
Fuel Fraud Background & Timeline

Issue:

- In 2005, a change in the collection of taxes¹ on noncommercial jet fuel was enacted under the belief the 2.5-cent per gallon difference between the highway diesel and jet fuel tax rates incited truckers to use jet fuel. This ignores the fact that in 2005 the average price of highway diesel was \$1.30 a gallon less than cost of jet fuel; today the disparity between those prices is even greater.
- As a result, the GAO has concluded between \$1 billion and \$2 billion in noncommercial jet fuel tax receipts have not been transferred to the Airport & Airway Trust Fund (AATF).
- Aviation jet fuel (Jet A) shares similar chemical characteristics as diesel fuel and kerosene. Up until a 2005 law change, Jet A was taxed at the rate of 21.9 cpg for noncommercial fuel. Highway diesel was, and remains, taxed at 24.4 cpg.²
- Concerns were raised that a diesel fuel user could avoid paying 2.5 cpg in taxes by obtaining noncommercial jet fuel and using it in their highway diesel truck.³
- This concern, though not conclusively demonstrated, led to the change in law requiring both Jet A and highway diesel be *assessed* at the highway tax rate of 24.4 cpg. The actual tax *due* on Jet A remained at 21.9 cpg. The law further requires that all tax collections be first deposited into the Highway Trust Fund (HTF).
- Lawmakers intended that funds initially deposited into the HTF would, after demonstrated aviation use, be transferred from the HTF to the AATF with refund of the 2.5 cpg overtax amount to the applicable party.
 - As the FAA predicted at the time, the IRS refund mechanism provides little incentive for fuel vendors to participate in the refund process, to the significant detriment of the AATF and the nation's aviation infrastructure. As a result, a significant amount of tax revenue derived from the sale of noncommercial jet fuel remains in the HTF.
 - A fuel vendor selling noncommercial fuel, typically an FBO, may apply for refunds, but only after completing an arduous IRS registration process and then managing the substantial administrative burden to maintain records for the IRS, including increased IRS audits. There is no requirement for fuel vendors to register with the IRS; it is purely voluntary and many fuel vendors are not participating due to the additional workload.
 - In the typical instance where the FBO is not participating in the IRS program, the FBO simply sells the fuel with the highway tax rate included, and those tax funds remain in the HTF and never find their way to the AATF.

¹ SAFETEA-LU, Public Law 109-59 (Subtitle E, Section 11161), <https://www.gpo.gov/fdsys/pkg/PLAW-109publ59/pdf/PLAW-109publ59.pdf>

² Commercial fuel uses are taxed at 4.4 cpg. Airlines typically receive fuel taxed at 4.4 cpg due to the use of so-called secure fuel terminals which are exempt from the fuel fraud provisions. Part 135 operators typically buy fuel taxed at the noncommercial rate and are eligible to apply for refunds/credits to reduce tax paid to the 4.4 cpg rate.

³ This assertion was made despite the significant difference in retail price per gallon between Jet A and diesel. In 2005 the average price of diesel was \$2.44pg and Jet A \$3.75pg. Today, the average price of diesel \$2.40 cpg is and Jet A \$4.07 cpg.

- This is not a significant issue for airlines or charter flights. Revenues from fuels delivered to the secured fuel terminals used by airlines are being captured and deposited into the AATF (i.e. the commercial 4.4 cpg tax). Charter operators (Part 135) are also eligible to apply for excise tax rebates/credits and those tax revenues are being transferred into the AATF.
- Because of the retail price disparity between diesel and jet fuel (then and now), the 2005 provision was a solution in search of a problem.

Timeline:

In a 2005 letter to the IRS, the FAA cautioned the implementation of the provision would “impose a significant burden on small aviation operators.....and create financial risk for the Airport and Airway Trust Fund.”⁴

In response to a 2015 request from lawmakers for views on the FAA reauthorization legislation, NATA recommended that lawmakers task the Government Accountability Office (GAO) to review the issue and quantify the significant losses to the Airport and Airway Trust Fund since 2005 and assess the ongoing relevance of the provision. Then-Representative Mike Pompeo (KS) subsequently added language (Sec. 42001) to the Fixing America’s Surface Transportation (FAST) Act (PL 114-94), directing the GAO to study the impacts of the 2005 highway bill provision.

- The GAO study was among the lists of “asks” NATA originally provided transportation policymakers for consideration during the development of the 2015 FAA reauthorization legislation. The political landscape, particularly the overall shortage of highway funds, made outright repeal of the fuel fraud provision problematic. However, an investigation by the GAO bolsters our case for the provision’s ultimate repeal.

In 2016, the GAO released its [report](#) on the impact of diversions of non-commercial jet fuel tax revenues from the Airport and Airway Trust Fund to the Highway Trust Fund.

- The report concludes the diversion of funds stemming from a 2005 change in tax law has resulted in a loss to the aviation fund of between *one and two billion dollars* intended for airport improvements and system modernization.
- The report also casts doubt on the rationale behind the 2005 change in tax law and the provision’s utility going forward.
- In a [press statement](#) released after the GAO was made public, then-NATA Chairman Andy Priester said “the report quantifies the dramatic impact of this revenue diversion that is undermining the viability of the Airport and Airway Trust Fund. The amounts lost to the Trust Fund as revealed by the GAO are simply staggering. Consider how many new runways, instrument approaches, or additional air traffic control towers could have been build, had this money been available for its intended purpose.”

Policy Prescription:

Repeal the 2005 provision that triggered this inappropriate diversion of aviation tax dollars and return these funds to the important work of modernizing our nation’s aviation infrastructure. The GAO has concurred in NATA’s long held belief the 2005 tax diversion provision was unnecessary and, as implemented by the IRS, a bureaucratic roadblock that drains the Airport and Airway Trust Fund of revenues needed for airport improvements and the development of a more modern air traffic control system.

⁴ FAA Ass’t Admin Pinkerton to IRS Commissioner Everson, 9-30-2005
<http://nata.aero/data/files/gia/faa%20fuel%20fraud%20letter%20oct%202005.pdf>