



October 30, 2007

The Honorable Andrew B. Steinberg  
Assistant Secretary for Aviation and International Affairs  
U.S. Department of Transportation  
Office of the Secretary  
1200 New Jersey Ave, SE  
Washington, DC 20590

The Honorable D. J. Gribbin  
General Counsel  
U.S. Department of Transportation  
Office of the Secretary  
1200 New Jersey Ave, SE  
Washington, DC 20590

**Re: Tincum Township Privilege Fee Proceeding  
Docket OST-2007-29341**

Dear Assistant Secretary Steinberg and Mr. Gribbin:

Airports Council International – North America (ACI-NA) is a membership organization representing approximately 165 state, regional, and local governing bodies that own and operate the principal airports served by scheduled air carriers in the United States and Canada. ACI-NA member airports enplane approximately 95 percent of the domestic, and virtually all of the international air passenger and cargo traffic in North America. Among the ACI-NA membership is Philadelphia International Airport, the airport addressed in Ordinance No. 2007-809 of Tincum Township, Delaware County, Pennsylvania, and the airport addressed in Docket OST-2007-29341. On behalf of its members, ACI-NA offers the following comments in response to the request in the Order Instituting Proceeding for the above Docket.

ACI-NA asserts that the Tincum Township Privilege Fee, which requires aircraft users to pay a landing fee for the use of the Philadelphia International Airport (an airport that the Township neither owns nor operates), is contrary to Federal law. ACI-NA is very concerned that other non-proprietor jurisdictions across the United States would impose

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similar fees on aircraft operations if the Township's fee is permitted to remain in effect.<sup>1</sup> These fees are not reinvested to improve and maintain the infrastructure and operation of an airport but are siphoned to the general fund of non-proprietor jurisdictions. Neither the airlines nor the passengers receive any benefit from these fees.

We agree with the conclusions expressed in the August 30, 2007, correspondence to you from the Air Transport Association (ATA) and the Air Carrier Association of America (ACAA): (1) The Anti-Head Tax Act preempts and prohibits the fee imposed by Tincum Township; (2) 49 U.S.C. Subsection 40116(c) of the Anti-Head Tax Act does not authorize the Tincum Township fee; (3) The Tincum Township fee violates 49 U.S.C. Subsection 40116(d)(2)(A)(iv) because the fee is not "wholly utilized for airport or aeronautical purposes"; and (4) 49 U.S.C. Subsection 40116(e)(2) of the Anti-Head Tax Act bars the Tincum Township fee. ACI-NA shares with ATA and ACAA the view that 49 U.S.C. 40116(c) was intended to serve as a limiting provision, as opposed to a grant of authority for non-proprietor jurisdictions to impose taxes on aeronautical operators. In addition, by its own terms, Section 40116(c) applies to "taxes", and not to "fees" such as the Township's "privilege fee."

An existing framework of statutory provisions controls an airport proprietor's assessment of fees and charges on airlines and other aeronautical users and restricts the airport proprietor's use of the resulting revenues. This framework includes not only the Anti-Head Tax Act but also 49 U.S.C. 47129 and 49 U.S.C. 47107. No reading of the Anti-Head Tax Act that would permit a non-proprietor jurisdiction to impose a fee for the privilege of using an airport can be reconciled with these provisions, and no legislative history supports such a result. If the Township's fees remain in place, an incongruity results: Proprietors responsible for the safe and efficient operation of airports would have statutory limitations on fees and charges to aeronautical users and on expenditure of funds, but no limitations whatsoever would apply to fees imposed by non-proprietor jurisdictions.

The assessment of fees by non-proprietor jurisdictions could have severe adverse consequences for the national air transportation system. Many commercial service airports across the United States are wholly or partially located in the jurisdictions of

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<sup>1</sup> A similar concern was expressed by Congress in enacting the Anti-Head Tax Act (Pub. L. No. 93-44, 87. Stat. 88) in 1973.

Presently, at least 31 different government jurisdictions have levied head taxes and many other communities are in the process of doing so or are seriously considering it. We believe this proliferation of local taxes can and will undermine a sound national transportation system by causing confusion, delay, inequities, and discrimination in air transportation and must be prohibited before it gets any further out of hand.

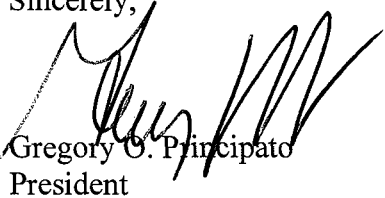
119 Cong. Rec. 3349-50 (Cannon).

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non-proprietors: such airports include, for example, Atlanta, Georgia; Baltimore, Maryland; Charleston, South Carolina; Cincinnati, Ohio; Des Moines, Iowa; Detroit, Michigan; Grand Rapids, Michigan; Monterey, California; Moline, Illinois; San Diego, California; San Jose, California. Commercial service airports in the U.S., particularly those operated by airport authorities, stand to be affected if ordinances similar to Tinicum's are enacted.

We therefore urge the Department to find that the fee imposed by Tinicum Township is unlawful; to support the airline defendants in their litigation with the Township; and to take such other action as may be necessary to invalidate the Township's ordinance.

Sincerely,



Gregory C. Principato  
President