



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
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JUL 11 2001

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

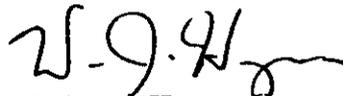
Dear Mr. Speaker:

The Department of Defense proposes the enclosed legislation relating to customs fees, the Federal Claims Collection Act, and auditing payments for customs services. These proposals are part of the departmental legislative program for the First Session of the 107th Congress and we urge their enactment. The purpose of each proposal is stated in its accompanying sectional analysis.

The Department proposes an authority to recover costs for the pursuit of losses directly relating to shoplifting, theft detection, and theft prevention. Many states have such authority and we seek this for the operation of Federal retail stores. We also seek authority to use sampling methods in lieu of complete prepayment audits in government contracting. All bills not prepayment audited still would be required to be audited after payment is made. We also seek exemption from customs fees for Space Available travelers on Department of Defense chartered aircraft. The Department would absorb the cost, thereby contributing to the morale of our military members.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of these initiatives for your consideration and the consideration of the Congress.

Sincerely,


William J. Haynes II

Enclosures
As Stated





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1600 DEFENSE PENTAGON
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JUL 11 2001

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

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A handwritten signature in black ink, appearing to read "W.J. Haynes II".

William J. Haynes II

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SEC. ____ . CIVIL RECOVERY FOR SHOPLIFTING.

1 Subsection 3701(b)(1)(B) of title 31, United States Code, is amended to read as follows:

2 “(B) expenditures of nonappropriated funds, including actual and administrative
3 costs related to shoplifting, theft detection, and theft prevention.”.

Sectional Analysis

Shoplifting in the Armed Services Exchanges annually costs service members millions of dollars. Last year alone, the Army and Air Force Exchange Service (AAFES) lost over 22 million dollars due to shoplifting. The cost of detecting and preventing shoplifting, currently absorbed by nonappropriated funds, is substantial. Many states have civil recovery statutes that allow retail stores to recover the cost of theft detection and prevention from people who are caught shoplifting. AAFES' state-by-state approach to recover the exchange costs using state statutes proved unsuccessful because of different jurisdictional arrangements, statutory variation, and other factors.

The proposed amendment to the Federal Claims Collection Act would allow agencies or instrumentalities operating federal retail stores to pursue losses and administrative costs directly relating to shoplifting, theft detection, and theft prevention as claims of the United States recoverable from the shoplifter through existing federal debt collection methods. Such claims would be subject to the full safeguards and due process provisions that exist in processes such as Salary Offset, Administrative Wage Garnishment, and Treasury Offset programs.

SEC. ____ . REVISION OF ACCOUNTING PROCEDURES REGARDING AUDITING

PAYMENTS FOR TRANSPORTATION SERVICES.

1 Section 3726(a) of title 31, United States Code, is amended—

2 (1) in paragraph (1), by inserting "either complete or based on sampling methods, and"
3 after "using prepayment audit,"; and

4 (2) by adding at the end the following new paragraph (5):

5 "(5) Where the Administrator of General Services has approved sampling
6 methods for prepayment audits or an exemption for prepayment audits,
7 accountable, certifying and disbursing officers shall be relieved from the liabilities
8 contained in sections 3527, 3528 and 3322, respectively, of this title, except for
9 illegal, improper, or incorrect payments resulting from the negligent performance
10 of their duties, if they are in compliance with the provisions required by the
11 Administrator pursuant to this section. Post payment auditing of these bills shall
12 be the responsibility of the General Services Administration."

Sectional Analysis

This section would amend section 3726(a) of title 31, United States Code, to provide accountable, certifying and disbursing officers the ability to use sampling methods in lieu of complete prepayment audits, to fulfill their obligations in cases where the Administrator of General Services has authorized sampling methods for prepayment audits or an exemption from the requirement for a prepayment audit. Nothing in this section changes the requirement that all bills not prepayment audited must continue to be submitted to the GSA Auditor for post payment audits. The section also provides the authority to set reasonable personal liability standards for any loss to the government occasioned by negligence. While the provisions of title 31, United States Code, section 3527, for accountable officials; section 3528(c), for certifying officers; and section 3322, for disbursing officers, provide similar relief, those sections mainly address the use of the Government Bill of Lading.

As the Department of Defense expands its use of Commercial Bills of Lading to fulfill its transportation needs, thousands of transactions per day will be conducted using computer automated ordering and payment systems, such as PowerTrack. Under such circumstances, the authority to use sampling methods for prepayment audits provides accountable, disbursing and

certifying officers the only reasonable means available to them to audit and verify individual transactions. In summary, the proposed change capitalizes on the best business practices available to ensure accountability in such government contracts, while providing the Administrator of General Services the authority to set reasonable standards for accountable, certifying and disbursing officers to follow. The proposed change would also clarify that post payment auditing of these bills shall remain the responsibility of the General Services Administration. It has no cost or budgetary effect.

SEC. ____ . EXEMPTION FROM CERTAIN FEES FOR CUSTOMS SERVICES.

1 Section 13031(a)(5) of the Consolidated Omnibus Budget Resolution Act of 1985 (19
2 U.S.C. 58c(a)(5)) as amended, is further amended—

3 (1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E),
4 respectively; and

5 (2) by inserting after subparagraph (B) the following new subparagraph (C):

6 “(C) The fees imposed by this subsection shall not be imposed on
7 personnel traveling on an aircraft chartered by the Department of Defense, by any
8 branch of the United States Armed Forces, or any component of either the
9 Department of Defense or any branch of the United States Armed Forces. The
10 Department of Defense will provide an annual payment from the government
11 appropriation or fund available for transportation purposes directly to the Customs
12 Service based on the total number of passengers on these aircraft.”.

Sectional Analysis

This provision would amend section 13031(a)(5) of the Consolidated Omnibus Budget Resolution Act of 1985. This provision would exempt Space Available (Space-A) passengers, predominantly members of the Armed Forces of the United States and their spouses and dependents, and retirees and their dependents, from certain custom fees when they are traveling on aircraft chartered by the Department of Defense, by any branch of the United States Armed Forces, or any component of either the Department of Defense or any branch of the United States Armed Forces. The Department of Defense will obtain efficiencies by paying these fees directly to the Customs Service on an annual basis. This is also a quality of life issue for personnel assigned to overseas locations.

Recent changes to Federal Transportation Tax have raised the combination of taxes and fees paid by service members traveling Space-A on DOD-chartered civilian aircraft to the point that it is having a significant adverse affect on the quality of life of service members stationed overseas. The Commanders-in-Chief in Europe and South America have determined that these

charges are a serious morale issue. The Commander-in-Chief, United States Transportation Command, agrees that relief is needed.

These charges are imposed on service members, their dependents, retirees and their dependents traveling Space-A on DOD chartered civilian aircraft (the military has recently come to rely more heavily on chartered flights to bring its members deployed overseas back to the United States for morale and welfare leave). These fees are currently not imposed on service members traveling Space A on military aircraft.

From March 1997 through February 1998, Air Mobility Command carried 47,467 Space-A passengers on charter flights ending in the United States and 52,777 Space-A passengers on charter flights originating in the United States. At the current rate (\$5 per person), this represents \$237,335 in customs fees. The military pays these taxes for the member and then must obtain reimbursement from the member (no authority exists for the military to absorb these expenses as Space Available travel is classified as morale and welfare travel and not official travel).

Space-A travelers on international military charter flights must pay a fee for use of international facilities of \$12.40 per passenger on any flight that begins or ends in the United States. See 26 U.S.C. § 4261(c)(1). Prior to October 1, 1997, this tax was only \$6 and it was imposed only on international flights from the U.S. This two-fold increase (from \$6 to \$12.40) is a new hardship for overseas military members. In addition to the International Air Transportation Tax, service members traveling Space-A on DOD-chartered civilian aircraft must pay a customs user fee of \$5; See 19 U.S.C. § 58c(a)(5)(B); and an Immigration Inspection fee of \$6 per passenger; See 8 U.S.C. § 1536(d).

Thus, since October 1997, the round-trip tax imposed on service members traveling on DOD chartered civilian aircraft has increased from \$17 to \$35.80.

**TAXES/FEES IMPOSED ON EACH SERVICE MEMBERS AND FAMILY MEMBER TRAVELING
SPACE-A
ON DOD CHARTERED CIVILIAN AIRCRAFT**

	<u>Pre-October 1, 1997</u>	<u>Post-October 1, 1997</u>
Immigration inspection fees	\$ 6	\$ 6
Custom fees	\$ 5	\$ 5
Fees for use of international facilities	<u>\$ 6</u>	<u>\$24.80</u>
	\$17	\$35.80

While \$35.80 may not seem excessive for a round-trip airfare from an overseas duty station and the United States, for a young enlisted member with a spouse and two children the \$140 in taxes/fees may preclude them from being able to take a mid-tour break to visit family and friends.

In addition to the obvious effect on morale, a mid-tour Space-A flight to the United States from overseas is a factor in voluntary tour extensions (which saves money by reducing the frequency of moves and can improve mission capability by increasing the continuity of personnel).

No group of travelers deserves less to be seen as a source of revenue than those who are serving the armed forces overseas. Enacting this narrow exception to title 19 of the United States Code will both improve morale and quality of life, while contributing to mission readiness.

If enacted, this proposal may cause a slight increase to the budgetary requirements of the Department of Defense. However, as noted above, the proposal would be an important step towards equalize the treatment of personnel traveling on charter flights with that of personnel traveling on military aircraft. Additionally, unlike many international travelers, the majority of military members traveling Space-A on charter aircraft are transiting to and from overseas locations to which they have been assigned by their employer, the Department of Defense. To extract extra revenues from them because of their assigned location appears inequitable at best. The Department of Defense will receive some benefit by eliminating the costs associated with collection and accounting for fees from small numbers of passengers and a streamlined payment method to the agency involved.