Airlines for America®
We Connect the World

February 28, 2024

The Honorable Marc Korman
Chair, Environment & Transportation Committee
Maryland House of Delegates

The Honorable C.T. Wilson
Chair, Economic Matters Committee
Maryland House of Delegates

Re: HB 1008

Dear Del. Korman and Del. Wilson,

On behalf of Airlines for America® (A4A), the trade association for the leading U.S. airlines,[1] I am writing to respectfully express our opposition to HB 1008, which would impose a fee on the transportation of fossil fuels. This law would violate federal law regarding the use of jet fuel tax revenue, would raise the cost of air service in Maryland and is unnecessary.

The "fee" in HB 1008 would be 30 cents per 1 million British Thermal Units (BTUs) of transported fuel, and the revenue collected would be directed to a newly created Fossil Fuel Mitigation Fund that is intended to "support activities that reduce greenhouse gas emissions from fossil fuels and their impacts in the state." The only exemption from the fee is for fuel used on a farm.

FAA Revenue Use Policy

Federal law requires that revenue raised from state taxes on aviation fuel must be used for the capital or operating costs of an airport, an airport system or facilities that are substantially related to the air transportation of passengers or property. These funds may also be used for state aviation programs or noise mitigation. The only exception is for taxes that were in place as of December 30, 1987.[2] The Federal Aviation Administration (FAA) issued policies and procedures under the statute in 1999.[3] The FAA then clarified the policy with proposed amendments in 2013,[4] finalized those amendments in 2014 and directed state and local governments to certify their compliance with the policy or come into compliance within three years.[5] These rules are commonly referred to as "FAA revenue use policy."

While this bill names this levy a "fee," the nomenclature is not dispositive for analyzing it under the revenue use policy. It is levied like a tax with general applicability and is not tied to a service, and the revenue use policy broadly applies to any taxes. As the FAA has stated, "the term 'taxes on aviation fuel' cannot reasonably be construed to mean only taxes specifically on aviation fuel, and not to include taxes on petroleum products generally or general sales taxes on all goods that touch on aviation fuel."[6]

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[1] A4A's members are Alaska Airlines, Inc.; American Airlines Group Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corp.; Hawaiian Airlines, Inc.; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada, Inc. is an associate member.
[2] 49 U.S.C. sections 47107(b) and 47133.
[3] FAA, Policy and Procedure Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (Feb. 16, 1999).
[4] 78 Fed. Reg. 69789 (Nov. 21, 2013).
[5] 79 Fed. Reg. 66282 (Nov. 7, 2014).
[6] 2013 Notice, *supra*, discussion at p. 69792.

As described above, the revenue from taxes such as this one are required to be spent on aviation, and the policy is very specific as to what constitutes permissible use. General environmental mitigation efforts are not compliant. For example, the FAA told Nebraska that if its environmental fees "are not used for an airport purpose; this is not consistent with the revenue use requirements."[7] HB 1008 must include a provision to spend any revenue collected from aviation fuel for aviation purposes or Maryland would not be in compliance with federal law. However, this fee should not apply to jet fuel, as it would harm the state economically and it is not necessary to further Maryland's environmental goals.

Competitive Impact

Based on the U.S. Department of Transportation estimate[8] of 135,000 BTUs in a gallon of jet fuel, A4A concludes that this bill would result in about a 4 cents per gallon (cpg) fee on jet fuel. This would significantly raise the cost of jet fuel in Maryland and put the state at a competitive disadvantage with other states.

Currently, Maryland is one of the best states in the country when it comes to the tax burden on commercial jet fuel. A4A calculates that only three states (Connecticut, Ohio and Texas) are better. This statistic is reflected in the significant and continuing growth of Thurgood Marshall Baltimore Washington International Airport (BWI), which is a major economic engine for Maryland, providing almost 87,000 jobs and driving more than $14.5 billion in total economic activity. However, this bill would change that comparison significantly. Nationally, 25 states would provide a better tax environment than Maryland. Locally, it would fall behind Virginia by 3 cpg and Pennsylvania by 1 cpg. While these amounts may seem small, fuel is one of the biggest expenses an airline has. Therefore, even minor changes in cost can have an outsize impact and influence on the economics of providing air service.

Environmental Record

Further, A4A does not believe HB 1008 will assist the industry in our efforts to make aviation cleaner. Between 1978 and 2021, the U.S. airlines improved their fuel efficiency (on a revenue ton mile basis) by more than 135 percent, saving over 5.5 billion metric tons of carbon dioxide (CO_2) – equivalent to taking more than 28 million cars off the road on average in each of those years. We are not resting on that record. In 2021, A4A and its members pledged to work across the aviation industry and with government leaders in a positive partnership to achieve net-zero carbon emissions by 2050. Recognizing that transitioning to low-carbon fuel is essential to achieving net zero emissions, we also pledged to work with government partners to make 3 billion gallons of cost-competitive sustainable aviation fuel (SAF) available to U.S. aircraft operators in 2030. We are thankful that the U.S. government shares these goals, as reflected in its 2021 Climate Action Plan and the Biden Administration's SAF Grand Challenge. To do our part to achieve these mutual goals, we are already making huge investments in new fuel-efficient aircraft and engines, cutting edge technologies to improve operational efficiency and SAF.

Imposing new taxes on aviation will only cut into our ability to continue making the investments necessary to achieve these shared goals while still delivering economic growth and high-paying jobs in Maryland.

For these reasons, A4A opposes this legislation. Thank you for your time and consideration of this important matter to the aviation industry. If you have any questions or comments, please do not hesitate to e-mail me at swilliams@airlines.org.

Sincerely yours,

Sean Williams
Vice-President, State and Local Affairs
Airlines for America

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[7] *See, e.g.*, FAA letter to Nebraska Dep't of Aeronautics (Mar. 15, 2017), available at https://www.regulations.gov/document/FAA-2013-0988-0216.

[8] *See* https://www.bts.dot.gov/content/energy-consumption-mode-transportation-1.