

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548



B-75409

APR 21 1978

The Honorable Charles A. Vanik
House of Representatives

Dear Mr. Vanik:

Your letter of April 14, 1978, requested our opinion on our audit authority under H. R. 11986, 95th Congress, the proposed Noisy Aircraft Revenue and Credit Act of 1978. Briefly, the bill would amend the Internal Revenue Code of 1954 by reducing certain existing taxes (which are for deposit into the Airport and Airway Trust Fund) on air transportation of persons and property, and would impose a new 2 percent excise tax to be paid by the person furnishing the transportation but passed through to the person paying for the transportation. The bill also provides for the credit or refund of a portion of these new taxes to an operator (defined in the bill as a person liable for the new taxes "who is engaged in the transportation of persons or property by air for hire or compensation") for purchasing new aircraft or retrofitting existing aircraft to meet noise abatement regulations. Finally, the bill would transfer to the Airport and Airway Trust Fund that portion of the new taxes determined by the Secretary of the Treasury as not needed for the credits or refunds.

You state that you offered an amendment to the bill to provide for audit by the General Accounting Office (GAO) of the utilization of the new excise taxes, but that the amendment was defeated. You ask whether, under existing law or the language of H. R. 11986 as introduced, GAO would be able to audit the utilization of the "diverted trust fund" taxes to determine whether they are being used for their intended purpose.

Under section 304 of the bill, a credit or refund may be allowed with respect to any qualifying expenditure only if the Secretary of the Treasury has received a certification of such expenditure from the Secretary of Transportation before July 1, 1985. Also, costs and qualified progress expenditures can be taken into account in determining credits or refunds only if certified by the Secretary of Transportation.

Generally, without specific statutory authority, our audit authority does not extend to private persons or organizations. With respect to

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funds in the hands of an "operator" as defined in the bill, we would have no authority to demand access to the records and documents necessary to conduct an audit if such documents were in the operator's possession. 31 U. S. C. § 54. Under the present language of H. R. 11986, our audit authority would extend to verifying that credits or refunds have been made pursuant to the required certifications by the Secretary of Transportation. We would also have authority to audit the books, records and documents of the Department of Transportation to determine whether the Secretary's certifications were in accordance with law.

Of course, we have specific authority to audit grants under the Airport and Airway Development Act of 1970, as amended (49 U. S. C. § 1728), but this authority would have no application with respect to the tax credits and refunds under section 304 of H. R. 11986, since the funds to be transferred to the Airport and Airway Trust Fund by section 305 of the bill would be limited to those funds not needed for the credits or refunds.

Sincerely yours,

R. F. KELLER

Acting

Comptroller General
of the United States