The American Infrastructure Investment and Improvement Act

April 30, 2008

I. Airport and Airway Trust Fund Provisions

Amid growing concerns over aviation congestion and safety, the Airport and Airway Trust Fund (AATF) was established in 1970 to finance expenditures on national aviation programs. Since its enactment 38 years ago, AATF receipts have grown from about $560 million per year to approximately $12 billion today. AATF funding comes from taxes on passenger tickets, flight segments, international arrivals and departures, cargo waybills and aviation fuel. With the number of passengers on U.S. airlines expected to nearly double by 2025, we must modernize our aviation system with state-of-the art technology. This bill makes an important step to that end, by providing approximately $800 million in additional funds for modernization over the course of this reauthorization. These funds will be directed to Next Generation Air Transportation System (NextGen), the Federal Aviation Administration's proposal to modernize the U.S. air-traffic system.

Air Traffic Modernization Account. This bill establishes an Air Traffic Control System Modernization Account in the Airport and Airway Trust Fund. This account will receive $400 million per year through taxes imposed on jet fuel, with funding available for expenditures related to modernization and implementation of NextGen.

General Aviation Jet Fuel. This bill sets the general aviation jet fuel tax at a rate of 36¢ per gallon, increasing it from the current rate of 21.9¢/gallon. *This provision is estimated to raise approximately $220 million annually over the next three years for NextGen, with approximately $250 million raised in 2011.*

Fractionals. Fractional aircraft are currently subject to commercial aviation taxes, including an ad valorem tax of 7.5 percent of the amount paid for the transportation, a $3.50 segment tax, and tax of 4.4 cents per gallon on fuel. For purposes of FAA safety regulations, fractional aircraft are treated as a special category of general aviation. This bill classifies fractional flights as general aviation for tax purposes, subject to the general aviation fuel tax rate of 36¢ per gallon. In keeping with the intent of the bill that funding for a modernized system should be broadly shared, the bill establishes a 14¢ surtax on fractional fuel. *This provision is estimated to raise approximately $35 million per year for NextGen in the next three years, with $48 million raised in 2011.*

Non-Established Lines. Under section 4281 of the Internal Revenue Code, transportation by aircraft weighing 6,000 pounds or less is exempt from certain AATF taxes unless the aircraft operates on an 'established line', defined by IRS as a route "operated with some degree of regularity between definite points." This provision repeals section 4281 except for sight-seeing planes. *This provision is estimated to raise approximately $8 million per year for NextGen.*

Transparency in passenger disclosures. The bill prohibits transportation providers from including amounts other than charges payable to a government entity in the required disclosure of passenger taxes on tickets and in advertising. The intent of the proposal is to avoid passenger confusion as to which charges are taxes and which are not. Providers may disclose their non-governmental charges elsewhere on the tickets or in advertising if they wish. *No revenue effect.*

Modification of pension funding rules. This bill modifies the relief provided for non-frozen airline pension plans in the Pension Protection Act of 2006. The proposal limits the relief to benefits earned in past years. It requires the plans to make current contributions each year at least equal to the cost of newly earned benefits. *This provision is estimated to result in a loss of less than $500,000 over 10 years*.

II. Increased Funding for the Highway Trust Fund

The Highway Trust Fund faces significant funding shortfalls in 2009 and beyond. To prevent States from forgoing transportation construction projects, Congress must act to fill a projected 2009 Highway Trust Fund deficit. This bill does so, as follows:

Replenishes emergency spending from the Highway Trust Fund. Since 1998, approximately $3.4 billion has been spent from the Highway Trust Fund to respond to emergencies such as the September 11 attacks and natural disasters. Unforeseen expenses such as these are more appropriately met by the General Fund. To ensure solvency of the Highway Trust Fund through 2009, this provision replenishes the Highway Trust Fund with a total of $3.4 billion.

Suspending transfers from the Highway Trust Fund. Current law exempts certain entities, such as state and local governments, from fuel taxes. When these entities purchase fuel and subsequently apply for a refund of taxes paid on that fuel, the refund is paid by the General Fund, which is then reimbursed by the Highway Trust Fund. This provision suspends a portion of transfers paid by the Highway Trust Fund for a 6-month period, providing Congress with an opportunity to evaluate this policy. This provision does not change the tax status of entities that are currently exempt from fuel tax. This provision provides $635 million to the Highway Trust Fund. The General Fund impact of this provision is fully offset.

Excise tax on certain removals of taxable fuel from foreign trade zones. This bill would generally impose excise tax on the non-bulk removal of taxable fuel from terminals or refineries within a foreign trade zone or subzone or bonded warehouse at the same time and in the same manner as if such terminal or refinery were not located in such foreign trade zone or subzone or bonded warehouse. The provision is effective for removals and entries after December 31, 2008. *This provision is estimated to raise $35 million over 10 years.*

Clarification of penalty for sale of fuel failing to meet EPA regulations. Under current law, any person other than a retailer who knowingly transfers for resale, sells for resale, or holds out for resale for use in a diesel-powered highway vehicle (or train) any liquid that does not meet EPA regulations on sulfur standards is subject to a penalty of $10,000 for each such transfer, sale, or holding out for resale, in addition to the tax on such liquid, if any. Any retailer who knowingly holds out for sale (other than for resale) any such liquid is subject to a $10,000 penalty for each such holding out for sale, in addition to the tax on such liquid, if any. This provision expands the penalty to include any fuel that does not meet EPA standards for distribution to the public. The provision reaffirms that the Secretary is authorized to make the determination that the fuel does not comply with the applicable EPA regulations and standards for purposes of asserting the penalty. *This provision is estimated to raise less than $500,000 over 10 years.*

Treatment of qualified alcohol and biodiesel fuel mixtures as taxable fuel. This bill adds biodiesel and alcohol to the definition of a taxable fuel. *This provision is estimated to raise $55 million over 10 years.*

Calculation of volume of alcohol for fuel credits. The Internal Revenue Code provides a per-gallon credit for the volume of alcohol used as a fuel or in a qualified mixture. For purposes of determining the number of gallons of alcohol eligible for the credit, the volume of alcohol includes any denaturant, including gasoline. ATF requires a minimum of 2% denaturant so that ethanol won't be taxed as alcohol. This proposal provides that the volume of alcohol eligible for the credit does not include more than 2% denaturant. *This provision is estimated to raise $138 million over 10 years.*

Denial of bulk transfer exception for finished gasoline. Given the potential for fuel to be diverted from pipelines and barges and escape taxation, this proposal moves the point of taxation for gasoline generally from the point of removal from a terminal to removal from the refinery or upon entry into the United States. This provision does not affect the tax rates but simply streamlines the point of taxation. *This provision is estimated to provide $1.021 billion to the Highway Trust Fund over 10 years, including $816 million in 2009.*

Oil Spill Liability Trust Fund. In the wake of the Exxon Valdez oil spill, the Oil Pollution Act of 1990 authorized the Oil Spill Liability Trust Fund (OSLTF). The largest source of revenue for OSLTF is a 5¢ per barrel excise tax on crude oil received at a U.S. refinery and to petroleum products entered into the U.S. for consumption, use, or warehousing. The oil spill tax also applies to certain uses and the exportation of domestic crude oil. If any domestic crude oil is used in or exported from the United States, and before such use or exportation no oil spill tax was imposed on such crude oil, then the oil spill tax is imposed. The 5¢ per-barrel rate has not been increased since authorization of OSLTF in 1990. With passage of recent legislation, including the Gulf of Mexico Energy Security Act of 2006, which opened millions of acres for new drilling, the potential for oil spills has increased. This provision sets the oil spill tax at 10¢ per barrel, and repeals the requirement that the tax is suspended during a calendar quarter if the Secretary estimates that, as of the close of the preceding calendar quarter, the unobligated balance of the Oil Spill Liability Trust Fund exceeds $2.7 billion. *This provision is estimated to raise $2.7 billion over 10 years.*

Motor Fuel Tax Enforcement Advisory Commission. This bill makes limited changes to the composition and operation of the Motor Fuel Tax Advisory Commission, as recommended by the Government Accountability Office. *No revenue effect.*

Conforming Highway Trust Fund provisions. This bill amends Highway Trust Fund provisions in the Code to conform with P.L. 110-56, which authorized additional funds for emergency repairs and reconstruction of the I-35 bridge in Minneapolis and to waive the $100,000,000 limit on emergency relief funds for those repairs. *No revenue effect.*

III. Additional Infrastructure Modifications

Restructuring of New York Liberty Zone tax credits. The bill would implement a proposal to provide the City of New York and the State of New York with tax credits for expenditures made for transportation infrastructure projects connecting with the New York Liberty Zone. *This proposal is estimated to cost $1.657 billion over 10 years.*

Limited exemption from Harbor Maintenance Tax. This bill provides a narrow exemption to the Harbor Maintenance Tax for the movement of ‘non-bulk’ commercial cargo by water in the Great Lakes region. The provision is designed to reduce congestion by encouraging non-bulk shippers to move cargo off congested roads and onto marine transportation. *This provision is estimated to cost less than $500,000 over 10 years.*

Railroad tax credit bonds. This bill creates a new category of tax-credit bonds – “Qualified Rail Infrastructure Bonds” – to help meet the financing needs of long-term rail infrastructure projects. At least 95 percent of the proceeds of the bonds must be spent on qualified projects within a five year period beginning on the date of issuance of the bond. Holders of these bonds are entitled to a tax credit, calculated by multiplying the bond’s credit rate by the face amount of the bond. The credit is includable in gross income and can be claimed against regular income tax liability and AMT liability. The provision establishes a $900 million annual limitation for 2009, 2010, and 2011 on the amount of bonds. *This provision is estimated to cost $911 million over 10 years.*

IV. Revenue Provisions

Corporate inversions. The bill modifies current law by moving the date of inversion back to March 20, 2002. Companies manipulating the U.S. worldwide tax system have avoided paying U.S. corporate income tax by setting up post office drops in tax haven countries. The American Jobs Creation Act taxing these “corporate inversions” applied to inversions occurring after March 4, 2003. This provision would apply to inversions dating back to March 20, 2002. However, this provision is prospective only and applies to tax years ending after the date of enactment. *This provision is estimated to raise $1.3 billion over 10 years.*

Elimination of deductions for punitive damages. The bill eliminates the deduction for punitive damages, including tort settlements, paid or incurred by the taxpayer as a result of a judgment or in settlement of a claim. Punitive damages paid by an insurer are included in gross income of the insured person and the insurer is required to report such amounts to both the insured person and the IRS. *This provision is estimated to raise $341 million over 10 years.*

Roth-style retirement plans. The bill permits § 457(b) plans for governmental employees to offer designated Roth contribution accounts now available under 401(k) and 403(b) plans. The proposal levels the playing field for state and local government workers by permitting 457(b) arrangements to offer designated Roth accounts already permitted in 401(k) and 403(b) plans. *The provision is estimated to raise $1.19 billion over 10 years.*

Suspension of interest and penalties. The bill repeals the suspension of interest when the IRS takes greater than 36 months to inform a taxpayer of a deficiency. The suspension period was extended from 18 months to 36 months in the 2007 Small Business bill. *This provision is estimated to raise $124 million over 10 years.*

Increase in information return penalties. The bill proposes a number of changes to existing information return penalties. It increases the penalty for failure to file correct information returns from $50/return to $250/return, and raises the calendar year cap from $250,000 to $3 million. The bill increases the penalty in cases of intentional disregard from $100/return to $500/return, with the cap increasing from $250,000 to $3 million. It also increases the failure to furnish correct payee statements from $50/return to $250/return, with the cap increasing from $100,000 to $1 million. Also in the event of intentional disregard, the penalty is increased from $100/return to $500/return, with the cap increasing from $100,000 to $1 million. *This provision is estimated to raise $446 million over 10 years.*

Individual expatriation. The bill would impose a new "mark-to-market" tax on certain U.S. citizens and long-term residents who terminate their U.S. residence. In general, such individuals would be taxed on the net unrealized gain in their property exceeding $600,000, as if such property were sold for fair market value on the day prior to the expatriation or the U.S. residency termination. *This provision is estimated to raise $785 million over 10 years.*

Fines and penalties. The bill clarifies that there is no tax deduction for any payment made to a government or certain self-regulatory entity (e.g., NASD) in settlement of an investigation of a potential violation of law or when there is a final determination of wrongdoing in violation of the law. Restitution and remediation payments are deductible. *This provision is estimated to raise $203 million over 10 years.*