

**§ 40116. State taxation**

(a) DEFINITION.—In this section, “State” includes the District of Columbia, a territory or possession of the United States, and a political authority of at least 2 States.

(b) PROHIBITIONS.—Except as provided in subsection (c) of this section and section 40117 of this title, a State, a political subdivision of a State, and any person that has purchased or leased an airport under section 47134 of this title may not levy or collect a tax, fee, head charge, or other charge on—

- (1) an individual traveling in air commerce;
- (2) the transportation of an individual traveling in air commerce;
- (3) the sale of air transportation; or
- (4) the gross receipts from that air commerce or transportation.

(c) AIRCRAFT TAKING OFF OR LANDING IN STATE.—A State or political subdivision of a State may levy or collect a tax on or related to a flight of a commercial aircraft or an activity or service on the aircraft only if the aircraft takes off or lands in the State or political subdivision as part of the flight.

(d) UNREASONABLE BURDENS AND DISCRIMINATION AGAINST INTERSTATE COMMERCE.—(1) In this subsection—

(A) “air carrier transportation property” means property (as defined by the Secretary of Transportation) that an air carrier providing air transportation owns or uses.

(B) “assessment” means valuation for a property tax levied by a taxing district.

(C) “assessment jurisdiction” means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(D) “commercial and industrial property” means property (except transportation property and land used primarily for agriculture or timber growing) devoted to a commercial or industrial use and subject to a property tax levy.

(2)(A) A State, political subdivision of a State, or authority acting for a State or political subdivision may not do any of the following acts because those acts unreasonably burden and discriminate against interstate commerce:

(i) assess air carrier transportation property at a value that has a higher ratio to the true market value of the property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(ii) levy or collect a tax on an assessment that may not be made under clause (i) of this subparagraph.

(iii) levy or collect an ad valorem property tax on air carrier transportation property at a tax rate greater than the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(iv) levy or collect a tax, fee, or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee, or charge

wholly utilized for airport or aeronautical purposes.

(v) except as otherwise provided under section 47133, levy or collect a tax, fee, or charge, first taking effect after the date of enactment of this clause, upon any business located at a commercial service airport or operating as a permittee of such an airport that is not generally imposed on sales or services by that State, political subdivision, or authority unless wholly utilized for airport or aeronautical purposes.

(B) Subparagraph (A) of this paragraph does not apply to an in lieu tax completely used for airport and aeronautical purposes.

(e) OTHER ALLOWABLE TAXES AND CHARGES.—Except as provided in subsection (d) of this section, a State or political subdivision of a State may levy or collect—

(1) taxes (except those taxes enumerated in subsection (b) of this section), including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and

(2) reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities of an airport owned or operated by that State or subdivision.

(f) PAY OF AIR CARRIER EMPLOYEES.—(1) In this subsection—

(A) “pay” means money received by an employee for services.

(B) “State” means a State of the United States, the District of Columbia, and a territory or possession of the United States.

(C) an employee is deemed to have earned 50 percent of the employee’s pay in a State or political subdivision of a State in which the scheduled flight time of the employee in the State or subdivision is more than 50 percent of the total scheduled flight time of the employee when employed during the calendar year.

(2) The pay of an employee of an air carrier having regularly assigned duties on aircraft in at least 2 States is subject to the income tax laws of only the following:

(A) the State or political subdivision of the State that is the residence of the employee.

(B) the State or political subdivision of the State in which the employee earns more than 50 percent of the pay received by the employee from the carrier.

(3) Compensation paid by an air carrier to an employee described in subsection (a) in connection with such employee’s authorized leave or other authorized absence from regular duties on the carrier’s aircraft in order to perform services on behalf of the employee’s airline union shall be subject to the income tax laws of only the following:

(A) The State or political subdivision of the State that is the residence of the employee.

(B) The State or political subdivision of the State in which the employee’s scheduled flight time would have been more than 50 percent of the employee’s total scheduled flight time for the calendar year had the employee been en-

gaged full time in the performance of regularly assigned duties on the carrier's aircraft.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1111; Pub. L. 103-305, title I, §112(e), title II, §208, Aug. 23, 1994, 108 Stat. 1576, 1588; Pub. L. 104-264, title I, §149(b), Oct. 9, 1996, 110 Stat. 3226; Pub. L. 104-287, §5(66), Oct. 11, 1996, 110 Stat. 3395; Pub. L. 115-254, div. B, title I, §159(a), Oct. 5, 2018, 132 Stat. 3220.)

HISTORICAL AND REVISION NOTES  
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40116(a) .....	49 App.:1513(d)(2)(E).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1113(d); added Sept. 3, 1982, Pub. L. 97-248, §532(b), 96 Stat. 701.
	49 App.:1513(f) (words in parentheses).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1113(f); added Nov. 5, 1990, Pub. L. 101-508, §9125, 104 Stat. 1388-370.
40116(b) .....	49 App.:1513(a).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1113(a); added June 18, 1973, Pub. L. 93-44, §7(a), 87 Stat. 90; Nov. 5, 1990, Pub. L. 101-508, §9110(1), 104 Stat. 1388-357.
40116(c) .....	49 App.:1513(f) (less words in parentheses).	
40116(d) .....	49 App.:1513(d)(1), (2)(A)-(D), (3).	
40116(e) .....	49 App.:1513(b).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1113(b); added June 18, 1973, Pub. L. 93-44, §7(a), 87 Stat. 90; Sept. 3, 1982, Pub. L. 97-248, §532(a), 96 Stat. 701.
40116(f) (1)(A), (B).	49 App.:1512(c).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1112; added Dec. 23, 1970, Pub. L. 91-569, §4(a), 84 Stat. 1502; restated Feb. 18, 1980, Pub. L. 96-193, §402, 94 Stat. 57.
40116(f) (1)(C).	49 App.:1512(b).	
40116(f)(2) ...	49 App.:1512(a).	

Subsection (a) is made applicable to subsections (b) and (e) of this section to avoid having to repeat the term being defined. In subsection (a), the words "Commonwealth of Puerto Rico, the Virgin Islands, Guam" are omitted as surplus because of the definition of "territory or possession of the United States" in section 40102(a) of the revised title. The word "authority" is substituted for "agencies" for consistency in the revised title and with other titles of the United States Code.

In subsection (b), before clause (1), reference to 49 App.:1513(f), restated as subsection (c) of this section, is added for clarity. The words "directly or indirectly" are omitted as surplus. The text of 49 App.:1513(a) (words after "subsection (e) and") is omitted as surplus.

In subsections (d)(2)(A), before clause (i), and (f)(1)(C) and (2), the word "political" is added for consistency in the revised title and with other titles of the Code.

In subsection (f)(1)(A), the word "pay" is substituted for "compensation" for consistency in the revised title and with chapter 55 of title 5, United States Code. The words "rendered by the employee in the performance of his duties and shall include wages and salary" are omitted as surplus.

In subsection (f)(1)(B), the words "means a State of the United States" are substituted for "also means" for clarity.

In subsection (f)(1)(C), the words "of a State" are added for clarity.

In subsection (f)(2), before clause (A), the words "as such an employee" are omitted as surplus.

PUB. L. 104-287

This amends 49:40116(d)(2)(A)(iv) to conform to the style of title 49 and to set out the effective date for this clause.

Editorial Notes

REFERENCES IN TEXT

The date of enactment of this clause, referred to in subsec. (d)(2)(A)(v), is the date of enactment of Pub. L. 115-254, which was approved Oct. 5, 2018.

AMENDMENTS

2018—Subsec. (d)(2)(A)(v). Pub. L. 115-254 added cl. (v).  
1996—Subsec. (b). Pub. L. 104-264, in introductory provisions, substituted "a State, a" for "a State or" and inserted ", and any person that has purchased or leased an airport under section 47134 of this title" after "of a State".

Subsec. (d)(2)(A)(iv). Pub. L. 104-287, which directed substitution of "August 23, 1994" for "the date of enactment of this clause", was executed by making the substitution for "the date of the enactment of this clause" to reflect the probable intent of Congress.

Pub. L. 104-287 substituted "levy" for "Levy".

1994—Subsec. (d)(2)(A)(iv). Pub. L. 103-305, §112(e), added cl. (iv).

Subsec. (f)(3). Pub. L. 103-305, §208, added par. (3).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

CONSTRUCTION OF 2018 AMENDMENT

Pub. L. 115-254, div. B, title I, §159(b), Oct. 5, 2018, 132 Stat. 3220, provided that: "Nothing in this section [amending this section] or an amendment made by this section shall affect a change to a rate or other provision of a tax, fee, or charge under section 40116 of title 49, United States Code, that was enacted prior to the date of enactment of this Act [Oct. 5, 2018]. Such provision of a tax, fee, or charge shall continue to be subject to the requirements to which such provision was subject under that section as in effect on the day before the date of enactment of this Act."

§ 40117. Passenger facility charges

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) AIRPORT, COMMERCIAL SERVICE AIRPORT, AND PUBLIC AGENCY.—The terms "airport", "commercial service airport", and "public agency" have the meaning those terms have under section 47102.

(2) ELIGIBLE AGENCY.—The term "eligible agency" means a public agency that controls a commercial service airport.

(3) ELIGIBLE AIRPORT-RELATED PROJECT.—The term "eligible airport-related project" means any of the following projects:

(A) A project for airport development or airport planning under subchapter I of chapter 471.

(B) A project for terminal development described in section 47119(a).

(C) A project for costs of terminal development referred to in subparagraph (B) incurred after August 1, 1986, at an airport that did not have more than .25 percent of