

SJR

35

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 1/13/92

FURTHER: L&C

Date of 5-Day Notice: 3/18/92
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-27-92

Transportation Committee considered SJR 35

Urging the United States Congress to eliminate a federal excise tax involving air travel to or from Alaska.

and recommends:

replace with _____ CS _____ ()

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

same title
 new title
 technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date
 zero fiscal notes Sen. Trans. Comm/3/27/92

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date
 Governor's bill with fiscal notes:
zero fiscal notes _____

fiscal notes _____

DO PASS:

OTHER RECOMMENDATIONS:

Shirley Craft
Dick Staley

Chair: Signature and Recommendation **DO PASS**

Chair: Signature and Recommendation

Statement of Senator Pearce to Senate Transportation Committee
March 25, 1992

Mr. Chairman, members of the committee, thank you for the opportunity to testify before you today on Senate Joint Resolution 35, urging the United States Congress to eliminate a federal excise tax involving air travel to or from Alaska.

There are two types of excise tax: the first applies to all air travel originating and ending in the United States and amounts to 10 percent of the fare. The second type of tax is the subject of this Resolution. It applies to all flights that originate in the United States and travel through international airspace is a flat rate of \$6.00 per ticket and applies to travel in and out of Alaska and Hawaii only -- not to travel between any of the contiguous forty-eight states.

This Resolution asks Congress to address the problem of unequal treatment that Alaska and Hawaii receive as a result of this tax.

I appreciate your taking the time to consider this matter. Thank you.

government to formulate billing policies that would minimize the customers' excise taxes. *McDonnell Douglas Corp. v. General Tel. Co. of California*, C.A.Cal. 1979, 594 F.2d 720, certiorari denied 100 S.Ct. 77, 444 U.S. 839, 62 L.Ed.2d 50.

2. Separation of charges

This section did not impose any duty on telephone company to prepare customers' bills in such a way as to separate charges for private branch exchange services from charges for normal telephone services; under the 1965 amendments of this subchapter, it was within the absolute discretion of the telephone company whether to separate or not to separate private branch exchange charges. *McDonnell Douglas Corp. v. General Tel. Co. of California*, C.A.Cal. 1979, 594 F.2d 720, certiorari denied 100 S.Ct. 77, 444 U.S. 839, 62 L.Ed.2d 50.

Action would not lie against telephone company to recover communications excise taxes allegedly overcollected from users of "Centrex" systems, on theory that entries on telephone company books for Centrex service satisfied the "separate charge" requirement of Excise

Tax Reduction Act, 79 Stat. 136; in effect, suit seeking return of the allegedly overcollected taxes, which had been remitted to the government, was a suit for "recovery of any internal revenue tax" and was required to be filed only against the government, notwithstanding claim of no probable cause to collect the tax. *DuPont Glove Forge Inc. v. American Tel. & Tel. Co.*, D.C.N.Y. 1977, 428 F.Supp. 1297, affirmed 758 F.2d 1366, 1367, certiorari denied 99 S.Ct. 465, 439 U.S. 970, 58 L.Ed.2d 431.

3. Inclusion of state and local taxes

Even though additional charges imposed on telephone subscribers might be directly attributable to state and local occupational taxes paid by telephone company, those additional charges were nonetheless a part of price telephone company demanded for its services, and they were properly includable in base on which federal tax on amounts paid for communication services was computed. *Agron v. Illinois Bell Tel. Co.*, C.A.Ill. 1971, 449 F.2d 906, certiorari denied 92 S.Ct. 1171, 405 U.S. 954, 31 L.Ed.2d 231.

SUBCHAPTER C—TRANSPORTATION BY AIR

Part

I. Persons.

II. Property.

III. Special provisions relating to taxes on transportation by air.¹

¹ So in original. Does not conform to part heading.

PART I—PERSONS

Section

4261. Imposition of tax.

4262. Definition of taxable transportation.

4263. Special rules.

HISTORICAL AND STATUTORY NOTES

Amendments

1970 Amendment. Pub.L. 91-258, Title II, § 205(c)(4), May 21, 1970, 84 Stat. 242, substituted "Transportation by Air" for "Transportation of Persons by Air" in the subchapter heading, inserted Part I to III headings in the subchapter analysis, inserted "Part I—Persons" as analysis heading preceding § 4261, deleted item 4263, and redesignated item 4264 as 4263 in the analysis.

1962 Amendment. Pub.L. 87-508, § 5(b), June 28, 1962, 76 Stat. 115, substituted "Transportation of Persons by Air" for "Transportation of Persons" in heading of subchapter.

1958 Amendment. Pub.L. 85-475, § 4(b)(2), June 30, 1958, 72 Stat. 260, in the heading of subchapter substituted "Transportation of Persons" for "Transportation", and struck out Parts I-III, which were included in subchapter C.

1956 Amendment. Act July 25, 1956, Item 4262 as 4263, and added Items 4262 c. 725, § 5, 70 Stat. 646, redesignated and 4264.

CROSS REFERENCES

Collection of fees from detained aliens, see 8 USCA § 1356.
Fees for customs services, see 19 USCA § 58c.

WESTLAW ELECTRONIC RESEARCH

WESTLAW supplements United States Code Annotated and is useful for additional research. Enter a citation in Insta-Cite for display of any parallel citations and case history. Enter a constitution, statute or rule citation in a case law database for cases of interest.

Example query for Insta-Cite: IC 726 F.2d 1292

Example query for statute: "26 U.S." "26 U.S.C.***" "Title 26" Code /8 3304

Also, see the WESTLAW Electronic Research Guide following the Explanation.

§ 4261. Imposition of tax

(a) **In general.**—There is hereby imposed upon the amount paid for taxable transportation (as defined in section 4262) of any person a tax equal to 8 percent of the amount so paid. In the case of amounts paid outside of the United States for taxable transportation, the tax imposed by this subsection shall apply only if such transportation begins and ends in the United States.

(b) **Seats, berths, etc.**—There is hereby imposed upon the amount paid for seating or sleeping accommodations in connection with transportation and with respect to which a tax is imposed by subsection (a), a tax equal to 8 percent of the amount so paid.

(c) **Use of international travel facilities.**—There is hereby imposed a tax of \$3 upon any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins in the United States. This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282).

(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) **Exemption for certain helicopter uses.**—No tax shall be imposed under subsection (a) or (b) on air transportation by helicopter for the purpose of—

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

(2) the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter 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 the Airport and Airway Improvement Act of 1982 during such use.

(f) Exemption for certain emergency medical transportation.—No tax shall be imposed under this section or section 4271 on any air transportation by helicopter for the purpose of providing emergency medical services if such helicopter—

(1) does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970 during such transportation, and

(2) does not otherwise use services provided pursuant to the Airport and Airway Improvement Act of 1982 during such transportation.

(g) Termination.—The taxes imposed by this section shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1991.

(Aug. 16, 1954, c. 736, 68A Stat. 506; July 25, 1956, c. 725, §§ 1, 4(b), 70 Stat. 644, 646; June 30, 1959, Pub.L. 86-75, § 4, 73 Stat. 158; June 30, 1960, Pub.L. 86-564, Title II, § 202(a) (3), 74 Stat. 290; June 30, 1961, Pub.L. 87-72, § 3(a) (3), 75 Stat. 193; June 28, 1962, Pub.L. 87-508, § 5(b), 76 Stat. 115; June 29, 1963, Pub.L. 88-52, § 3(a) (3), 77 Stat. 72; June 30, 1964, Pub.L. 88-348, § 2(a) (3), 78 Stat. 237; June 21, 1965, Pub.L. 89-44, Title III, § 303(a), 79 Stat. 148; May 21, 1970, Pub.L. 91-258, Title II, § 203(a), 84 Stat. 238; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1904(a) (7), 90 Stat. 1812; July 1, 1980, Pub.L. 96-298, § 1(b), 94 Stat. 829; Sept. 3, 1982, Pub.L. 97-248, Title II, § 280(a), 96 Stat. 564; July 18, 1984, Pub.L. 98-369, Div. A, Title X, § 1018(b), 98 Stat. 1021; Oct. 22, 1986, Pub.L. 99-514, Title XVIII, § 1878(c)(2), 100 Stat. 2903; Dec. 30, 1987, Pub.L. 100-223, Title IV, §§ 402(a)(1), 404(a), (c), 101 Stat. 1532, 1533.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1954 Act. House Report No. 1337, Senate Report No. 1622, and Conference Report No. 2543, see 1954 U.S.Code Cong. and Adm.News, pp. 4468, 5127, 5280, respectively.

1956 Act. Senate Report No. 1607 and Conference Report No. 2749, see 1956 U.S.Code Cong. and Adm.News, p. 3504.

1959 Act. Senate Report No. 427 and Conference Report No. 587, see 1959 U.S.Code Cong. and Adm.News, p. 1751.

1960 Act. Senate Report No. 1602 and Conference Report No. 2005, see 1960 U.S.Code Cong. and Adm.News, p. 2563.

1961 Act. Senate Report No. 371, see 1961 U.S.Code Cong. and Adm.News, p. 2038.

1962 Act. Senate Report No. 1616 and Conference Report No. 1935, see 1962 U.S.Code Cong. and Adm.News, p. 1771.

1963 Act. Senate Report No. 281, see 1963 U.S.Code Cong. and Adm.News, p. 718.

1964 Act. Senate Report No. 1107 and Conference Report No. 1523, see 1964 U.S.Code Cong. and Adm.News, p. 2329.

1965 Act. House Report No. 433, Senate Report No. 324, and Conference Report No. 525, see 1965 U.S.Code Cong. and Adm.News, p. 1645.

1970 Act. House Report No. 91-601 and Conference Report No. 91-1074, see 1970 U.S.Code Cong. and Adm.News, p. 3047.

1976 Act. House Report Nos. 94-658, 94-1380, Senate Report No. 94-938, and House Conference Report No. 94-1515, see 1976 U.S.Code Cong. and Adm.News, p. 2897.

1982 Act. Senate Report No. 97-494, House Conference Report No. 97-760, and Statements by Legislative Leaders, see 1982 U.S.Code Cong. and Adm.News, p. 781.

1984 Act. House Report No. 98-432, House Conference Report No. 98-861, Statements by Legislative Leaders, and Two Related Reports, see 1984 U.S.Code Cong. and Adm.News, p. 697.

1986 Act. House Conference Report No. 99-841 and Statement by President, see 1986 U.S.Code Cong. and Adm.News, p. 4075.

1987 Act. House Report No. 100-123(I, II) and House Conference Report No. 100-484, see 1987 U.S.Code Cong. and Adm.News, p. 2533.

References in Text

The Airport and Airway Development Act of 1970, referred to in subsecs. (e), (f)(1), is Title I of Pub.L. 91-258, May 21, 1970, 84 Stat. 219, which is classified principally to chapter 25 of the Appendix to Title 49, Transportation. For complete classification of Title I of Pub.L. 91-258 to the Code, see Tables volume.

The Airport and Airway Improvement Act of 1982, referred to in subsecs. (e), (f)(2), is Pub.L. 97-248, Title V, Sept. 3, 1982, 96 Stat. 671, which is classified principally to chapter 31 (section 2201 et seq.) of the Appendix to Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note under section 2201 of the Appendix to Title 49 and Tables volume.

Codifications

Amendment by section 404(c) of Pub.L. 100-223, directing the substitution of "Improvement Act" for "System Improvement Act" in subsec. (e), could not be executed. Subsec. (e) of this section

contains no reference to a "System Improvement Act".

Amendments

1987 Amendment. Subsec. (f). Pub.L. 100-223, § 404(a), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub.L. 100-223, §§ 402(a)(1), 404(a), substituted "January 1, 1991" for "January 1, 1988" in former subsec. (f), and redesignated former subsec. (f), as so amended, as (g).

1986 Amendment. Subsec. (c)(1). Pub.L. 99-514 substituted "in the exploration for, or the development or removal of, hard minerals, oil or gas, or" for "in—(A) the exploration for, or the development or removal of, hard minerals, or (B) the exploration for oil or gas, or".

1984 Amendment. Subsec. (e)(1). Pub.L. 98-369 designated existing provisions as subpar. (A) and added subpar. (B).

1982 Amendment. Subsecs. (e), (f). Pub.L. 97-248 in subsec. (e) substituted provisions relating to exemptions for certain helicopter uses for provisions that effective with respect to transportation beginning after Sept. 30, 1980 the rate of taxes imposed by subsecs. (a) and (b) would be 5 percent and taxes imposed by subsec. (c) would not apply, and added subsec. (f).

1980 Amendment. Subsec. (e). Pub.L. 96-298 substituted "September 30, 1980" for "June 30, 1980".

1976 Amendment. Subsec. (a). Pub.L. 94-455, § 1904(a)(7)(A), struck out "which begins after June 30, 1970" following "any person".

Subsec. (b). Pub.L. 94-455, § 1904(a)(7)(A), struck out "which begins after June 30, 1970" following "with transportation".

Subsec. (c). Pub.L. 94-455, § 1904(a)(7)(B), struck out "and begins after June 30, 1970" following "United States".

1970 Amendment. Subsec. (a). Pub.L. 91-258 consolidated former provisions of subsecs. (a) and (b) for imposition of tax on amounts paid within and outside the United States, substituted therein an 8 percent rate commencing after June 30, 1970, for prior 5 percent rate commencing after Nov. 15, 1962.

Subsec. (b). Pub.L. 91-258 redesignated former subsec. (c) as (b), substituting therein an 8 percent rate in connection with transportation which begins after

June 30, 1970, and with respect to which a tax is imposed by subsec. (a) for prior 5 percent rate in connection with transportation which began after Nov. 15, 1962, and with respect to which a tax had been imposed by former provisions of subsecs. (a) and (b). Former subsec. (b) provisions for imposition of tax on amounts paid outside the United States were incorporated in subsec. (a).

Subsec. (c). Pub.L. 91-258 added subsec. (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub.L. 91-258 substituted "section 4263(a)" for "section 4264".

Subsec. (e). Pub.L. 91-258 added subsec. (e).

1965 Amendment. Pub.L. 89-44 substituted "November 15, 1962" for "November 15, 1962, and before July 1, 1965" wherever appearing.

1964 Amendment. Pub.L. 88-348 substituted "July 1, 1965" for "July 1, 1964" wherever appearing.

1963 Amendment. Pub.L. 88-52 substituted "July 1, 1964" for "July 1, 1963" wherever appearing.

1962 Amendment. Subsecs. (a), (b). Pub.L. 87-508, § 5(b), eliminated the imposition of tax on transportation of persons by rail, motor vehicle, or water and substituted "tax equal to 5 percent of the amount so paid in connection with transportation which begins after November 15, 1962, and before July 1, 1963" for "tax equal to 10 percent of the amount so paid for transportation which begins before November 16, 1962".

Pub.L. 87-508, § 5(a), substituted provisions imposing a tax equal to 10 percent of the amount paid in connection with transportation which begins before Nov. 16, 1962 for provisions imposing a tax equivalent to 10 percent of the amount paid before July 1, 1962 or 5 percent of the amount paid on or after July 1, 1962.

Subsec. (c). Pub.L. 87-508, § 5(b), substituted "tax equivalent to 5 percent of the amount so paid in connection with transportation which begins after November 15, 1962, and before July 1, 1963" for "tax equivalent to 10 percent of the amount so paid in connection with transportation which begins before November 16, 1962".

Pub.L. 87-508, § 5(a), substituted provision imposing a tax equivalent to 10 percent of the amount paid in connection with transportation which begins

before Nov. 16, 1962 for provision imposing a tax equivalent to 10 percent of the amount paid before July 1, 1962 or 5 percent of the amount paid on or after July 1, 1962.

1961 Amendment. Pub.L. 87-72 substituted "July 1, 1962" for "July 1, 1961" wherever appearing.

1960 Amendment. Pub.L. 86-564 substituted "July 1, 1961" for "July 1, 1960" wherever appearing.

1959 Amendment. Pub.L. 86-75 reduced the tax on transportation of persons from ten to five percent effective July 1, 1960.

1956 Amendment. Subsec. (a). Act July 25, 1956, § 1, substituted "taxable transportation (as defined in section 4262) of any person by rail, motor vehicle, water, or air a tax" for "the transportation of persons by rail, motor vehicle, water, or air within or without the United States a tax".

Subsec. (b). Act July 25, 1956, § 1, substituted "taxable transportation (as defined in section 4262) of any person by rail, motor vehicle, water, or air, but only if such transportation begins and ends in the United States" for "transportation of persons by rail, motor vehicle, water, or air which begins and ends in the United States".

Subsec. (d). Act July 25, 1956, § 4(b), substituted "Except as provided in section 4264, the" for "The".

Effective Dates

1987 Act. Section 404(d)(1) of Pub.L. 100-223 provided that. "The amendment made by subsection (a) [amending this section] shall apply to transportation beginning after September 30, 1988, but shall not apply to amounts paid on or before such date."

1986 Act. Amendment by Pub.L. 99-514 effective as if included in the provisions of the Tax Reform Act of 1984, Pub.L. 98-369, Div.A, to which such amendment relates, except as otherwise provided, see section 1881 of Pub.L. 99-514, set out as a note under section 48 of this title.

1984 Act. Section 1018(c)(2) of Pub.L. 98-369 provided that: "The amendment made by subsection (b) [amending subsec. (e)(1) of this section] shall apply to transportation beginning after March 31, 1984, but shall not apply to any amount paid on or before such date."

1982 Act. Section 280(d) of Pub.L. 97-248 provided that: "The amendments made by this section [enacting subsec. (f) of this section, amending subsec. (e) of this section and sections 4271, 4281, and 6156 of this title, and repealing sections 4491 to 4494 and 6426 of this title] shall apply with respect to transportation beginning after August 31, 1982; except that such amendments shall not apply to any amount paid on or before such date."

1976 Act. Amendment by Pub.L. 94-455 effective on the first day of the first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub.L. 94-455, set out as a note under section 4041 of this title.

1970 Act. Amendment by Pub.L. 91-258 applicable to transportation beginning after June 30, 1970, see § 211(b) of Pub.L. 91-258, set out as a note under § 4041 of this title.

1965 Act. Section 701(b)(3) of Pub.L. 89-44 provided that: "The amendments made by section 303 [to this section] shall apply with respect to amounts paid for transportation, and amounts paid for accommodations in connection with transportation, beginning on or after July 1, 1965."

1962 Act. Section 5(b) of Pub.L. 87-508 provided in part that the amendment of this subchapter by § 5(b) shall be effective with respect to transportation beginning after Nov. 15, 1962.

1956 Act. Section 6 of Act July 25, 1956, provided that: "The amendments made by this Act [to sections 4261(a), (b), (d), 4262 to 4264, 4291, and 6421(d)(2) of this title] shall apply to amounts paid on or after the first day of the first month which begins more than sixty days after the date of the enactment of this Act [July 25, 1956] for transportation commencing on or after such first day."

CROSS REFERENCES

Air transportation by members of affiliated group, see 26 USCA § 4282.

Airport and Airway Trust Fund, see 26 USCA § 9502.

Credits or refunds to persons who collected certain taxes, see 26 USCA § 6415. Noncommercial aviation defined for purposes of tax on special fuels, see 26 USCA § 4041.

Penalty for offenses relating to airline tickets and advertising, see 26 USCA § 7275.

Small aircraft on nonestablished lines, see 26 USCA § 4281.

LIBRARY REFERENCES

American Digest System

Air transportation tax, see Internal Revenue ¶4347.

Encyclopedias

Air transportation tax, see C.J.S. Internal Revenue § 1011.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Persons or entities liable 2 Rules and regulations 1

Administrative Decisions: IRS decisions available on WESTLAW. See WESTLAW guide following Explanation pages ante.

1. Rules and regulations

Treasury regulations, which related to records to be kept for purposes of transportation of persons tax, were reasonable and in conformity with § 3469 [I.R. C.1939 (now this section and § 4262 of

this title)], *Loew's Inc. v. U.S.*, D.C. Cal. 1951, 99 F.Supp. 100.

2. Persons or entities liable

Where federal excise tax on amounts paid for transportation of persons by air was nondiscriminatory in nature and did not unduly interfere with sovereign functions of government of city, which reimbursed employees who paid the tax, imposition of the tax on such city expenditures for employees traveling on official city business was not precluded by constitutional doctrine of intergovernmental tax immunity. *City of New*

