

**The original documents are located in Box 65, folder “10/17/76 HR10101 Aircraft Museums Tax” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library**

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APPROVED  
OCT 17 1976

10/17/76

THE WHITE HOUSE  
WASHINGTON  
October 16, 1976

ACTION  
Last Day: October 20

MEMORANDUM FOR THE PRESIDENT  
FROM: JIM CANNON *Jim Cannon*  
SUBJECT: H.R. 10101 - Aircraft Museums Tax

Attached for your consideration is H.R. 10101, sponsored by Representative Milford and 22 others.

The enrolled bill would exempt "aircraft museums" from two air user taxes: the aviation fuel tax and the annual aircraft use tax.

The definition of an aircraft museum is intended to provide relief for the "Confederate Air Force Flying Museum" at Harlingen, Texas. The museum was created as a private non-profit organization to maintain a collection of each type of aircraft used in World War II which are flown at various types of expositions. The organization has apparently found it difficult to raise enough in the way of contributions to cover increased costs and relief from the air user tax is proposed as a means of saving them some \$50,000 a year.

H.R. 10101 was voted out of the House Ways and Means Committee 14 to 10. The bill passed the Senate and the House without a record vote.

A detailed explanation of the enrolled bill, including complete agency comments is provided in OMB's enrolled bill report at Tab A.

#### Agency Recommendations

OMB and Treasury recommend disapproval of H.R. 10101. OMB believes the bill raises fundamental problems of equity and tax policy. They believe it would seriously undercut the Administration's arguments for denying tax relief of other general aviation groups which have been seeking similar preferential treatment and approval would establish a precedent that could lead to a massive erosion in the sources of revenue dedicated to the public airways system.

The Department of Transportation does not object to the signing of the enrolled bill.



Staff RecommendationsCounsel's Office (Lazarus)

"Recommend approval. The principal argument advanced by Treasury Department in opposition to the bill appears to be artificial. Even cast in the guise of a "use tax" current law does impose what appears to be a substantial burden on the museum which appears to be an operation conducted in the public interest. Although tax purists might argue otherwise, this bill would not appear to be so objectionable as to warrant Presidential disapproval."

Max Friedersdorf

"Recommend approval. Bill sponsored by entire Texas congressional delegation because of Confederate Air Force. Representative Milford has called twice. Veto will cause bad reaction in Texas."

Council of Economic Advisers (Greenspan)

"The Council of Economic Advisers supports the objections of the OMB and Treasury to H.R. 10101. The bill would exempt one "aircraft museum" from the aviation fuel tax and the aircraft use tax. If Congress wishes to subsidize the presentation of World War II aircraft it would be preferable to do so directly instead of adding another "tax expenditure" loophole to the tax codes--even though the amount of revenue is small."

Bill Seidman - DisapprovalJack Marsh - DisapprovalRecommendation

I recommend that you veto H.R. 10101 because this type of subsidy for one aircraft museum is bad policy and bad precedent for others who may seek similar subsidies in the form of tax relief.

Decision

Sign H.R. 10101 at Tab B.

Veto H.R. 10101 and sign Memorandum of Disapproval at Tab C which has been cleared by Doug Smith.





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OCT 11 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 10101 - Aircraft Museums Tax  
Sponsor - Rep. Milford (D) Texas and 22 others

Last Day for Action

October 20, 1976 - Wednesday

Purpose

To exempt certain aircraft museums from Federal fuel taxes and the Federal tax on the use of civil aircraft.

Agency Recommendations

Office of Management and Budget	Disapproval
Department of the Treasury	Disapproval (Memorandum of disapproval attached)
Department of Transportation	No objection

Discussion

The enrolled bill would exempt "aircraft museums" from two air user taxes: the aviation fuel tax and the annual aircraft use tax.

The tax on fuel used in aircraft operated in noncommercial aviation currently is 7 cents a gallon. For piston engine planes, the use tax on civil aircraft is 2 cents a pound for each pound of the maximum certificated takeoff weight in excess of 2,500 pounds.

The bill would exempt from these two Federal taxes an "aircraft museum" which is 1) operated as a museum under charter by a State or the District of Columbia, 2) exempt from Federal income tax, and 3) operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II.

This definition of an aircraft museum is intended to provide relief for the "Confederate Air Force Flying Museum," at Harlingen, Texas. The Museum was created as a private nonprofit organization to maintain a collection of each type of aircraft used in World War II. Liability of the Museum for the fuel tax and aircraft use tax arises from the fact that the organization not only maintains a collection of planes but also flies them to and at exhibitions of various types. The organization apparently has found it difficult to raise enough in the way of contributions to cover increased costs. Relief from the air user tax is proposed as a means of saving the Museum some \$50,000 a year.

Two or three other small organizations might fall within the terms of the bill. Reference was made during the Ways and Means Committee hearings on this bill to the Experimental Aircraft Association of Hales Corners, Wisconsin, and a telegram from the Association's president in support of the bill was inserted in the record. It is, however, clear that this association would not qualify for tax relief under the bill, because it is not "operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II."

The major argument advanced by the proponents of this bill is that the planes of the Confederate Air Force and of similar flying aircraft museums are flown only four or five times a year and thus rarely use the expensive instrument landing, radar facilities, and other items of the public airways system, which are funded by air user taxes. These taxes, the proponents note, are a large part of the cost of maintaining and operating their vintage aircraft, which usually are flown at small private landing strips.

A similar argument is often made by noncommercial aviation organizations which charge that the taxes assessed on aviation fuel and aircraft use are far out of proportion to the use made by general aviation of the public airways system.

In its report to the House Ways and Means Committee in December 1975, the Treasury Department opposed the bill. The Department agreed that if the Museum's planes are flown only four or five times a year, the use tax is not spread over as many flying hours as in the case of a plane used a large number of days per year. However, it also noted that the aircraft use tax, like the highway use tax, is not intended to reflect the extent of use made of federally financed facilities, but is the equivalent of a standby charge for having the facilities available for use whenever needed. Other taxes, such as the fuel tax, reflect the actual use made of the facilities.

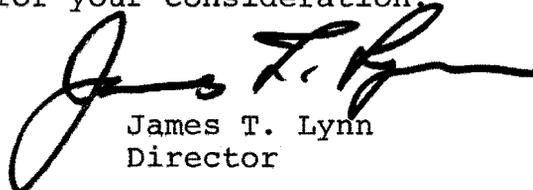
In this connection, a series of cost allocation studies by the Department of Transportation and the Federal Aviation Administration have consistently concluded that noncommercial aviation is paying a great deal less than its allocable share of airways costs.

When the air user charges were being enacted in 1970, the Congress intended these taxes to be extensive in coverage. An exemption was provided only for aircraft fuel used by State and local governments and private nonprofit schools. State and local governments and private schools pay all other taxes, including the annual aircraft use tax. Federal agencies pay all the taxes.

H.R. 10101 was voted out of the House Ways and Means Committee 14 to 10. The bill was passed by the Senate and the House without a record vote.

In our view, the enrolled bill raises fundamental problems of equity and tax policy. The bill would seriously undercut the Administration's arguments for denying tax relief to other general aviation groups which have been seeking similar preferential treatment. While the amount of tax loss in the specific case is estimated at only \$50,000, the precedent that would be established by enactment of the bill could lead to a massive erosion in the sources of revenue dedicated to the public airways system.

Accordingly, we recommend disapproval of H.R. 10101. A memorandum of disapproval, attached to the Treasury views letter, has been prepared for your consideration.

A handwritten signature in black ink, appearing to read "James T. Lynn", is written over the typed name and title.

James T. Lynn  
Director

Enclosures

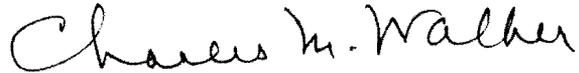


The major argument advanced in support of the proposed bill is that the planes of the museum are flown only four or five times a year and do not use the expensive instrument landing, radar facilities and other items of the airways system. The identical argument has been advanced by noncommercial aviation organizations in their opposition to the taxes on aviation fuel and aircraft use. On the other hand, a series of cost allocation studies by the Department of Transportation and the Federal Aviation Administration have consistently concluded that noncommercial aviation is paying a great deal less than its allocable share of airways costs. This is the reason for the President's recommendation earlier this year for an increase in the tax on noncommercial aviation fuel. It is true, of course, that if the museum's planes are flown only four or five times a year, the use tax is not spread over as many flying hours as in the case of a plane used a large number of days per year. However, the aircraft use tax, like the highway use tax, is not intended to reflect the extent of use made of Federally financed facilities but is the equivalent of a standby charge for having the facilities available for use whenever they are wanted. Other taxes, such as the fuel tax, then reflect use made of the facilities.

Another argument presented in support of the exemption is that it was not the intent of the Congress to have the fuel and annual use taxes apply in this type of case. While, as far as we know, the museum's situation was not discussed when the air user charges were being enacted in 1970, the Congress intended to make these taxes extensive in coverage. The taxes on aviation fuel and aircraft use, along with taxes on charges for transportation of persons and property by air, constitute a package designed to help finance the expenditures made by the Federal Government for the benefit of civil aviation, including grants for airport construction and the construction, maintenance, and operation of the airways system. In view of the fact that the air user taxes are levied to recoup expenditures for the benefit of aircraft operators and not as general revenue measures, the Congress strictly limited any exemptions. The only exemption is that for aircraft fuel used by State and local governments and private schools. The State and local governments, and the private schools, pay all the other taxes, including the annual aircraft use tax. Federal agencies pay all the taxes.

The Treasury Department believes that a user charge system should not contain exemptions for specific types of organizations. Consequently, we opposed the enactment of H.R. 10101 and we recommend that the President withhold his approval from the enrolled bill. A proposed memorandum of disapproval is enclosed.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles M. Walker".

Charles M. Walker  
Assistant Secretary

Director, Office of Management and Budget  
Attention: Assistant Director for  
Legislative Reference, Legislative  
Reference Division  
Washington, D.C. 20503

Enclosure

## MEMORANDUM OF DISAPPROVAL

I have withheld my approval from H.R. 10101, entitled "AN ACT To amend the Internal Revenue Code of 1954 to exempt certain aircraft museums from Federal fuel taxes and the Federal tax on the use of civil aircraft, and for other purposes".

The bill will exempt certain aircraft museums from the Federal tax on fuel used in noncommercial aviation and from the imposition of the use tax on civil aircraft. These taxes, together with the taxes on charges for transportation of persons and property by air, constitute a package designed to help finance the expenditures made by the Federal government for the benefit of civil aviation, including grants for airport construction and operation of the airways system.

Since the air user taxes are levied to recoup expenditures for the benefit of aircraft operators and not as general revenue measures, it is important that any exemptions from the application of the taxes be strictly limited. The only exemption under current law is that for aircraft fuel used by State and local governments and private nonprofit schools. However, State and local governments and private nonprofit schools pay all the other taxes, including the annual aircraft use tax. Federal agencies pay all the taxes.

In light of this nearly universal sharing of the costs of the airways system by the users of that system I believe that only an extraordinary circumstance justifies the granting of relief from the application of these user taxes. I do not believe that such a case has been made on behalf of this limited group of taxpayers.

The major argument advanced in support of the bill is that planes operated by the museums are flown only four or five times a year and that they do not use the expensive instrument landing, radar facilities, and other sophisticated equipment of the airways system. However, an identical argument can be made on behalf of other noncommercial users of the system who are obliged to pay these user taxes. Furthermore, that argument overlooks the rationale underlying these taxes. The aircraft use tax, like the highway use tax, is not intended to reflect the extent of use made of Federally financed facilities but is the equivalent of a standby charge for having the facilities available for use whenever they are wanted. Other taxes, such as the fuel tax, then reflect use made of the facilities.

For the above reasons, I am withholding my approval from this bill.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 12

Time: 130pm

FOR ACTION: Paul Leach *veto*  
Bill Seidman  
Alan Greenspan *veto comments*  
Bobbie Kilberg *sign*  
Robert Hartmann

cc (for information): Jack Marsh  
Ed Schmults  
Steve McConahey *afu*  
Mike Duval *veto*  
*sign comments*

FROM THE STAFF SECRETARY

DUE: Date: October 14

Time: 300pm

SUBJECT:

H.R.10001-Aircraft Museums Tax

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.  
For the President

10/12/76 - 4:00 pm  
n

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 12

Time: 130pm

FOR ACTION: Paul Leach  
Bill Seidman  
Alan Greenspan  
Bobbie Kilberg  
Robert Hartmann

cc (for information): Jack Marsh  
Ed Schmults  
Steve McConahey  
Mike Duval

Max Friedersdorf

FROM THE STAFF SECRETARY

DUE: Date: October 14

Time: 300pm

SUBJECT:

H.R.10101-Aircraft Museums Tax

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

10/12/76 - Copy sent for researching. nm

10/13/76 - Researched copy returned. nm

*V. H. message OK*  
*[Signature]*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon  
For the President

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

*Jmf/ok*

Date: October 12

*TO DJS  
10-13-76  
3:30 pm*

Time: 130pm

FOR ACTION: Paul Leach  
Bill Seidman  
Alan Greenspan  
Bobbie Kilberg  
Robert Hartmann

Max Friedersdorf

cc (for information):

Jack Marsh  
Ed Schmults  
Steve McConahey  
Mike Duval

*TO Res. 10/13 7:20 SP*

FROM THE STAFF SECRETARY

DUE: Date: October 14

Time: 300pm

SUBJECT:

H.R.10101-Aircraft Museums Tax

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

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James M. Cannon  
For the President

MEMORANDUM OF DISAPPROVAL

I have withheld my approval from H.R. 10101, entitled "AN ACT To amend the Internal Revenue Code of 1954 to exempt certain aircraft museums from Federal fuel taxes and the Federal tax on the use of civil aircraft, and for other purposes".

The bill will exempt certain aircraft museums from the Federal tax on fuel used in noncommercial aviation and from the imposition of the use tax on civil aircraft. These taxes, together with the taxes on charges for transportation of persons and property by air, constitute a package designed to help finance the expenditures made by the Federal government for the benefit of civil aviation, including grants for airport construction and operation of the airways system.

Since the air user taxes are levied to recoup expenditures for the benefit of aircraft operators and not as general revenue measures, it is important that any exemptions from the application of the taxes be strictly limited. The only exemption under current law is that for aircraft fuel used by State and local governments and private nonprofit schools. However, State and local governments and private nonprofit schools pay all the other taxes, including the annual aircraft use tax. Federal agencies pay all the taxes.

P. 44  
style  
manual

Attached  
for Lynn  
P. 3  
backlog



In light of this nearly universal sharing of the costs of the airways system by the users of that system I believe that only an extraordinary circumstance justifies the granting of relief from the application of these user taxes. I do not believe that such a case has been made on behalf of this limited group of taxpayers.

The major argument advanced in support of the bill is that planes operated by the museums are flown only four or five times a year and that they do not use the expensive instrument landing, radar facilities, and other sophisticated equipment of the airways system. However, an identical argument can be made on behalf of other noncommercial users of the system who are obliged to pay these user taxes. Furthermore, that argument overlooks the rationale underlying these taxes. The aircraft use tax, like the highway use tax, is not intended to reflect the extent of use made of federally financed facilities but is the equivalent of a standby charge for having the facilities available for use whenever they are wanted. Other taxes, such as the fuel tax, then reflect use made of the facilities.

For the above reasons, I am withholding my approval from this bill.

Attached  
P. 3  
back-up

P. 44  
style  
manual

X



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

OCT 08 1976

Dear Sir:

This is in response to your request for the views of this Department on the enrolled bill H.R. 10101. The bill would exempt aircraft museums from two of the air user taxes, that is, the taxes on aviation fuel and the annual aircraft use tax.

The tax on fuel used in aircraft operated in noncommercial aviation currently is 7 cents a gallon. For piston engine planes, the use tax on civil aircraft is \$25 plus 2 cents a pound for each pound of the maximum certification takeoff weight in excess of 2,500 pounds. For turbine engine powered planes, the tax is \$25 plus 3 1/2 cents a pound for each pound of the maximum certificated takeoff weight.

The bill defines an "aircraft museum" as an organization exempt from income tax under section 501(c)(3) of the Internal Revenue Code; operated as a museum under charter by a State or the District of Columbia; and operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II. The use tax exemption would apply when the aircraft are used in the course of the procurement, care and exhibition of aircraft.

The definition of an aircraft museum in the bill is designed to describe an organization called the "Confederate Air Force Flying Museum." (Cong. Rec., Nov. 3, 1975, pp. 39879-80). Two or three other small organizations might fall within the prescribed limits. The Confederate Air Force Museum was created as a private nonprofit organization to maintain a collection of each type of aircraft used in World War II. Liability of the museum for the fuel tax and aircraft use tax arises from the fact that the organization not only maintains a collection of planes but flies them to and at expositions of various types. Because of the general increase in costs of operation, the organization has found it difficult to raise enough in the way of contributions to cover the increased costs. Relief from the air user taxes is proposed as a means of saving the museum some \$50,000 a year.



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

OCT 8 1976

Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for this Department's comments on enrolled bill H.R. 10101,

"To amend the Internal Revenue Code of 1954 to exempt certain aircraft museums from Federal fuel taxes and the Federal tax on the use of civil aircraft, and for other purposes."

This enrolled bill would exempt from excise taxes on gasoline and special fuels and from use taxes, aircraft museums which are operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transportation in World War II.

It has been the policy of the Department of Transportation to oppose legislation which has the effect of granting exemptions from these taxes and which thereby reduces the revenues acquired for the Airport and Airway Trust Fund. The Fund provides expenditures attributable to planning and construction of airports and the acquisition and maintenance of air traffic control and air navigation systems. We have consistently maintained the position that persons who operate aircraft within the navigable airspace of the United States should pay for the establishment and maintenance of the Air Navigation System in proportion to the extent of their use. The use of fuel taxes as a revenue generating mechanism ensures that this proportional philosophy is maintained. This "pay-as-you-fly" philosophy was strongly endorsed by President Ford on his signing of the Airport and Airway Development Act Amendments of 1976, P.L. 94-353.

We recognize that aircraft museums provide the public with a unique educational opportunity and granting them an exemption under this enrolled bill will have only a limited impact on the revenues generated for the Trust Fund. For these reasons, we would not object to the signing of this enrolled bill by the President.

Sincerely,

  
William T. Coleman, Jr.

## THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 12

Time: 130pm

FOR ACTION: Paul Leach  
 Bill Seidman  
 Alan Greenspan  
 Bobbie Kilberg  
 Robert Hartmann

Max Friedersdorf

cc (for information):

Jack Marsh  
 Ed Schmults  
 Steve McConahey  
 Mike Duval

FROM THE STAFF SECRETARY

DUE: Date: October 14

Time: 300pm

SUBJECT:

H.R.10101-Aircraft Museums Tax

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

please return to judy johnston, ground floor west wing

Recommend approval. The principal argument advanced by the Treasury Department in opposition to the bill (set out in the second paragraph on page 3) appears to be artificial. Even cast in the guise of a "use tax", current law does impose what appears to be a substantial burden on the Museum which appears to be an operation conducted in the public interest. Although tax purists might argue otherwise. This bill would not appear to be so objectionable as to warrant the President's disapproval.

K. Lazarus 10/13

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. Cannon  
 For the President

THE WHITE HOUSE

N MEMORANDUM

WASHINGTON

LOG NO.:

October 12

Time: 130pm

FOR ACTION: Paul Leach  
 Bill Seidman  
 Alan Greenspan  
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 Robert Hartmann

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Jack Marsh  
 Ed Schmults  
 Steve McConahey  
 Mike Duval

Max Friedersdorf

FROM THE STAFF SECRETARY

DUE: Date: October 14

Time: 300pm

SUBJECT:

H.R.10101-Aircraft Museums Tax

ACTION REQUESTED:

- |   |   |
|---|---|
| <input type="checkbox"/> For Necessary Action         | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief     | <input type="checkbox"/> Draft Reply              |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks            |

REMARKS:

please return to judy johnston, ground floor west wing

*Recommend Approval. Bill sponsored by entire Texas Congressional delegation because of Confederate Air Force. Rep. Milford has called twice. Veto will cause bad reaction in Texas. JMF*

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James M. Cannon  
 For the President

## THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: *J.D.*

Date: October 12

Time: 130pm

FOR ACTION: Paul Leach  
 Bill Seidman  
 Alan Greenspan Max Friedersdorf,  
 Bobbie Kilberg  
 Robert Hartmann

cc (for information): Jack Marsh  
 Ed Schmults  
 Steve McConahey  
 Mike Duval

FROM THE STAFF SECRETARY

DUE: Date: October 14

Time: 300pm

SUBJECT:

H.R.10101-Aircraft Museums Tax

## ACTION REQUESTED:

For Necessary Action  For Your Recommendations  
 Prepare Agenda and Brief  Draft Reply  
 For Your Comments  Draft Remarks

## REMARKS:

please return to judy johnston, ground floor west wing

The Council of Economic Advisers supports the objectives of the OMB and Treasury to H. R. 10101. The bill would exempt one "aircraft museum" from the aviation fuel tax and the aircraft use tax. If Congress wishes to subsidize the presentation of World War II aircraft it would be preferable to do so directly instead of adding another "tax expenditure" loophole to the tax codes -- even though the amount of revenue loss is small.

*John M. Davis*  
 John M. Davis  
 Special Assistant  
 to the Chairman of CEA

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James M. Cannon  
 For the President

Date: October 12

Time: 130pm

FOR ACTION: Paul Leach  
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 Bobbie Kilberg  
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 Max Friedersdorf

FROM THE STAFF SECRETARY

DUE: Date: October 14

Time: 300pm

SUBJECT:

H.R.10101-Aircraft Museums Tax

## ACTION REQUESTED:

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~~DISAPPROVAL~~  
 RAS

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James M. Cannon  
 For the President

Date: October 12

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 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

please return to judy johnston, ground floor west wing

*Concur with OMB/Treasury  
w/ recommendations**PC2**10/13/76*PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. Cannon  
For the President

THE WHITE HOUSE

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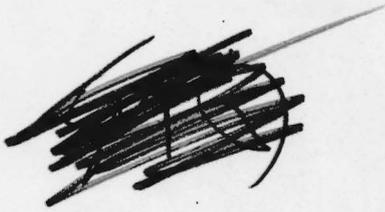
FROM THE STAFF SECRETARY

DUE: Date: October 14

Time: 300pm

SUBJECT:

H.R.10101-Aircraft Museums Tax



ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*Vets*  
*MRD*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon  
For the President

## MEMORANDUM OF DISAPPROVAL

I have withheld my approval from H.R. 10101, entitled "An Act to amend the Internal Revenue Code of 1954 to exempt certain aircraft museums from Federal fuel taxes and the Federal tax on the use of civil aircraft, and for other purposes".

The bill will exempt certain aircraft museums from the Federal tax on fuel used in noncommercial aviation and from the imposition of the use tax on civil aircraft. These taxes, together with the taxes on charges for transportation of persons and property by air, constitute a package designed to help finance the expenditures made by the Federal government for the benefit of civil aviation, including grants for airport construction and operation of the airways system.

Since the air user taxes are levied to recoup expenditures for the benefit of aircraft operators and not as general revenue measures, it is important that any exemptions from the application of the taxes be strictly limited. The only exemption under current law is that for aircraft fuel used by State and local governments and private nonprofit schools. However, State and local governments and private nonprofit schools pay all the other taxes, including the annual aircraft use tax. Federal agencies pay all the taxes.

In light of this nearly universal sharing of the costs of the airways system by the users of that system I believe that only an extraordinary circumstance justifies the granting of relief from the application of these user taxes. I do not believe that such a case has been made on behalf of this limited group of taxpayers.

The major argument advanced in support of the bill is that planes operated by the museums are flown only four or five times a year and that they do not use the expensive instrument landing, radar facilities, and other sophisticated equipment of the airways system. However, an identical argument can be made on behalf of other noncommercial users

of the system who are obliged to pay these user taxes. Furthermore, that argument overlooks the rationale underlying these taxes. The aircraft use tax, like the highway use tax, is not intended to reflect the extent of use made of federally financed facilities but is the equivalent of a standby charge for having the facilities available for use whenever they are wanted. Other taxes, such as the fuel tax, then reflect use made of the facilities.

For the above reasons, I am withholding my approval from this bill.

THE WHITE HOUSE,

## MEMORANDUM OF DISAPPROVAL

I have withheld my approval from H. R. 10101, entitled "AN ACT To amend the Internal Revenue Code of 1954 to exempt certain aircraft museums from Federal fuel taxes and the Federal tax on the use of civil aircraft, and for other purposes".

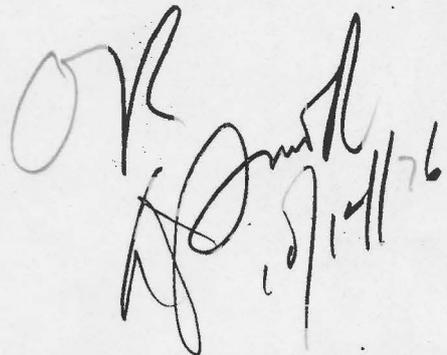
The bill will exempt certain aircraft museums from the Federal tax on fuel used in noncommercial aviation and from the imposition of the use tax on civil aircraft. These taxes, together with the taxes on charges for transportation of persons and property by air, constitute a package designed to help finance the expenditures made by the Federal government for the benefit of civil aviation, including grants for airport construction and operation of the airways system.

Since the air user taxes are levied to recoup expenditures for the benefit of aircraft operators and not as general revenue measures, it is important that any exemptions from the application of the taxes be strictly limited. The only exemption under current law is that for aircraft fuel used by State and local governments and private nonprofit schools. However, State and local governments and private nonprofit schools pay all the other taxes, including the annual aircraft use tax. Federal agencies pay all the taxes.

In light of this nearly universal sharing of the costs of the airways system by the users of that system I believe that only an extraordinary circumstance justifies the granting of relief from the application of these user taxes. I do not believe that such a case has been made on behalf of this limited group of taxpayers.

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A handwritten signature in dark ink, appearing to be "O. R. Smith", is written over the date "10/14/76". The signature is cursive and somewhat stylized.

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For the above reasons, I am withholding my approval from this bill.

THE WHITE HOUSE,

## EXEMPTION FROM FUEL AND AIRCRAFT USE EXCISE TAXES FOR CERTAIN AIRCRAFT MUSEUMS

JULY 22, 1976.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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

### REPORT

[To accompany H.R. 10101]

The Committee on Ways and Means, to whom was referred the bill (H.R. 10101) to amend the Internal Revenue Code of 1954 to exempt certain aircraft museums from Federal fuel taxes and the Federal tax on the use of civil aircraft, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 1, line 6, strike out "immediately".

Page 2, strike out line 1 and all that follows down through line 4 and insert:

"(1) EXEMPTION.—Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this section on any liquid sold for use or used by an aircraft museum in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in paragraph (2)(C).

Page 2, line 5, strike out "The" and insert "For purposes of this subsection, the".

Page 2, line 7, strike out "501(c)(7)" and insert "501(c)(3)".

Page 2, strike out line 14 and all that follows down through line 19 on page 5 and insert:

(b) Section 6427 of such Code (relating to fuels not used for taxable purposes) is amended by redesignating subsections (d) through (h) as subsections (e) through (i), respectively, and by inserting after subsection (c) the following new subsection:

"(d) USE BY CERTAIN AIRCRAFT MUSEUMS.—Except as provided in subsection (g), if—

“(1) any gasoline on which tax was imposed by section 4081, or

“(2) any fuel on the sale of which tax was imposed under section 4041,

is used by an aircraft museum (as defined in section 4041(h)(2)) in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in section 4041(h)(2)(C), the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline or fuel an amount equal to the aggregate amount of the tax imposed on such gasoline or fuel.”

(c)(1) Subsections (a)(4) and (c) of section 39 of such Code are each amended by striking out “6427(f)” and inserting in lieu thereof “6427(g)”.

(2) Subsections (a), (b)(1), and (c) of section 6427 of such Code are each amended by striking out “(f)” and inserting in lieu thereof “(g)”.

(3) Subsection (e)(1) of such section 6427, as redesignated, is amended by striking out “(a), (b), or (c)” and inserting in lieu thereof “(a), (b), (c), or (d)”.

(4) Subsection (e)(2) of such section 6427, as redesignated, is amended by striking out “(a) and (b)” and inserting in lieu thereof “(a), (b), and (d)”.

(5) Subsection (g)(2) of such section 6427, as redesignated, is amended by striking out “(d)(2)” and inserting in lieu thereof “(e)(2)”.

(6) Sections 7210, 7603, 7604(b), and 7605(a) of such Code are each amended by striking out “6427(e)(2)” each place it appears and inserting in lieu thereof “6427(f)(2)”.

(d) The amendments made by this section shall take effect on October 1, 1976.

SEC. 2. (a) Subsection (a) of section 4492 of the Internal Revenue Code of 1954 (defining taxable civil aircraft for purposes of the tax on the use of civil aircraft) is amended by adding at the end thereof the following new sentence: “Such term does not include any aircraft owned by an aircraft museum (as defined in section 4041(h)(2)) and used exclusively for purposes set forth in section 4041(h)(2)(C).”

(b) The amendment made by subsection (a) shall take effect on July 1, 1976.

## I. SUMMARY

The bill exempts aircraft museums from the manufacturers and retailers taxes on gasoline and special fuels used for the museums', aircraft and also from the aircraft use tax on the museums' aircraft.

## II. GENERAL STATEMENT

### I. Exemption From Fuel Taxes (first sec. of the bill and secs. 4041 and 6427 of the Code)

#### *Present law*

Under present law (secs. 4041 and 4081) gasoline and special fuels used in noncommercial aviation, including use by aircraft museums, are subject to manufacturers and retailers excise taxes totalling 7 cents per gallon of gasoline or special fuel.<sup>1</sup> Exemptions from the gasoline and special fuels taxes are provided where the aircraft is used by commercial airlines, for farming, in foreign trade, by a State or local government, or by a nonprofit educational organization.<sup>2</sup>

Present law provides mechanisms for credits or refunds of these taxes—

(1) if the gasoline or special fuel is used by an exempt user (sec. 6416);

(2) in the case of the manufacturer's excise tax, if the gasoline is used in commercial aviation (sec. 6421(a)); and

(3) in the case of the retailers' excise taxes, if the special fuels or gasoline is used for a nontaxable purpose (sec. 6427).

The revenues from these taxes (less the credits or refunds described above) go to the Airport and Airway Trust Fund (through June 30, 1980).

#### *Reasons for change*

Several “flying aircraft museums” operate in the United States. They maintain and operate vintage airplanes either at fixed locations or at displays and airshows in various parts of the country. The aircraft are flown a limited number of times each year. The flying aircraft museums, which are exempt from income taxes,<sup>3</sup> are generally funded largely by membership dues and outside contributions.

A considerable part of the expense of maintaining and operating these aircraft museums consists of Federal fuels excise taxes and aircraft use taxes, despite the fact that these types of aircraft make only limited, or no use, of aircraft aids, such as radar and instrument land-

<sup>1</sup> Under schedules in present law, on July 1, 1980, the manufacturers tax on gasoline is to be 1½ cents per gallon and the retailers taxes on gasoline and special fuels for noncommercial aviation are to expire.

<sup>2</sup> An educational organization for these purposes is, in general, one which maintains a faculty and curriculum to conduct on-site educational activities.

<sup>3</sup> Although these organizations are educational organizations, they do not maintain faculties and curricula to conduct on-site educational activities, and so do not qualify under present law for fuels taxes exemptions. See footnote 2, above.

ing systems, provided by the Federal Government and funded through the fuels and aircraft use taxes. Your committee concluded that these flying aircraft museums should be exempt from the fuel taxes (and, as described below under item 2, from the aircraft use tax).

*Explanation of provision*

The bill provides an exemption from taxes on fuel in the case of aircraft museums.

Under the bill, the retailers excise tax is not to apply to gasoline or special fuels sold for use or used by an aircraft museum. Registration procedures are authorized so that the museums will be able to purchase these fuels free of the retailers taxes. Refund procedures are provided for the manufacturers excise tax on gasoline and for any retailers taxes that may have been paid on these fuels. Such refunds are to be paid, without interest, in amounts equal to the aggregate of the manufacturers and retailers excise taxes that have been paid on these fuels.

In order to qualify as an "aircraft museum" under these provisions, the organization must be exempt from income tax as an organization described in section 501(c)(3) (relating to educational, etc., organizations). Also, the organization must be operated as a museum under State (or District of Columbia) charter and must be operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II.

For the exemption or refund to be available, the fuel must be used in an aircraft or vehicle (such as a ground servicing vehicle for aircraft) which is owned by an aircraft museum and is used exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II.

*Effective date*

The exemption and refund provisions apply to fuel sold or used on or after October 1, 1976.

**2. Exemption From Aircraft Use Tax (sec. 2 of the bill and sec. 4492 of the Code)**

*Present law*

Present law imposes an annual excise tax upon the use of civil aircraft (through June 30, 1980). This tax under sec. 4491) is based largely upon the weight of the aircraft.<sup>4</sup>

This annual use tax represents an "entry fee" to be paid each year that the aircraft uses the system (i.e., flies in the navigable air space of the United States). The amount of the tax does not depend upon the number or length of the flights. If the aircraft is flown once during the month of July, the entire year's tax must be paid. Lesser, prorated amounts are required to be paid if the first use occurs later in the year.

Your committee understands that the annual tax in the case of a B-29 (the "flying fortress" bomber used in World War II) is more than \$13,000.

<sup>4</sup> The annual tax rate is \$25, plus 2 cents per pound of takeoff weight over 2,500 pounds in the case of a nonturbine-powered aircraft, and 3½ cents per pound in the case of a turbine-powered aircraft.

As in the case of the fuels taxes described above, the revenues from this aircraft use tax go to the Airport and Airway Trust Fund (through June 30, 1980).

*Reasons for change*

For the reasons described above in connection with the fuel taxes, your committee has concluded that these flying aircraft museums should be exempt from the annual aircraft use tax.

*Explanation of provision*

The bill provides that an aircraft owned by an aircraft museum (described above, in the discussion regarding fuels taxes) is not subject to the aircraft use tax, so long as it is used exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II. Any use of the aircraft other than in carrying out these purposes is a taxable use, which subjects the aircraft to the aircraft use tax as though that taxable use were the first use during the year.

*Effective date*

This exemption from the aircraft use tax takes effect on July 1, 1976. If a tax has already been incurred with respect to a particular aircraft because of one or more uses that are taxable under present law but that are made exempt by this bill, then (1) if the tax has not yet been paid, it is to be abated, and (2) if the tax has been paid, it is to constitute an overpayment which is to be refunded by the Treasury Department.

**III. EFFECT OF THE BILL ON THE REVENUES AND VOTE OF THE COMMITTEE IN REPORTING THE BILL**

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made relative to the effect of this bill on the revenues. Your committee estimates that this bill will result in a revenue loss of about \$50,000 per year. The Treasury Department agrees with this statement.

In compliance with clause 2(1)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the committee on the motion to report the bill. This bill, as amended, was ordered reported by a show-of-hands vote of 14 to 10.

**IV. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER HOUSE RULES**

In compliance with clause 2(1)(3) of Rule XI of the Rules of the House of Representatives, the following statements are made:

With respect to subdivision (A), relating to oversight findings, it was as a result of your committee's oversight activity concerning the impact of the gasoline and special fuels taxes and the aircraft use tax on aircraft museums that the committee concluded that the provisions

of this bill are appropriate so as to facilitate the educational activities of such organizations.

With respect to subdivision (B), after consultation with the Director of the Congressional Budget Office, your committee states that the changes made to existing law by this bill involve no new budget authority or new or increased tax expenditures.

With respect to subdivision (C), the Director of the Congressional Budget Office has not made an estimate or comparison of the estimates of the cost of H.R. 10101, but has examined the committee's estimates and agrees with the methods and the dollar estimates resulting therefrom.

With respect to subdivision (D), your committee advises that no oversight findings or recommendations have been submitted to your committee by the Committee on Government Operations with respect to the subject matter of H.R. 10101.

In compliance with clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, your committee states that the enactment of this bill is not expected to have an inflationary impact on prices and costs in the operation of the national economy.

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

In compliance with clause 3 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 (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) :

### INTERNAL REVENUE CODE OF 1954

\* \* \* \* \*

#### Subtitle A—Income Taxes

\* \* \* \* \*

#### CHAPTER 1—NORMAL TAXES AND SURTAXES

\* \* \* \* \*

#### Subchapter A—Determination of Tax Liability

\* \* \* \* \*

#### PART IV—CREDITS AGAINST TAX

\* \* \* \* \*

#### Subpart A—Credits Allowable

\* \* \* \* \*

#### SEC. 39. CERTAIN USES OF GASOLINE, SPECIAL FUELS, AND LUBRICATING OIL.

(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer—

(1) under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes (determined without regard to section 6420(h)),

(2) under section 6421 with respect to gasoline used during the taxable year (A) otherwise than as a fuel in a highway vehicle or (B) in vehicles while engaged in furnishing certain public passenger land transportation service (determined without regard to section 6421(i)),

(3) under section 6424 with respect to lubricating oil used during the taxable year otherwise than in a highway motor vehicle (determined without regard to section 6424(g)), and

(4) under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(f) 6427(g)).

(b) TRANSITIONAL RULES.—For purposes of paragraphs (1) and (2) of subsection (a), a taxpayer's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year. For purposes of paragraph (3) of subsection (a), a taxpayer's first taxable year beginning after December 31, 1965, shall include the period after December 31, 1965, and before the beginning of such first taxable year.

(c) EXCEPTION.—Credit shall not be allowed under subsection (a) for any amount payable under section 6421, 6424, or 6427, if a claim for such amount is timely filed, and under section 6421(i), 6424(g), or 6427(f) 6427(g) is payable, under such section.

\* \* \* \* \*

**Subtitle D—Miscellaneous Excise Taxes**

\* \* \* \* \*

**CHAPTER 31—RETAILERS EXCISE TAXES**

\* \* \* \* \*

**Subchapter E—Special Fuels**

\* \* \* \* \*

**SEC. 4041. IMPOSITION OF TAX.**

(a) DIESEL FUEL.—There is hereby imposed a tax of 4 cents a gallon upon any liquid (other than any product taxable under section 4081)—

(1) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle; or

(2) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid under paragraph (1).

In the case of a liquid taxable under this subsection sold for use or used as a fuel in a diesel-powered highway vehicle (A) which (at the time of such sale or use) is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a diesel-powered highway vehicle owned by the United States, is not used on the highway, the tax imposed by paragraph (1) or by paragraph (2) shall be 2 cents a gallon. If a liquid on which tax was imposed by paragraph (1) at the rate of 2 cents a gallon by reason of the preceding sentence is used as a fuel in a diesel-powered highway vehicle (A) which (at the time of such use) is registered, or is required to be registered, for highway

use under the laws of any State or foreign country, or (B) which, in the case of a diesel-powered highway vehicle owned by the United States, is used on the highway, a tax of 2 cents a gallon shall be imposed under paragraph (2).

(b) SPECIAL MOTOR FUELS.—There is hereby imposed a tax of 4 cents a gallon upon benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081 or subsection (a) of this section)—

(1) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat; or

(2) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under paragraph (1).

In the case of a liquid taxable under this subsection sold for use or used otherwise than as a fuel in a highway vehicle (A) which (at the time of such sale or use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway, the tax imposed by paragraph (1) or by paragraph (2) shall be 2 cents a gallon. If a liquid on which tax was imposed by paragraph (1) at the rate of 2 cents a gallon by reason of the preceding sentence is used as a fuel in a highway vehicle (A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway, a tax of 2 cents a gallon shall be imposed under paragraph (2).

(c) NONCOMMERCIAL AVIATION.—

(1) IN GENERAL.—There is hereby imposed a tax of 7 cents a gallon upon any liquid (other than any product taxable under section 4081)—

(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in non-commercial aviation; or

(B) used by any person as a fuel in an aircraft in non-commercial aviation, unless there was a taxable sale of such liquid under this section.

(2) GASOLINE.—There is hereby imposed a tax (at the rate specified in paragraph (3)) upon any product taxable under section 4081—

(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in non-commercial aviation; or

(B) used by any person as a fuel in an aircraft in non-commercial aviation, unless there was a taxable sale of such product under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed under section 4081.

(3) **RATE OF TAX.**—The rate of tax imposed by paragraph (2) is as follows:

3 cents a gallon for a period ending September 30, 1979; and  
5½ cents a gallon for the period after September 30, 1979.

(4) **DEFINITION OF NONCOMMERCIAL AVIATION.**—For purposes of this chapter, the term “noncommercial aviation” means any use of an aircraft, other than use in a business of transporting persons or property for compensation or hire by air. The term also includes any use of any aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282.

(5) **TERMINATION.**—On and after July 1, 1980, the taxes imposed by paragraphs (1) and (2) shall not apply.

(d) **ADDITIONAL TAX.**—If a liquid on which tax was imposed on the sale thereof is taxable at a higher rate under subsection (c) (1) of this section on the use thereof, there is hereby imposed a tax equal to the difference between the tax so imposed and the tax payable at such higher rate.

(e) **RATE REDUCTION.**—On and after October 1, 1979—

(1) the taxes imposed by subsections (a) and (b) shall be 1½ cents a gallon, and

(2) the second and third sentences of subsections (a) and (b) shall not apply.

(f) **EXEMPTION FOR FARM USE.**—

(1) **EXEMPTION.**—Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes.

(2) **USE ON A FARM FOR FARMING PURPOSES.**—For purposes of paragraph (1) of this subsection, use on a farm for farming purposes shall be determined in accordance with paragraphs (1), (2), and (3) of section 6420(c).

(g) **EXEMPTION FOR USE AS SUPPLIES FOR VESSELS.**—Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this section on any liquid sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d) (3)).

(h) **EXEMPTION FOR USE BY CERTAIN AIRCRAFT MUSEUMS.**—

(1) **EXEMPTION.**—Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this section on any liquid sold for use or used by an aircraft museum in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in paragraph (2) (C).

(2) **DEFINITION OF AIRCRAFT MUSEUM.**—For purposes of this subsection, the term “aircraft museum” means an organization—

(A) described in section 501(c) (3) which is exempt from income tax under section 501(a),

(B) operated as a museum under charter by a State or the District of Columbia, and

(C) operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II.

[(h)] (i) **REGISTRATION.**—If any liquid is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this section that a tax imposed by this section applies to the sale of such liquid unless the purchaser is registered in such manner (and furnishes such information in respect of the use of the liquid) as the Secretary or his delegate shall by regulations provide.

## CHAPTER 36—CERTAIN OTHER EXCISE TAXES

### Subchapter E—Tax on Use of Civil Aircraft

#### SEC. 4492. DEFINITIONS.

(a) **TAXABLE CIVIL AIRCRAFT.**—For purposes of this subchapter, the term “taxable civil aircraft” means any engine driven aircraft—

(1) registered, or required to be registered, under section 501 (a) of the Federal Aviation Act of 1958 (49 U.S.C., sec. 1401(a)), or

(2) which is not described in paragraph (1) but which is owned by or for a United States person.

*Such term does not include any aircraft owned by an aircraft museum (as defined in section 4041(h) (2)) and used exclusively for purposes set forth in section 4041(h) (2) (C).*

(b) **WEIGHT.**—For purposes of this subchapter, the term “maximum certificated takeoff weight” means the maximum such weight contained in the type certificate or airworthiness certificate.

(c) **OTHER DEFINITIONS.**—For purposes of this subchapter—

(1) **YEAR.**—The term “year” means the one-year period beginning on July 1.

(2) **USE.**—The term “use” means use in the navigable airspace of the United States.

(3) **NAVIGABLE AIRSPACE OF THE UNITED STATES.**—The term “navigable airspace of the United States” has the definition given to such term by section 101(24) of the Federal Aviation Act of 1958 (49 U.S.C., sec. 1301(24)), except that such term does not include the navigable airspace of the Commonwealth of Puerto Rico or of any possession of the United States.

## Subtitle F—Procedure and Administration

## CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

## Subchapter B—Rules of Special Application

### SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) **NONTAXABLE USES.**—Except as provided in subsection [(f)] (g), if tax has been imposed under section 4041(a), (b), or (c) on the sale of any fuel and, after June 30, 1970, the purchaser uses such fuel other than for the use for which sold, or resells such fuel, the Secretary or his delegate shall pay (without interest) to him an amount equal to—

(1) the amount of tax imposed on the sale of the fuel to him, reduced by

(2) if he uses the fuel, the amount of tax which would have been imposed under section 4041 on such use if no tax under section 4041 had been imposed on the sale of the fuel.

#### (b) LOCAL TRANSIT SYSTEMS.—

(1) **ALLOWANCE.**—Except as provided in subsection [(f)] (g) if any fuel on the sale of which tax was imposed under section 4041(a) or (b) is, after June 30, 1970, used by the purchaser during any calendar quarter in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes, the Secretary or his delegate shall, subject to the provisions of paragraph (2), pay (without interest) to the purchaser the amount determined by multiplying—

(A) 2 cents for each gallon of fuel so used on which tax was imposed at the rate of 4 cents a gallon, by

(B) the percentage which the purchaser's commuter fare revenue (as defined in section 6421(d)(2)) derived from such scheduled service during the quarter was of his total passenger fare revenue derived from such scheduled service during the quarter.

(2) **LIMITATION.**—Paragraph (1) shall apply in respect of fuel used during any calendar quarter only if at least 60 percent of the total passenger fare revenue derived during the quarter from scheduled service described in paragraph (1) by the purchaser was attributable to commuter fare revenue derived during the quarter by the purchaser from such scheduled service.

(c) **USE FOR FARMING PURPOSES.**—Except as provided in subsection [(f)] (g), if any fuel on the sale of which tax was imposed under section 4041(a), (b), or (c) is, after June 30, 1970, used on a farm for farming purposes (within the meaning of section 6420(c)), the Secretary or his delegate shall pay (without interest) to the purchaser an amount equal to the amount of the tax imposed on the sale of the fuel. For purposes of this subsection, if fuel is used on a farm by any person other than the owner, tenant, or operator of such farm, such owner, tenant, or operator shall be treated as the user and purchaser of such fuel.

(d) **USE BY CERTAIN AIRCRAFT MUSEUMS.**—Except as provided in subsection (g), if—

(1) any gasoline on which tax was imposed by section 4081, or

(2) any fuel on the sale of which tax was imposed under section 4041,

is used by an aircraft museum (as defined in section 4041(h)(2)) in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in section 4041(h)(2)(C), the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline or fuel an amount equal to the aggregate amount of the tax imposed on such gasoline or fuel.

#### [(d)] (e) TIME FOR FILING CLAIMS; PERIOD COVERED.—

(1) **GENERAL RULE.**—Except as provided in paragraph (2), not more than one claim may be filed under subsection (a), (b), [(or)] (c), or (d) by any person with respect to fuel used during his taxable year; and no claim shall be allowed under this paragraph with respect to fuel used during any taxable year unless filed by the purchaser not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A.

(2) **EXCEPTION.**—If \$1,000 or more is payable under subsections [(a) and (b)] (a), (b), and (d) to any person with respect to fuel used during any of the first three quarters of his taxable year, a claim may be filed under this section by the purchaser with respect to fuel used during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.

#### [(e)] (f) APPLICABLE LAWS.—

(1) **IN GENERAL.**—All provisions of law, including penalties, applicable in respect of the taxes imposed by section 4041 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) **EXAMINATION OF BOOKS AND WITNESSES.**—For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary or his delegate shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

#### [(f)] (g) INCOME TAX CREDIT IN LIEU OF PAYMENT.—

(1) **PERSONS NOT SUBJECT TO INCOME TAX.**—Payment shall be made under this section only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) **EXCEPTION.**—Paragraph (1) shall not apply to a payment of a claim filed under subsection [(d)(2)] (e)(2).

(3) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—

For allowances of credit against the income tax imposed by subtitle A for fuel used or resold by the purchaser, see section 39.

[(g)] (h) REGULATIONS.—The Secretary or his delegate may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

[(h)] (i) CROSS REFERENCES.—

(1) For civil penalty for excessive claims under this section, see section 6675.

(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

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**CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES**

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**Subchapter A—Crimes**

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**PART I—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 7210. FAILURE TO OBEY SUMMONS.**

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420(e)(2), 6421(f)(2), 6424(d)(2), [6427(e)(2)] 6427(f)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

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**CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE**

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**Subchapter A—Examination and Inspection**

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**SEC. 7603. SERVICE OF SUMMONS.**

A summons issued under section 6420(e)(2), 6421(f)(2), 6424(d)(2), [6427(e)(2)] 6427(f)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and

the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

**SEC. 7604. ENFORCEMENT OF SUMMONS.**

(a) JURISDICTION OF DISTRICT COURT.—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) ENFORCEMENT.—Whenever any person summoned under section 6420(e)(2), 6421(f)(2), 6424(d)(2), [6427(e)(2)] 6427(f)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary or his delegate may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(c) CROSS REFERENCES.—

(1) Authority to issue orders, processes, and judgments.—

For authority of district courts generally to enforce the provisions of this title, see section 7402.

(2) Penalties.—

For penalties applicable to violation of section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(e)(2), or 7602, see section 7210.

**SEC. 7605. TIME AND PLACE OF EXAMINATION.**

(a) TIME AND PLACE.—The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421(f)(2), 6424(d)(2), [6427(e)(2)] 6427(f)(2), or 7602 shall be such time and place as may be fixed by the Secretary or his delegate and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2), 6421(f)(2), 6424(d)(2), or [6427(e)(2)] 6427(f)(2), the date fixed for appearance before the Secretary or his delegate shall not be less than 10 days from the date of the summons.

(b) RESTRICTIONS ON EXAMINATION OF TAXPAYER.—No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary or his delegate, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

(c) **RESTRICTION ON EXAMINATION OF CHURCHES.**—No examination of the books of account of a church or convention or association of churches shall be made to determine whether such organization may be engaged in the carrying on of an unrelated trade or business or may be otherwise engaged in activities which may be subject to tax under part III of subchapter F of chapter 1 of this title (sec. 511 and following, relating to taxation of business income of exempt organizations) unless the Secretary or his delegate (such officer being no lower than a principal internal revenue officer for an internal revenue region) believes that such organization may be so engaged and so notifies the organization in advance of the examination. No examination of the religious activities of such an organization shall be made except to the extent necessary to determine whether such organization is a church or a convention or association of churches, and no examination of the books of account of such an organization shall be made other than to the extent necessary to determine the amount of tax imposed by this title.

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# Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,  
one thousand nine hundred and seventy-six*

## An Act

To amend the Internal Revenue Code of 1954 to exempt certain aircraft museums from Federal fuel taxes and the Federal tax on the use of civil aircraft, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) section 4041 of the Internal Revenue Code of 1954 (relating to tax on special fuels) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) EXEMPTION FOR USE BY CERTAIN AIRCRAFT MUSEUMS.—

“(1) EXEMPTION.—Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this section on any liquid sold for use or used by an aircraft museum in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in paragraph (2) (C).

“(2) DEFINITION OF AIRCRAFT MUSEUM.—For purposes of this subsection, the term ‘aircraft’ means an organization—

“(A) described in section 501 (c) (3) which is exempt from income tax under section 501 (a),

“(B) operated as a museum under charter by a State or the District of Columbia, and

“(C) operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II.”

(b) Section 6427 of such Code (relating to fuels not used for taxable purposes) is amended by redesignating subsections (d) through (h) as subsections (e) through (i), respectively, and by inserting after subsection (c) the following new subsection:

“(d) USE BY CERTAIN AIRCRAFT MUSEUMS.—Except as provided in subsection (g), if—

“(1) any gasoline on which tax was imposed by section 4081, or

“(2) any fuel on the sale of which tax was imposed under section 4041,

is used by an aircraft museum (as defined in section 4041 (h) (2)) in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in section 4041 (h) (2) (C), the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline or fuel an amount equal to the aggregate amount of the tax imposed on such gasoline or fuel.”

(c) (1) Subsections (a) (4) and (c) of section 39 of such Code are each amended by striking out “6427 (f)” and inserting in lieu thereof “6427 (g)”.

(2) Subsections (a), (b) (1), and (c) of section 6427 of such Code are each amended by striking out “(f)” and inserting in lieu thereof “(g)”.

(3) Subsection (e) (1) of such section 6427, as redesignated, is amended by striking out “(a), (b), or (c)” and inserting in lieu thereof “(a), (b), (c), or (d)”.

(4) Subsection (e) (2) of such section 6427, as redesignated, is amended by striking out “(a) and (b)” and inserting in lieu thereof “(a), (b), and (d)”.

## H. R. 10101—2

(5) Subsection (g)(2) of such section 6427, as redesignated, is amended by striking out “(d)(2)” and inserting in lieu thereof “(e)(2)”.

(6) Sections 7210, 7603, 7604(b), and 7605(a) of such Code are each amended by striking out “6427(e)(2)” each place it appears and inserting in lieu thereof “6427(f)(2)”.

(d) The amendments made by this section shall take effect on October 1, 1976.

Sec. 2. (a) Subsection (a) of section 4492 of the Internal Revenue Code of 1954 (defining taxable civil aircraft for purposes of the tax on the use of civil aircraft) is amended by adding at the end thereof the following new sentence: “Such term does not include any aircraft owned by an aircraft museum (as defined in section 4041(h)(2)) and used exclusively for purposes set forth in section 4041(h)(2)(C).”

(b) The amendment made by subsection (a) shall take effect on July 1, 1976.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*