shall be substituted for the phrase
18 “at least 80 percent” each place it appears
19 in such subsection.

20 (B) NONINCORPORATED PERSONS UNDER
21 COMMON CONTROL.—Under regulations pre-
22 scribed by the Secretary, principles similar to
23 the principles of subparagraph (A) shall apply
24 to a group of persons under common control

1 where 1 or more of such persons is not a cor-
 2 poration.

3 (g) OTHER LAW APPLICABLE.—All provisions of law,
 4 including penalties, applicable with respect to the taxes
 5 imposed by section 4081 of such Code in the case of gaso-
 6 line and diesel fuel and section 4091 of such Code in the
 7 case of aviation fuel shall, insofar as applicable and not
 8 inconsistent with the provisions of this subsection, apply
 9 with respect to the floor stock taxes imposed by subsection
 10 (a) to the same extent as if such taxes were imposed by
 11 such section 4081 or 4091.

12 **SEC. 6. BENEFITS OF TAX REPEAL SHOULD BE PASSED ON**
 13 **TO CONSUMERS.**

14 (a) PASSTHROUGH TO CONSUMERS.—

15 (1) SENSE OF CONGRESS.—It is the sense of
 16 Congress that—

17 (A) consumers immediately receive the
 18 benefit of the repeal of the 4.3-cent increase in
 19 the transportation motor fuels excise tax rates
 20 enacted by the Omnibus Budget Reconciliation
 21 Act of 1993, and

22 (B) transportation motor fuels producers
 23 and other dealers take such actions as nec-
 24 essary to reduce transportation motor fuels
 25 prices to reflect the repeal of such tax increase,

1 including immediate credits to customer ac-
2 counts representing tax refunds allowed as
3 credits against excise tax deposit payments
4 under the floor stocks refund provisions of this
5 Act.

6 (2) STUDY.—

7 (A) IN GENERAL.—The Comptroller Gen-
8 eral of the United States shall conduct a study
9 of the repeal of the 4.3-cent increase in the fuel
10 tax imposed by the Omnibus Budget Reconcili-
11 ation of 1993 to determine whether there has
12 been a passthrough of such repeal.

13 (B) REPORT.—Not later than July 31,
14 1997, the Comptroller General of the United
15 States shall report to the Committee on Fi-
16 nance of the Senate and the Committee on
17 Ways and Means of the House of Representa-
18 tives the results of the study conducted under
19 subparagraph (A).

○