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REPORT
118–105

TO PROVIDE FOR THE EXTENSION OF TAXES FUNDING THE AIRPORT AND AIRWAY TRUST FUND AND TO REQUIRE THE DESIGNATION OF CERTAIN AIRPORTS AS PORTS OF ENTRY

JUNE 12, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. SMITH of Missouri, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3796]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3796) to provide for the extension of taxes funding the Airport and Airway Trust Fund and to require the designation of certain airports as ports of entry, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. EXTENSION OF TAXES FUNDING AIRPORT AND AIRWAYS TRUST FUND.

(a) FUEL TAXES.—Section 4081(d)(2)(B) of the Internal Revenue Code of 1986 is amended by striking "September 30, 2023" and inserting "September 30, 2028".

(b) TICKET TAXES.—

(1) PERSONS.—Section 4261(k)(1)(A)(ii) of such Code is amended by striking "September 30, 2023" and inserting "September 30, 2028".

(2) PROPERTY.—Section 4271(d)(1)(A)(ii) of such Code is amended by striking "September 30, 2023" and inserting "September 30, 2028".

(c) FRACTIONAL OWNERSHIP PROGRAMS.—

(1) FUEL TAX.—Section 4043(d) of such Code is amended by striking "September 30, 2023" and inserting "September 30, 2028".

(2) TREATMENT AS NONCOMMERCIAL AVIATION.—Section 4083(b) of such Code is amended by striking "October 1, 2023" and inserting "October 1, 2028".

(3) EXEMPTION FROM TICKET TAX.—Section 4261(j) of such Code is amended by striking "September 30, 2023" and inserting "September 30, 2028".

SEC. 2. DESIGNATION OF CERTAIN AIRPORTS AS PORTS OF ENTRY.

(a) IN GENERAL.—The President shall—

(1) pursuant to the Act of August 1, 1914 (38 Stat. 623, chapter 223; 19 U.S.C. 2), designate each airport described in subsection (b) as a port of entry; and

(2) terminate the application of the user fee requirement under section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b) with respect to the airport.

(b) AIRPORTS DESCRIBED.—An airport described in this subsection is an airport that—

(1) is a primary airport (as defined in section 47102 of title 49, United States Code);

(2) is located not more than 30 miles from the northern or southern international land border of the United States;

(3) is associated, through a formal, legal instrument, including a valid contract or governmental ordinance, with a land border crossing or a seaport not more than 30 miles from the airport; and

(4) through such association, meets the numerical criteria considered by U.S. Customs and Border Protection for establishing a port of entry, as set forth in—

(A) Treasury Decision 82–37 (47 Fed. Reg. 10137; relating to revision of customs criteria for establishing ports of entry and stations), as revised by Treasury Decisions 86–14 (51 Fed. Reg. 4559) and 87–65 (52 Fed. Reg. 16328); or

(B) any successor guidance or regulation.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

Section 1 of H.R. 3796, "Extension of taxes funding Airport and Airway Trust Fund," as ordered reported by the Committee on Ways and Means on June 7, 2023, extends the expiring excise taxes funding the Airport and Airway Trust Fund, at their current rates, through September 30, 2028.

Section 2 of H.R. 3796 requires the President to designate certain primary, commercial service airports as ports of entry if they are within 30 miles from the international land border of the United

States, and meet the numerical criteria established by U.S. Customs and Border Protection (CBP) for establishing a port of entry, while terminating the application of the user fee requirement for airports that receive this designation.

B. Background and Need for Legislation

The Airport and Airway Trust Fund is the primary source of funding for Federal aviation programs. The taxes that support the trust fund are currently set to expire after September 30, 2023.

Under present law, CBP has discretion whether to designate any airport a port of entry pursuant to 19 U.S.C. § 1644a. In its regulations, CBP has established certain numerical criteria for determining whether to designate an airport as a port of entry. However, even if an airport meets these criteria, the designation decision is up to agency discretion.

U.S. CBP already has discretion to designate any airport a port of entry if it meets these criteria. This section of H.R. 3796 would simply remove discretion and require the designation for any qualifying airports.

C. Legislative History

Background

H.R. 3796 was introduced on June 5, 2023, and was referred to the Committee on Ways and Means.

Committee hearings

On May 9, 2023, the Committee held a "Field Hearing on Trade in America: Securing Supply Chains and Protecting the American Worker—Staten Island."

On May 25, 2023, the Trade Subcommittee held a "Hearing on Modernizing Customs Policies to Protect American Workers and Secure Supply Chains."

Committee action

The Committee on Ways and Means marked up H.R. 3796, "To provide for the extension of taxes funding the Airport and Airway Trust Fund and to require the designation of certain airports as ports of entry," on June 7, 2023, and ordered the bill, as amended, favorably reported (with a quorum being present).

D. Committee History

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to develop and consider H.R. 3796:

On May 9, 2023, the Committee held a "Field Hearing on Trade in America: Securing Supply Chains and Protecting the American Worker—Staten Island."

On May 25, 2023, the Trade Subcommittee held a "Hearing on Modernizing Customs Policies to Protect American Workers and Secure Supply Chains."

II. EXPLANATION OF THE BILL

A. EXTENSION OF TAXES FUNDING AIRPORT AND AIRWAY TRUST FUND (SEC. 1 OF H.R. 3796 AND SECS. 4043, 4081, 4083, 4261, AND 4271 OF THE CODE)

PRESENT LAW

Revenues dedicated to the Airport and Airway Trust Fund

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

Tax (and Code section)	Tax Rates
a. Domestic air passengers (sec. 4261)	7.5 percent of fare, plus $4.80 (2023) per domestic flight segment generally[2]
b. International air passengers (sec. 4261)	$21.10 (2023) per arrival or departure[3]
c. Amounts paid for right to award free or reduced rate passenger air transportation (sec. 4261).	7.5 percent of amount paid
d. Air cargo (freight) transportation (sec. 4271)	6.25 percent of amount charged for domestic transportation; no tax on international cargo transportation
e. Aviation fuels (sec. 4081):[4]	
i. Commercial aviation	4.3 cents per gallon
ii. Non-commercial (general) aviation:	
Aviation gasoline	19.3 cents per gallon
Jet fuel	21.8 cents per gallon
f. Surtax on fuel used in fractional ownership program aircraft (sec. 4043).	14.1 cents per gallon

The Airport and Airway Trust Fund excise taxes (except for 4.3 cents per gallon of the taxes on aviation fuels) are scheduled to expire after September 30, 2023. The 4.3-cents-per-gallon fuels tax rate is permanent.

REASONS FOR CHANGE

The Committee notes that the Airport and Airway Trust Fund excise taxes provide crucial revenue for funding the maintenance and operations of U.S. airports. The Committee believes that the extension of these taxes is necessary to keep the country's airports

[1] Air transportation through U.S. airspace that neither lands in nor takes off from a point in the United States (or the 225-mile zone) is exempt from the aviation excise taxes, but the transportation provider is subject to certain "overflight fees" imposed by the FAA pursuant to Congressional authorization. The term "225-mile zone" refers to the portion of Canada and Mexico that is not more than 225 miles from the nearest point in the continental United States. Sec. 4262(c)(2).

[2] A segment consists of a single takeoff and a single landing which is taxable transportation. The domestic flight segment portion of the tax is adjusted annually for inflation (effective each January 1). Sec. 3.45 of Rev. Proc. 2022 38, 2022 45 I.R.B. 445.

[3] The international arrival and departure tax rate is adjusted annually for inflation. For a domestic segment that begins or ends in Alaska or Hawaii, a reduced tax per person applies only to departures. For calendar year 2023, that reduced rate is $10.60 per departure (to/from the mainland United States). *Ibid.*

[4] Kerosene generally is taxed at 24.3 cents per gallon. For kerosene used in aviation, these reduced rates apply when the kerosene is removed directly from the terminal into the fuel tank of an aircraft for use in commercial or noncommercial aviation. Under certain conditions, refueler trucks, tankers, and tank wagons are treated as terminals. There is no tax on kerosene removed directly into the fuel tank of an aircraft for use in foreign trade. In addition, like most other taxable motor fuels, aviation fuels are subject to an additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund. For kerosene removed directly into the fuel tank of an aircraft for a use exempt from tax under section 4041(c) (such as use in an aircraft for the exclusive use of a State or local government), the rate of tax is 0.1 cent per gallon.

and airways safe and secure. Further, the Committee also believes that the extension of these taxes is vital to ensuring America's airports and air infrastructure remain competitive with the rest of the world and supports economic growth for American families, farmers, workers, and small businesses.

EXPLANATION OF PROVISION

The provision extends through September 30, 2028, all of the expiring taxes dedicated to the Airport and Airway Trust Fund.

EFFECTIVE DATE

The provision is effective on the date of enactment.

B. Clarification of Criteria for Designating Certain Primary, Commercial Airports as Ports of Entry (Sec. 2 of H.R. 3796)

PRESENT LAW

Under present law, U.S. CBP has discretion whether to designate any airport a port of entry pursuant to 19 U.S.C. § 1644a. In its regulations, CBP has established certain numerical criteria for determining whether to designate an airport as a port of entry. However, even if an airport meets these criteria, the designation decision is up to agency discretion.

REASONS FOR CHANGE

Users of primary, commercial airports near the U.S. northern or southern land border that have not been designated as ports of entry incur user-fee costs related to services provided by CBP that are not faced by users of similarly situated airports that have received this designation. Such disparate treatment can place these airports and their surrounding communities at a competitive disadvantage.

EXPLANATION OF PROVISION

This provision establishes that primary, commercial service airports within 30 miles of the northern or southern land border that meet numerical criteria set by CBP for establishing ports of entry must be designated as ports of entry while terminating their user-fee designation.

EFFECTIVE DATE

This provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 3796, "To provide for the extension of taxes funding the Airport and Airway Trust Fund and to require the designation of certain airports as ports of entry," on June 7, 2023.

The vote on the amendment offered by Mr. Pascrell to the amendment in the nature of a substitute to H.R. 3796, which would strike the provisions of the bill designating certain airports as ports

of entry was not agreed to by a roll call vote of 18 yeas to 23 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)		X		Mr. Neal	X		
Mr. Buchanan		X		Mr. Doggett	X		
Mr. Smith (NE)				Mr. Thompson	X		
Mr. Kelly		X		Mr. Larson	X		
Mr. Schweikert		X		Mr. Blumenauer	X		
Mr. LaHood		X		Mr. Pascrell	X		
Dr. Wenstrup		X		Mr. Davis	X		
Mr. Arrington		X		Ms. Sanchez	X		
Dr. Ferguson		X		Mr. Higgins	X		
Mr. Estes		X		Ms. Sewell	X		
Mr. Smucker		X		Ms. DelBene	X		
Mr. Hern		X		Ms. Chu	X		
Ms. Miller		X		Ms. Moore	X		
Dr. Murphy		X		Mr. Kildee	X		
Mr. Kustoff		X		Mr. Beyer	X		
Mr. Fitzpatrick		X		Mr. Evans	X		
Mr. Steube				Mr. Schneider	X		
Ms. Tenney		X		Mr. Panetta	X		
Mrs. Fischbach		X					
Mr. Moore		X					
Mrs. Steel		X					
Ms. Van Duyne		X					
Mr. Feenstra		X					
Ms. Malliotakis		X					
Mr. Carey		X					

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Mr. Buchanan	X			Mr. Doggett		X	
Mr. Smith (NE)				Mr. Thompson		X	
Mr. Kelly	X			Mr. Larson		X	
Mr. Schweikert	X			Mr. Blumenauer		X	
Mr. LaHood	X			Mr. Pascrell		X	
Dr. Wenstrup	X			Mr. Davis		X	
Mr. Arrington	X			Ms. Sanchez		X	
Dr. Ferguson	X			Mr. Higgins		X	
Mr. Estes	X			Ms. Sewell		X	
Mr. Smucker	X			Ms. DelBene		X	
Mr. Hern	X			Ms. Chu		X	
Ms. Miller	X			Ms. Moore		X	
Dr. Murphy	X			Mr. Kildee		X	
Mr. Kustoff	X			Mr. Beyer		X	
Mr. Fitzpatrick	X			Mr. Evans		X	
Mr. Steube				Mr. Schneider		X	
Ms. Tenney	X			Mr. Panetta		X	
Mrs. Fischbach	X						
Mr. Moore	X						
Mrs. Steel	X						

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Ms. Van Duyne	X						
Mr. Feenstra	X						
Ms. Malliotakis	X						
Mr. Carey	X						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

With respect to the requirement of clause 3(d) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974* was not made available to the Committee in time for the filing of this report.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee states further that the bill involves no new or increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill does not authorize funding, so no statement of general performance goals and objectives is required.

C. Information Relating to Unfunded Mandates

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

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

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

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

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this resolution, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

E. Tax Complexity Analysis

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code of 1986 and that have "widespread applicability" to individuals or small businesses, within the meaning of the rule.

F. Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

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

A. Changes in Existing Law Proposed by the Bill, as Reported

With respect to the requirement of clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported.

B. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) 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, and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 31—RETAIL EXCISE TAXES

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Subchapter B—SPECIAL FUELS

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SEC. 4043. SURTAX ON FUEL USED IN AIRCRAFT PART OF A FRACTIONAL OWNERSHIP PROGRAM.

(a) IN GENERAL.—There is hereby imposed a tax on any liquid used (during any calendar quarter by any person) in a fractional program aircraft as fuel—

(1) for the transportation of a qualified fractional owner with respect to the fractional ownership aircraft program of which such aircraft is a part, or

(2) with respect to the use of such aircraft on account of such a qualified fractional owner, including use in deadhead service.

(b) AMOUNT OF TAX.—The rate of tax imposed by subsection (a) is 14.1 cents per gallon.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) FRACTIONAL PROGRAM AIRCRAFT.—The term "fractional program aircraft" means, with respect to any fractional ownership aircraft program, any aircraft which—

(A) is listed as a fractional program aircraft in the management specifications issued to the manager of such program by the Federal Aviation Administration under subpart K of part 91 of title 14, Code of Federal Regulations, and

(B) is registered in the United States.

(2) FRACTIONAL OWNERSHIP AIRCRAFT PROGRAM.—The term "fractional ownership aircraft program" means a program under which—

(A) a single fractional ownership program manager provides fractional ownership program management services on behalf of the fractional owners,

(B) there are 1 or more fractional owners per fractional program aircraft, with at least 1 fractional program aircraft having more than 1 owner,

(C) with respect to at least 2 fractional program aircraft, none of the ownership interests in such aircraft are—

(i) less than the minimum fractional ownership interest, or

(ii) held by the program manager referred to in subparagraph (A),

(D) there exists a dry-lease aircraft exchange arrangement among all of the fractional owners, and

(E) there are multi-year program agreements covering the fractional ownership, fractional ownership program

management services, and dry-lease aircraft exchange aspects of the program.

(3) DEFINITIONS RELATED TO FRACTIONAL OWNERSHIP INTERESTS.—

(A) QUALIFIED FRACTIONAL OWNER.—The term "qualified fractional owner" means any fractional owner which has a minimum fractional ownership interest in at least one fractional program aircraft.

(B) MINIMUM FRACTIONAL OWNERSHIP INTEREST.—The term "minimum fractional ownership interest" means, with respect to each type of aircraft—

(i) a fractional ownership interest equal to or greater than 1/16 of at least 1 subsonic, fixed wing, or powered lift aircraft, or

(ii) a fractional ownership interest equal to or greater than 1/32 of at least 1 rotorcraft aircraft.

(C) FRACTIONAL OWNERSHIP INTEREST.—The term "fractional ownership interest" means—

(i) the ownership of an interest in a fractional program aircraft,

(ii) the holding of a multi-year leasehold interest in a fractional program aircraft, or

(iii) the holding of a multi-year leasehold interest which is convertible into an ownership interest in a fractional program aircraft.

(D) FRACTIONAL OWNER.—The term "fractional owner" means any person owning any interest (including the entire interest) in a fractional program aircraft.

(4) DRY-LEASE AIRCRAFT EXCHANGE.—The term "dry-lease aircraft exchange" means an agreement, documented by the written program agreements, under which the fractional program aircraft are available, on an as needed basis without crew, to each fractional owner.

(5) SPECIAL RULE RELATING TO USE OF FRACTIONAL PROGRAM AIRCRAFT FOR FLIGHT DEMONSTRATION, MAINTENANCE, OR TRAINING.—For purposes of subsection (a), a fractional program aircraft shall not be considered to be used for the transportation of a qualified fractional owner, or on account of such qualified fractional owner, when it is used for flight demonstration, maintenance, or crew training.

(6) SPECIAL RULE RELATING TO DEADHEAD SERVICE.—A fractional program aircraft shall not be considered to be used on account of a qualified fractional owner when it is used in deadhead service and a person other than a qualified fractional owner is separately charged for such service.

(d) TERMINATION.—This section shall not apply to liquids used as a fuel in an aircraft after **[**September 30, 2023**]** *September 30, 2028*.

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CHAPTER 32—MANUFACTURERS EXCISE TAXES

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Subchapter A—AUTOMOTIVE AND RELATED ITEMS

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PART III—PETROLEUM PRODUCTS

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Subpart A—MOTOR AND AVIATION FUELS

* * * * * * *

SEC. 4081. IMPOSITION OF TAX.

(a) TAX IMPOSED.—

(1) TAX ON REMOVAL, ENTRY, OR SALE.—

(A) IN GENERAL.—There is hereby imposed a tax at the rate specified in paragraph (2) on—

(i) the removal of a taxable fuel from any refinery,

(ii) the removal of a taxable fuel from any terminal,

(iii) the entry into the United States of any taxable fuel for consumption, use, or warehousing, and

(iv) the sale of a taxable fuel to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such fuel under clause (i), (ii), or (iii).

(B) EXEMPTION FOR BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.—

(i) IN GENERAL.—The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel (except as provided in clause (ii)), and the operator of such terminal or refinery are registered under section 4101.

(ii) NONAPPLICATION OF REGISTRATION TO VESSEL OPERATORS ENTERING BY DEEP-DRAFT VESSEL.—For purposes of clause (i), a vessel operator is not required to be registered with respect to the entry of a taxable fuel transferred in bulk by a vessel described in section 4042(c)(1).

(2) RATES OF TAX.—

(A) IN GENERAL.—The rate of the tax imposed by this section is—

(i) in the case of gasoline other than aviation gasoline, 18.3 cents per gallon,

(ii) in the case of aviation gasoline, 19.3 cents per gallon, and

(iii) in the case of diesel fuel or kerosene, 24.3 cents per gallon.

(B) LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAX.—The rates of tax specified in subparagraph (A) shall each be increased by 0.1 cent per gallon. The increase in tax under this subparagraph shall in this title be referred to as the Leaking Underground Storage Tank Trust Fund financing rate.

(C) TAXES IMPOSED ON FUEL USED IN AVIATION.—In the case of kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in aviation, the rate of tax under subparagraph (A)(iii) shall be—

(i) in the case of use for commercial aviation by a person registered for such use under section 4101, 4.3 cents per gallon, and

(ii) in the case of use for aviation not described in clause (i), 21.8 cents per gallon.

(D) DIESEL-WATER FUEL EMULSION.—In the case of diesel-water fuel emulsion at least 14 percent of which is water and with respect to which the emulsion additive is registered by a United States manufacturer with the Environmental Protection Agency pursuant to section 211 of the Clean Air Act (as in effect on March 31, 2003), subparagraph (A)(iii) shall be applied by substituting "19.7 cents" for "24.3 cents". The preceding sentence shall not apply to the removal, sale, or use of diesel-water fuel emulsion unless the person so removing, selling, or using such fuel is registered under section 4101.

(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—

(A) IN GENERAL.—For purposes of paragraph (2)(C), a refueler truck, tanker, or tank wagon shall be treated as part of a terminal if—

(i) such terminal is located within an airport,

(ii) any kerosene which is loaded in such truck, tanker, or wagon at such terminal is for delivery only into aircraft at the airport in which such terminal is located,

(iii) such truck, tanker, or wagon meets the requirements of subparagraph (B) with respect to such terminal, and

(iv) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with kerosene at such terminal.

(B) REQUIREMENTS.—A refueler truck, tanker, or tank wagon meets the requirements of this subparagraph with respect to a terminal if such truck, tanker, or wagon—

(i) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft,

(ii) is not registered for highway use, and

(iii) is operated by—

(I) the terminal operator of such terminal, or

(II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or wagon.

(C) REPORTING.—The Secretary shall require under section 4101(d) reporting by such terminal operator of—

(i) any information obtained under subparagraph (B)(iii)(II), and

(ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made

by trucks, tankers, or wagons operated by such terminal operator.

(D) APPLICABLE RATE.—For purposes of paragraph (2)(C), in the case of any kerosene treated as removed from a terminal by reason of this paragraph—

(i) the rate of tax specified in paragraph (2)(C)(i) in the case of use described in such paragraph shall apply if such terminal is located within a secured area of an airport, and

(ii) the rate of tax specified in paragraph (2)(C)(ii) shall apply in all other cases.

(4) LIABILITY FOR TAX ON KEROSENE USED IN COMMERCIAL AVIATION.—For purposes of paragraph (2)(C)(i), the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph. For purposes of the preceding sentence, fuel shall be treated as used when such fuel is removed into the fuel tank.

(b) TREATMENT OF REMOVAL OR SUBSEQUENT SALE BY BLENDER.—

(1) IN GENERAL.—There is hereby imposed a tax at the rate determined under subsection (a) on taxable fuel removed or sold by the blender thereof.

(2) CREDIT FOR TAX PREVIOUSLY PAID.—If—

(A) tax is imposed on the removal or sale of a taxable fuel by reason of paragraph (1), and

(B) the blender establishes the amount of the tax paid with respect to such fuel by reason of subsection (a),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

(c) LATER SEPARATION OF FUEL FROM DIESEL-WATER FUEL EMULSION.—If any person separates the taxable fuel from a diesel-water fuel emulsion on which tax was imposed under subsection (a) at a rate determined under subsection (a)(2)(D) (or with respect to which a credit or payment was allowed or made by reason of section 6427), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.

(d) TERMINATION.—

(1) IN GENERAL.—The rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) shall be 4.3 cents per gallon after September 30, 2028.

(2) AVIATION FUELS.—The rates of tax specified in subsection (a)(2)(A)(ii) and (a)(2)(C)(ii) shall be 4.3 cents per gallon—

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

(B) after [September 30, 2023] *September 30, 2028*.

(3) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall apply after September 30, 1997, and before October 1, 2028.

(e) REFUNDS IN CERTAIN CASES.—Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this sec-

tion with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

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SEC. 4083. DEFINITIONS; SPECIAL RULE; ADMINISTRATIVE AUTHORITY.

(a) TAXABLE FUEL.—For purposes of this subpart—

(1) IN GENERAL.—The term "taxable fuel" means—

(A) gasoline,

(B) diesel fuel, and

(C) kerosene.

(2) GASOLINE.—The term "gasoline"—

(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)), or a denatured alcohol, and

(B) includes, to the extent prescribed in regulations—

(i) any gasoline blend stock, and

(ii) any product commonly used as an additive in gasoline (other than alcohol).

For purposes of subparagraph (B)(i), the term "gasoline blend stock" means any petroleum product component of gasoline.

(3) DIESEL FUEL.—

(A) IN GENERAL.—The term "diesel fuel" means—

(i) any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, or a diesel-powered train,

(ii) transmix, and

(iii) diesel fuel blend stocks identified by the Secretary.

(B) TRANSMIX.—For purposes of subparagraph (A), the term "transmix" means a byproduct of refined products pipeline operations created by the mixing of different specification products during pipeline transportation.

(b) COMMERCIAL AVIATION.—For purposes of this subpart, the term "commercial aviation" means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of subsection (h) or (i) of section 4261. Such term shall not include the use of any aircraft before [October 1, 2023] *October 1, 2028*, if tax is imposed under section 4043 with respect to the fuel consumed in such use or if no tax is imposed on such use under section 4043 by reason of subsection (c)(5) thereof.

(c) CERTAIN USES DEFINED AS REMOVAL.—If any person uses taxable fuel (other than in the production of taxable fuels or special fuels referred to in section 4041), such use shall for the purposes of this chapter be considered a removal.

(d) ADMINISTRATIVE AUTHORITY.—

(1) IN GENERAL.—In addition to the authority otherwise granted by this title, the Secretary may in administering compliance with this subpart, section 4041, and penalties and other administrative provisions related thereto—

(A) enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of—

(i) examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel,

(ii) taking and removing samples of such fuel, and

(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and

(B) detain, for the purposes referred in subparagraph (A), any container which contains or may contain any taxable fuel.

(2) INSPECTION SITES.—The Secretary may establish inspection sites for purposes of carrying out the Secretary's authority under paragraph (1)(B).

(3) PENALTY FOR REFUSAL OF ENTRY.—

(A) FORFEITURE.—The penalty provided by section 7342 shall apply to any refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), except that section 7342 shall be applied by substituting "$1,000" for "$500" for each such refusal.

(B) ASSESSABLE PENALTY.—For additional assessable penalty for the refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), see section 6717.

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CHAPTER 33—FACILITIES AND SERVICES

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Subchapter C—TRANSPORTATION BY AIR

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PART I—PERSONS

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SEC. 4261. IMPOSITION OF TAX.

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

(b) DOMESTIC SEGMENTS OF TAXABLE TRANSPORTATION.—

(1) IN GENERAL.—There is hereby imposed on the amount paid for each domestic segment of taxable transportation by air a tax in the amount of $3.00.

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

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

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

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

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

(c) USE OF INTERNATIONAL TRAVEL FACILITIES.—

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

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

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

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

(e) SPECIAL RULES.—

(1) SEGMENTS TO AND FROM RURAL AIRPORTS.—

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

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

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

(ii) such airport—

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

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

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

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

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

(A) IN GENERAL.—Any amount paid (and the value of any other benefit provided) to an air carrier (or any related

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

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

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

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

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

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting the year before the last nonindexed year for "calendar year 2016" in subparagraph (A)(ii) thereof.

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

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

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

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

(C) TAXABLE EVENT.—For purposes of subparagraph (A), in the case of the tax imposed by subsection (b), the beginning of the domestic segment shall be treated as the taxable event.

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

(5) AMOUNTS PAID FOR AIRCRAFT MANAGEMENT SERVICES.—

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

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

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

(B) AIRCRAFT MANAGEMENT SERVICES.—For purposes of subparagraph (A), the term "aircraft management services" includes—

(i) assisting an aircraft owner with administrative and support services, such as scheduling, flight planning, and weather forecasting,

(ii) obtaining insurance,

(iii) maintenance, storage and fueling of aircraft,

(iv) hiring, training, and provision of pilots and crew,

(v) establishing and complying with safety standards, and

(vi) such other services as are necessary to support flights operated by an aircraft owner.

(C) LESSEE TREATED AS AIRCRAFT OWNER.—

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

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

(D) PRO RATA ALLOCATION.—In the case of amounts paid to any person which (but for this subsection) are subject to the tax imposed by subsection (a), a portion of which consists of amounts described in subparagraph (A), this paragraph shall apply on a pro rata basis only to the portion which consists of amounts described in such subparagraph.

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

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

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

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

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

(1) by helicopter, or

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

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

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

(j) EXEMPTION FOR AIRCRAFT IN FRACTIONAL OWNERSHIP AIRCRAFT PROGRAMS.—No tax shall be imposed by this section or section 4271 on any air transportation if tax is imposed under section 4043 with respect to the fuel used in such transportation. This subsection shall not apply after ⟦September 30, 2023⟧ *September 30, 2028*.

(k) APPLICATION OF TAXES.—

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

(A) transportation beginning during the period—

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

(ii) ending on ⟦September 30, 2023⟧ *September 30, 2028*, and

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

(2) REFUNDS.—If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.

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PART II—PROPERTY

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SEC. 4271. IMPOSITION OF TAX.

(a) IN GENERAL.—There is hereby imposed upon the amount paid within or without the United States for the taxable transportation (as defined in section 4272) of property a tax equal to 6.25 percent of the amount so paid for such transportation. The tax imposed by this subsection shall apply only to amounts paid to a person engaged in the business of transporting property by air for hire.

(b) BY WHOM PAID.—

(1) IN GENERAL.—Except as provided by paragraph (2), the tax imposed by subsection (a) shall be paid by the person making the payment subject to tax.

(2) PAYMENTS MADE OUTSIDE THE UNITED STATES.—If a payment subject to tax under subsection (a) is made outside the United States and the person making such payment does not pay such tax, such tax—

(A) shall be paid by the person to whom the property is delivered in the United States by the person furnishing the last segment of the taxable transportation in respect of which such tax is imposed, and

(B) shall be collected by the person furnishing the last segment of such taxable transportation.

(c) DETERMINATION OF AMOUNTS PAID IN CERTAIN CASES.—For purposes of this section, in any case in which a person engaged in the business of transporting property by air for hire and one or more other persons not so engaged jointly provide services which include taxable transportation of property, and the person so engaged receives, for the furnishing of such taxable transportation, a portion of the receipts from the joint providing of such services, the amount paid for the taxable transportation shall be treated as being the sum of (1) the portion of the receipts so received, and (2) any expenses incurred by any of the persons not so engaged which are properly attributable to such taxable transportation and which are taken into account in determining the portion of the receipts so received.

(d) APPLICATION OF TAX.—

(1) IN GENERAL.—The tax imposed by subsection (a) shall apply to—

(A) transportation beginning during the period—

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

(ii) ending on ⟦September 30, 2023⟧ *September 30, 2028*, and

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

(2) REFUNDS.—If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.

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VII. DISSENTING VIEWS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, June 7, 2023.

DISSENTING VIEWS ON "TO PROVIDE FOR THE EXTENSION OF TAXES FUNDING THE AIRPORT AND AIRWAY TRUST FUND AND TO REQUIRE THE DESIGNATION OF CERTAIN AIRPORTS AS PORTS OF ENTRY," H.R. 3796

Democrats agree that the Airport and Airways Trust Fund should continue to be funded and generally support legislation that extends these taxes. However, we are concerned that no hearing was held regarding these taxes and whether there are any appropriate updates to be made as a part of this reauthorization process. The imposition of these taxes is affecting the manner in which air carriers conduct their business, and accordingly we feel it is important to thoroughly examine the tax base to ensure that our airports and airways continue to receive necessary funding from the commercial enterprises that use these facilities.

For instance, had the Committee held hearings on the current state of the AATF taxes, it might have learned that certain low-cost air carriers are pushing the boundaries of the line between "an amount paid for taxable transportation", and other charges.[1] The Committee could have explored whether the current fuel surcharge for fractional aircraft ownership, which is not indexed for inflation, is providing a competitive advantage for the likes of large fractional ownership operations over smaller charter operations, who pay the 7.5 percent ticket tax (a tax that generally rises with rising costs). The Committee could have examined any number of issues, but it nonetheless neglected to do so.

More broadly, with the increasing proliferation of fees, documented in a recent Wall Street Journal article,[2] the Committee should have examined whether the AATF taxes accurately captured the cost of travel. By simply rubber-stamping the *status quo*, the Committee is blessing the airlines shifting more of their charges into un-taxed fees, and contributing to the feeling of air passengers being nickled-and-dimed whenever they travel.

Furthermore, the bill designates airports that meet new, unvetted criteria with port of entry status without any justification regarding the need for this legislation. Committee Democrats unanimously opposed H.R. 3796 at the markup because the legisla-

[1] See, e.g., https://onemileatatime.com/insights/buy-spirit-tickets-airport/. This blog post details how Spirit Airlines artificially lowers its base ticket prices, and then charging a "passenger usage charge", upon which the tax is not levied, arguing that this charge is not a mandatory fee because it is not charged when a purchaser drives to the airport to purchase a ticket at the ticket counter.

[2] The Airline, Hotel and Rental Car Fees That Catch Travelers Off-Guard—WSJ.

tion affects only certain airports in select congressional districts. The bill expands on previous legislation introduced by Rep. Stefanik, the Border Airport Enhancement Act of 2023 (H.R. 2979), which would designate the Plattsburgh International Airport in Plattsburgh, New York and the Valley International Airport in Harlingen, Texas as ports of entry. H.R. 3796 would also benefit Rep. Stefanik, a member of the House Republican leadership and Chair of the House Republican Conference, and perhaps several other Members of Congress, not the American people.

The legislation would terminate user fees at affected airports and take away resources and staff from U.S. Customs and Border Protection (CBP), thereby jeopardizing the important work the agency does to keep America's borders and ports of entry safe. The airports affected by the bill do not meet CBP's existing customs workload criteria for port of entry status. Most of the airports affected by the legislation rely on user fees authorized by Congress to receive CBP services. The legislation, by terminating the application of user fees at these airports would likely leave them without any customs services given CBP's limited, overstretched appropriated resources. The Committee has not had the opportunity to study this legislation fully to assess its potential merits as Chairman Jason Smith introduced H.R. 3796 on June 5, two days prior to the markup.

During the markup, Rep. Pascrell offered an amendment to strike section 2 of H.R. 3796 which includes the provisions related to the designation of certain airports as ports of entry. Committee Democrats unanimously supported the amendment. Unfortunately, the Members of the Majority present at the markup all voted against the amendment.

We hope the Majority will reconsider this legislation and instead consider bipartisan approaches to improving customs services at our nation's airports and ports of entry.

RICHARD E. NEAL,
Ranking Member.

RANKING MEMBER RICHARD E. NEAL, OPENING STATEMENT, COMMITTEE ON WAYS AND MEANS MARKUP OF H.R. 3796,

Wednesday, June 7, 2023.

This hastily thrown-together legislation flies in the face of the long-established practice of bipartisan reauthorization of the AATF taxes. Republicans released the text less than 24 hours ago, giving us no opportunity to provide our perspective. This proposal rubberstamps three excise taxes without so much as a hearing or any examination of the current practices of these airlines. According to press reports, this legislation would designate two airports as ports of entry with absolutely no rationale or explanation. The Committee hasn't studied these issues nor held a hearing on this legislation, which is strongly opposed by U.S. Customs and Border Protection.

This is hardly the sort of meaningful policy discussion one would expect from the Committee charged with funding the operation of our airways. There are any number of issues the Committee could have examined: the increasing proliferation of fees, the current state of AATF taxes, and the rising costs air carriers are levying onto consumers. Unfortunately, Republicans neglected to—rubberstamping airlines' current practices and telling American consumers who they stand with: corporations.

Thank you, and I yield back.

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