

# A Personal Examination of the User Fee Problem

**A** "...and with specific respect to user fees, let me repeat what I said last year: *The FAA doesn't support a fee-based system. I don't know how to be clearer than that.*" — Marian Blakey, FAA Administrator, at the AOPA Convention, Philadelphia, 2003

by Tim Kern

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By now, we have all heard the ruckus about the FAA's decision to attempt to fund large parts of its operations through what it calls user fees, excise taxes on flight activities. Though several options have been thrown out at us in attempts perhaps to confuse and diffuse our arguments, there is a fundamental problem beyond what all the alphabet organizations are saying, and beyond all the talk I've heard around the hangar.

First, though, let's have a look at the idea itself. The FAA, unwilling to face the fact that it has for years squandered millions of dollars on incomplete, obsolete, and sometimes worthless schemes, has its second non-pilot Administrator in a row, appointed more for her ability to get along than to lead. I believe that, tough as Ms Marian Blakey talks to us, she is scared to death to go to Congress for money, lest she be asked the equivalent of, "What did you do with the last boatload we gave you?" So, lacking the guts to demand that Congress allocate the funds the FAA needs, she is looking elsewhere – and where better than to see if she can get the money from her subjects: from us.

The now-classic arguments against user fees are valid and well-made: General Aviation (and especially light GA, though we don't want to be divided amongst ourselves) will lose large parts of its constituency if forced to pay additional fees every time someone flies. (Only Congress can levy taxes, so bureaucracies call their taxes, "fees.") Not only will the money itself be a problem, but the accounting and paper trails will

cause yet more troubles, and open further avenues for discipline and prosecution. (If you think it's just the money that's a problem, consider what is involved, keeping yourself out of trouble with the IRS!)

The airlines don't want to pay more, either, so they prevail with loud voice upon the FAA to spread the tax around, to tax those nasty little airplanes (from Sport Cruiser to Cessna to Gulfstream) for all the trouble they cause ATC. The airlines don't see any way out of having the FAA tax somebody, so they want the FAA to tax somebody else: us.

The FAA is doing its best to divide and conquer: airlines vs. business aviation, pistons vs turbines, hubs against small airports. This way, it can pick us off, one relatively small group at a time, and have its way. We need to band back together – Part 121 operators and Part 103, 91 and 135 – all of us – and demand that the FAA do its job, without resorting to taxing us. In fact, if they follow the law, they can't do this.

**Understanding a different approach, and why it matters.**

"It's the Constitution, stupid." It's not that anyone in government actually pays attention to this document any more; but, assuming you can find an official who says he/she believes in the Constitution (and most will *say* they support every word) you can use this line of reasoning:

1) The FAA's constitutional authority is not to be found directly in the Constitution. Congress authorizes the FAA and all kinds of other things under one or both of the two so-called "elastic" clauses, the interstate commerce clause and the general welfare clause.

2) The interstate commerce clause cannot be the basis for the FAA, because the FAA needs authority from Congress to regulate flight

whether in commerce or not, intrastate as well as interstate.

3) So, the authority for the FAA must derive from the general welfare clause. Being that the purpose of the FAA is to serve the *general* welfare (and not some small group, such as airline travelers) it stands to reason that the FAA's only constitutional justification is the general welfare — safety — which it is.

If the FAA exists to further the general welfare of all Americans, those in the air and those on the ground, then the benefit of the FAA must accrue to all Americans, as well. We see that: the FAA doesn't want aviators to die, and it certainly doesn't want us to land on the flightless masses.

Most officials will nod along with you to this point, waiting for you to say something they don't already know. ...and here it is:

Since it is by now obvious that the general populace is the beneficiary of the FAA and the reason the FAA's existence is authorized in the first (and only) place, then it stands to reason that the FAA should be funded from the general fund. In fact, to fund it any other way (say, with user fees on those who fly, or even with av-fuel taxes) would actually be unconstitutional!

The Department of Education doesn't tax the schools; the Department of Defense doesn't tax the Iraqis; the FBI didn't even tax the Branch Davidians. The FAA can't tax us.

The reality is, nobody cares about the Constitution.

That's a problem, so don't give up on all the work our organizations are doing. That's why we join; it's a principal benefit. In large part, we join these organizations to have some voice, and we should support them at every turn.

Write your Senators and your Representative. Email them. Phone their Washington and local offices — *and do it every week!* Tell them they need to fund the FAA, or risk losing control of the agency, and us. (The only thing an elected official likes less than controversy is losing power!)

Write the FAA, just for the record. The top

brass of the FAA, of course, don't care about us as much as about looking good to Congress — and ideally that means Congress doesn't know they exist. If we make noise, we'll get attention. (And if we don't, we won't!)

I'd recommend that, if your time is really tight, you not bother with the DoT (Department of Transportation, of which the FAA is a subset). That Department has bigger fish to fry (like cars), and would like nothing more than to have some reason to shut us all out of the skies and sit back with the lobbyists from the airlines rather than hearing from the riffraff, half of whom can't even afford pavement for their runways.

Some cautions:

Though it may seem that the airlines are the villains in this scenario, we must remember that the real problem is the spineless top tier of the FAA and DoT who are afraid to go Congress to demand the money to do the jobs Congress has given them. The second tier of trouble is our Congress itself, which allows these agencies to run largely unsupervised, wasting money and fostering inefficiency, and rewarding "getting along" rather than accomplishment. We need to understand that we and the airlines (and all of us outside the ruling class) are all being gouged from every angle — and we need Congress to step up, tell us why they need more of our money, and then demand it from us. Their weasel way of allowing their bureaucrats to effectively impose taxes needs to be widely exposed and stopped. We need to demand that Congress do its job. In other words, if Congress wants all this power, it needs to be responsible with it!

OK, that's a rant. Oops — I meant, "That's a wrap!"

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