Airlines for America®

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February 14, 2025

The Honorable Vanessa E. Atterbeary
Chair, Ways and Means Committee
Maryland House of Delegates
Annapolis, MD 21401

The Honorable Marc Korman
Chair, Environment and Transportation Committee
Maryland House of Delegates
Annapolis, MD 21401

**Re: HB 846**

Dear Chair Atterbeary and Chair Korman,

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 846, which would impose sales and use tax on air transportation services. First, federal law clearly pre-empts a state's ability to impose such taxes on airlines. Even if the bill was not federally pre-empted, we are opposed to any attempt to raise taxes, which could raise prices on airline passengers and cargo shippers, especially the millions of middle-class and working people who chose Baltimore Washington International Thurgood Marshall Airport (BWI) for their air transportation needs. As such, we respectfully urge your committees to either issue an unfavorable report or strike subparagraph (m)(14)(IV) ("air transportation services (NAICS Sector 481)") from the bill.

Specifically concerning federal pre-emption, the legislation would add "taxable transportation services" to the list of services subject to Maryland sales and use tax, and the bill includes "an air transportation service (NAICS sector 481)" in the definition of taxable services. This would apply to the airlines, as sector 481 comprises all air transportation, including scheduled service provided by the passenger and cargo airlines. However, longstanding federal law prohibits state and local governments from taxing the sale of air transportation.

**Anti-Head Tax Act**
The Anti-Head Tax Act (AHTA), codified at 49 U.S.C. section 40116, has long expressed the intent of Congress that states should not be able to burden air transportation with taxes, such as head or gross-receipts taxes, on passengers or the transportation itself. The statute provides:

> (b) Prohibitions.–Except as provided in subsection (c) of this section and section 40117 [relating to passenger facility charges] of this title, a State, a political subdivision of a State, and any person that has purchased or leased an airport under section 47134 of this title may not levy or collect a tax, fee, head charge, or other charge on–
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> (1) an individual traveling in air commerce;
> (2) the transportation of an individual traveling in air commerce;
> (3) the sale of air transportation; or
> (4) the gross receipts from that air commerce or transportation.

[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.

Air commerce is subject to federal excise taxes to pay for management of the national airspace, infrastructure, safety and other purposes, and Congress did not want the states to burden transportation with duplicative taxes.[2] A plain reading of the statute indicates that Maryland cannot impose sales and use tax on air transportation services as intended in HB 846.

Further, the AHTA exemptions do not apply in this situation. Section 40117 covers passenger facility charges at airports, which is not applicable here. The statute exemption in subsection (c) of 40116, provides that a "State or political subdivision of a State may levy or collect a tax on or related to a flight of a commercial aircraft or an activity or service on the aircraft only if the aircraft takes off or lands in the State or political subdivision as part of the flight." However, it is important to note that this take-off or landing provision is not a blanket exception to the prohibition on head taxes. The U.S. Department of Transportation, which is tasked with enforcing the AHTA, has said that this provision establishes the minimum grounds for a state to impose a *permitted* tax and was not intended by Congress as a savings clause for prohibited taxes.[3] The U.S. Court of Appeals for the Third Circuit has affirmed this interpretation and determined that subsection (c) does not save a tax from the categorical ban in subsection (b).[4]

Because this legislation does not conform to federal law, A4A opposes it and urges you and your committees to reject the bill or amend it to remove the objectionable provision. 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

cc: The Honorable Paul Wiedefeld, Maryland Secretary of Transportation
Mr. Ricky D. Smith, Sr., CEO of BWI Thurgood Marshall Airport

[2] Congress passed the original version of the AHTA in 1973 in response to a proliferation of local taxes in the wake of the Supreme Court's decision in *Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc.*, 405 U.S. 707 (1972), which held that states could impose head taxes on interstate air travel. The AHTA overturns that decision.
[3] *See, e.g.*, U.S. Department of Transportation General Counsel letter regarding the question of Maryland's taxation of hot air balloon flights, Jan. 20, 2010, discussion of subsection (c), *available at* https://www.transportation.gov/sites/dot.dev/files/docs/Assistant%20General%20Counsel%20Letter%20re%20Whether%20MD%20Gross%20Receipts%20Tax%20Violates%20Anti%20Head%20Tax%20Act%201.29.2010.pdf, at 3.
[4] *Township of Tinicum v. U.S. Dep't of Transp.*, 582 F.3d 482 (3d Cir. 2009) at 487.