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STATEMENT OF RONALD W. PULLING, ACTING ASSOCIATE ADMINISTRATOR FOR PLANS, DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, BEFORE THE AVIATION SUBCOMMITTEE OF THE SENATE COMMERCE COMMITTEE REGARDING S. 3611 ON 12 JUNE 1972

Mr. Chairman and Members of the Committee:

I am Ronald W. Pulling, Acting Associate Administrator for Plans, Department of Transportation, Federal Aviation Administration. Accompanying me today are Mr. George U. Carneal, Jr., General Counsel of the FAA, and Mr. Clyde W. Pace, Deputy Director, Airports Service.

I am very pleased to have this opportunity to present the Department of Transportation's view on S. 3611. During the course of this hearing many of the factors associated with the complex issues raised by the recent Supreme Court decision on airport head taxes will be presented. Prior to that decision, the subject of State or locally imposed head taxes had been of relatively little controversy. However, with the Evansville and New Hampshire decisions, all parties, including the Department of Transportation, have had to restudy the issue.

S. 3611 would amend the Federal Aviation Act of 1958 to prohibit any State or subdivision thereof from levying <u>any</u> "tax, fee or other charge, directly or indirectly, on the carriage of persons in air transportation." Such legislation, with language of such a sweeping character raises many issues which we consider to be far reaching and complex.

The first issue I will address is the prohibition contained in S. 3611 against indirect taxation. The Department and its predecessor organizations have always viewed the imposition of charges for the use of airport facilities, such as landing fees, as legitimate and proper. These charges are often

necessary from a fiscal viewpoint to allow an airport to recoup some of the cost incurred in its operation. Rental charges for hangars and office space, tie down fees and similar user charges have traditionally been the subject of a legitimate exercise of the airport owner's prerogative. This position is supported by the Airport and Airway Development Act of 1970 which specifically addresses itself to this subject. Section 18 of ADAP requires an operator to "maintain a fee and rental structure for the facilities and services being provided the airport user which will make the airport as self-sustaining as possible . . . taking into account such factors as volume of traffic and economy of collection."

Clearly, such charges as landing fees would be indirect taxation on the carriage of persons in air transportation within the meaning of the bill and we feel any legislation which would prohibit the airport proprietor from imposing such fees is unwarranted.

S. 3611 also addresses itself to a prohibition of direct taxation on the carriage of persons in air transportation. The Department does not view the imposition of a direct tax, such as the so-called "head tax", as undesirable in and of itself. We believe a flat ban at this time, on all forms of such taxation at the State and local level would be inappropriate for the following reasons. First of all, we believe it is important that the Federal Government afford State and local governments maximum flexibility in devising appropriate means to meet local problems. This is consistent with the basic tenet of the Administration's Transportation Special Revenue Sharing Proposal

of avoiding excessive Federal control over local decision making. In addition, the so-called "head tax" is not unlike any other user charge and is a potential means by which airports could gain additional revenue. A direct charge may not prove to be any more inequitable than indirect charges, such as landing, rental or parking fees.

Secondly, at this time there are in effect only a limited number of State and local laws which we can analyze, and we believe it would be premature to enact a bill as broad in scope as S. 3611 in reaction to those few cases. It would be preferable to take time to see how other State and local governments react to the landmark decision of the court, and to enact comprehensive legislation only if the airport taxes that result from the court decision prove to be unreasonable and burdensome.

It is our feeling that airports should be operated on a self-sustaining basis as indicated in §18 of ADAP. Thus, local taxation of those who use the airport is not inherently undesirable in our view as long as the taxation is reasonable, non-discriminatory, and the revenues are directed to be used for airport purposes. We would hope that these taxes will evolve along these lines.

Additionally, we have no reason to believe that the opinion of the Supreme Court is not reasonable and judicious and, as a result, believe that an outright proscription or a moratorium on these taxes would be premature. Of course, we will continue to monitor and study subsequent developments and

if it should become obvious that local taxation has not developed along the desirable guidelines I previously mentioned, we would recommend appropriate legislation to provide Federal guidelines for equitable implementation and administration of these taxes.

This concludes my prepared remarks and I would now be happy to answer any questions the Committee may have.