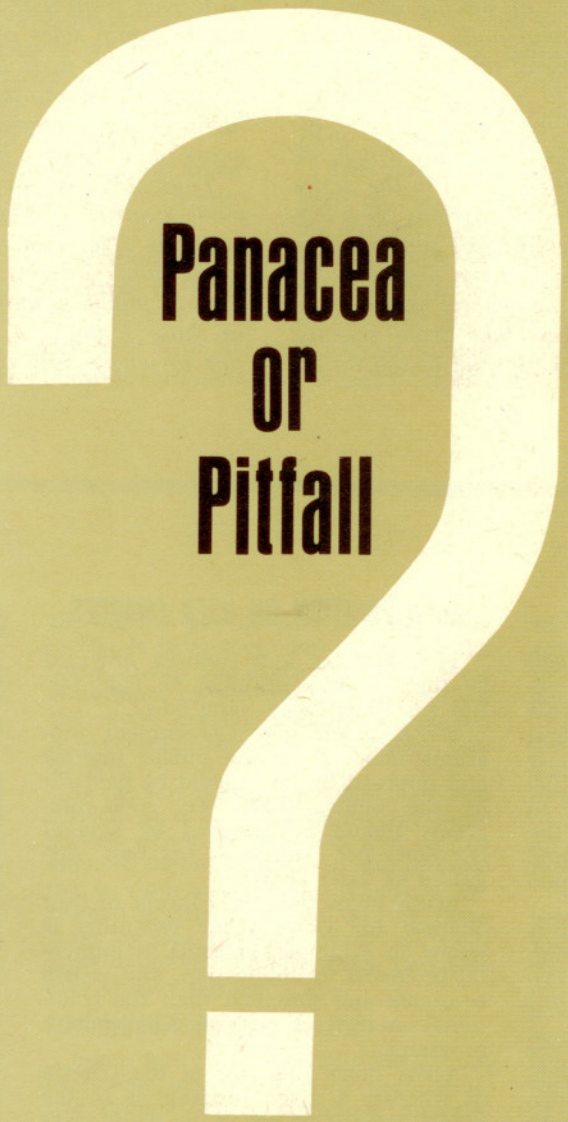
USER CHARGES:



Position and Analysis by the Aircraft Owners and Pilots Association

INTRODUCTION

The Aircraft Owners and Pilots Association (AOPA) is keenly aware of the need to provide more and improve existing airports and to improve the system for moving air traffic. This is essential to increase the productivity and economic value of air commerce for all the people of the United States, as well as to provide adequate facilities for those who use air transportation.

The airport and airways system has grown to its present importance by the combined efforts of private enterprise and government development. Traditionally, government efforts have been financed from general tax revenues.

There are now strong pressures to make major changes in the Federal financing of aviation facilities by placing direct charges on those individuals and companies which are direct users. These pressures have their origin in the desire to establish and maintain more Federal programs on a bigger scale than existing Federal revenues will support. The Federal Government has almost reached the limit of what it feels that it can safely take from the general taxpayer. So it has turned to seeing what it can take from selected groups. To justify this, it calls them "special beneficiaries" and claims that they receive "special benefits" from governmental programs. Whether these claims are true or not matters little. The object is to persuade the public that they are true—and thereby obtain public approval for the selective taxes to be imposed.

What is at issue here goes far beyond air transportation. It is a revolutionary change in government financing.

At present only about 7% of the total Federal revenue is derived from user charges or selective taxation. This includes stamp sales of the Post Office Department. It also includes those taxes on gasoline, tires and other items used in ground transportation which go into a trust fund for highway development. Included too are charges for issuances of copyrights, patents and certain other documents.

Thus, 93% of govenrment financing is from general taxation to provide programs in the total public interest. Education is a good example of general taxation for programs in the public interest. Those persons who do not have children in public schools still provide funds for the operation of those schools. A program of user charges could alter this to where only those persons who are the direct users

THE ISSUE

Every person—not just those in general aviation—is threatened with selective taxation on a grand scale. This threat comes primarily from the Federal Government in the form of more "user charges" for government activities. Historically, activities considered to be in the public interest for the benefit of the nation as a whole have been supported by general taxation. Some people would like to change this.

The issue is complicated and involves fundamental concepts of government. The outcome will affect how our Government operates and how it obtains the money to carry on its programs.

Aviation is the prime guinea pig for an experiment, as the Federal Government tests how and whether it can divide U.S. citizens into minority groups and impose selective taxes on them without arousing general public resistance.

Everyone should know what "user charges" are, what they involve, and what their consequences are likely to be.

AOPA POSITION ON USER CHARGES

The facilities and services provided by the Government must be paid for. But who should pay—and how?

AOPA holds that Government programs adopted in the public interest and imposed by law should be paid for by the public. Therefore, such programs should be financed by general taxation—not selective taxation disguised as "user charges."

AOPA holds that the concept of user charges for Government programs is wrong in principle, presents monumental problems in application, and is less equitable and practical than the traditional method of funding Government programs.

AOPA holds that one of the criteria of whether a given program is in the public interest or not is the willingness of the general taxpayer to support it. If the public will not support it, the program should not be established or maintained by law.

AOPA holds that in those cases where public support is lacking for a given program, private enterprise should be relied upon to provide the facilities and services on a voluntary basis. This may warrant regulation as a public utility if the activity is sufficiently infused with the public interest.

As applied to airway, airport and aviation services and facilities provided by Government, these principles mean that AOPA is opposed to financing them through user charges. These facilities and services were established in the public interest. AOPA believes they are still in the public interest.

USER CHARGES DEFINED

Strictly speaking, there is no such thing as a "user charge." The term is an epithet applied to a tax or fee to convey the impression that the payee is receiving a "special benefit" from the Government for something the Government requires or provides but does not wish to pay for, even though the requirement or provision was established by law or regulation in the public in-

of the education system would bear the major portion of the expense.

There are tremendous ramifications to the user charge concept. AOPA believes that the user charge concept has such far-reaching implications that it is time for Congress to make a clear and definitive declaration of policy and principles regarding them. Air transportation should not be singled out from among the thousands of government services for this major change in Federal Government financing.

Such a definitive study of the user charge principle needs and should take considerable time because of the complexity of the subject. Included in this paper are some of the areas which need to be studied and resolved.

AOPA recognizes that the immediate needs of air transportation would not be met by waiting for a full Congressional policy position on user charges.

Perhaps the expedient solution for air transportation is a determination of whether or not air commerce is in the total public interest. If it is, then there are financial solutions to the airport requirements more consistent with the historic pattern of financial operations of the government. If it is not, then the subject of user charges, the actual needs and the role of the user in determining these needs and expenditures can be discussed, debated and decided.

It is AOPA's view that improvement of air commerce is in the total public interest. As such, the public interest requirements for air commerce facilities have been and should be provided from general revenue funds. All of the direct users contribute through their general taxes.

This is consistent with other programs financed by Government. AOPA agrees with this policy. AOPA is, however, opposed to selective taxation to place the full burden of Government programs to improve air commerce on those who are direct users.

This analysis of user charge history and philosophy has been prepared with the intent of shedding proper light on the total subject so that a fair evaluation can be made. There are two basic sections to this paper. The first section traces the history of government funding and the growth of the user charge philosophy. The second section poses many of the questions which AOPA believes must be answered by Congress before expanding the use of user charges.

terest. A more accurate term would be "selective taxation."

Selective taxation falls into two general classifications based on the method of establishment.

Legislative Selective Taxation

Some selective taxes are established by Congress through the legislative process. Most generally, these take the form of an excise tax on the sale of some kind of product or service. There are excise taxes on liquor, gasoline, tires, autos, telephone service, tobacco, airline fares, firearms, and so on—but very few are labeled as "user charges." Most of these taxes go into the general fund and are available for any purpose.

A few are called "user charges." The gasoline and tire taxes fall in this group and are collected in a trust fund for highway construction. The excise tax on airline fares is sometimes mislabeled as a "user charge"—even though it goes into the general fund. The airlines claim it to be *their* contribution to the cost of operating the FAA's air traffic control system—despite the fact that the airlines pay no part of it, but only collect it from their passengers for the Government. The excise tax on air fares is no more an airway user charge than the excise tax on cigarettes purchased in the airline terminal building by passengers.

In a few cases Congress has prescribed in a law that a fee for some service should be collected and set the amount; patent application and processing fees are an example. Whenever the Executive Branch wants one of these taxes or fees raised, it must ask Congress to change the law which Congress may or may not do.

Administrative Selective Taxation

Some fees can be established by departments and agencies of the Executive Branch. Three situations underlie these fees.

1. Congress may have prescribed that a fee should be collected for some specific service or use but left determination of the amount to the administrative agency.

2. Congress may have authorized a fee but left it to the discretion of the administrative agency to determine whether to impose it or not and in what amount.

3. The administrative agency may have decided to collect the fee on the basis of the Title V rider in a 1952 appropriations act. This is a fuzzy bit of Congressional legislation that permits almost anything, depending on how it's interpreted. More of this later.

Administrative fees have generally been nominal in amount until recent years. They have been collected for the issuance of aircraft registrations, admission to selected recreational areas, purchase of some publications, rental of certain facilities and similar things. While often called "user charges," it would be more accurate to refer to them as sales prices of goods or services sold, rentals of property, or fees for regulatory papers. Little if any measurement of use is involved.

Administrative fees have one common characteristic: their impact is fixed by appointed, as distinguished from elected, government officials.

HISTORICAL PERSPECTIVE

Until 1965, the concept of "user charges" as a general method to raise large revenues to finance Federal Government programs had little effective support. Except for the highway trust fund, established in 1956, user charges had been applied in only a limited way. A review of how the issue grew helps to understand its implications.

Before the income tax, the Federal Government got most of its revenue from import duties. These, along with excise and a few other taxes, went into the general fund, out of which the Government's programs were financed. Trust or special funds dedicated to some particular purpose were avoided. This practice continued in the 20th century with a few notable exceptions like the highway trust fund. The Executive Branch has steadily opposed the establishment of trust funds for special purposes as a limit on its flexibility to spend the money where it wants to.

In the early 1930's an effort was made to establish fees for Federal inspection and grading of certain food products. Congressional hearings were hot. Congress finally decided that *inspection* was for the protection of the public and no fee should be established, but that *grading* was a benefit for the producer rather than the public and therefore a fee was appropriate.

After World War II Congressional concern was aroused regarding some "special benefits" received from the Federal Communications Commission. It is notable that the "special benefit" which concerned everybody was indeed a unique situation and not one which applied to all persons or even groups of persons subject to FCC regulation and licensing.

A Senate committee studied the problem of fees for special services rendered by several Government agencies. It concluded: "The study has, however, demonstrated clearly that the field is far too broad to be covered by general legislation; it must instead, if practical results are to be obtained, be covered by individual acts of Congress drafted by specialists in special fields." It went on, "The committee does not herein align itself either for or against the assessment of fees. Such a decision can prudently be made only after full and exhaustive hearings." This was in 1950.

Congressional Action

The next year, during hearings on the Independent Offices Appropriations bill, members of the House Appropriations Subcommittee were reminded by Administration witnesses that some Federal agencies did not have any legislative authority to charge fees. Some of these Congressmen had been urging user fees for several years as a means of underwriting some of the Federal activities which they considered to be of no benefit to their constituents. They decided to do something—and did. They inserted a "rider" in the bill which became Title V—and famous—or infamous.

Legislative responsibility in Congress is divided among several committees. These responsibilities are jealously guarded, but once in a while a trespass occurs. That's what a rider is. It's an amendment to a bill by a committee that does not have jurisdiction over the subject matter for the amendment. Also, as a consequence, the subject matter of bill and rider is usually unrelated. In this case, without public hearings or notice of any kind, the Appropriations Committee usurped the prerogatives of the Ways and Means Committee which is responsible for revenue legislation.

The language of the rider is a masterpiece of foggy law making. It reads:

> It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency (including wholly owned Government corporations as defined in the Government Corporation Control Act of 1945) to or for any person (including groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in the case of agencies in the Executive branch, shall be uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in the case of an existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts; provided, that nothing contained in this section shall repeal or modify existing statutes prohibiting the collection, fixing the amount, or directing the disposition of any fee, charge or price; provided further, that nothing contained in this section shall repeal or modify existing statutes prescribing bases for calculation of any fee, charge, or price, but this proviso shall not restrict the redetermination or recalculation in accordance with the prescribed bases of the amount of any such fee, charge or price.

Appropriation bills are so complex, the amounts of money so vast, and the items they cover so technical and detailed—and time is so short—that the House and Senate Chambers are unable to give them much more than cursory treatment. Reliance is placed on the Committee, and the Subcommittee particularly, to do a good job of screening.

The bill was adopted. There was no mention or debate of any kind about the rider. Nor did the President object.

Thus, almost offhand, without public hearings, without public debate, without any real consideration, and despite the advice of a committee which had given the subject careful thought, was established an authority for administrative user charges of far-reaching consequences.

In 1954, the Federal Communications Commission made the initial attempt to establish fees under the provisions of the rider, but some Senators were having doubts. The Government Operations Committee initiated another study, and the Senate passed a resolution asking the FCC and other agencies to hold off until that study was completed.

They weren't the only ones bothered. In 1955, the American Bar Association adopted a resolution urging repeal of the rider and stating its opinion that "no schedule of agency fees and charges of the character specified in said Title V (the rider) should be adopted unless first authorized by specific legislation dealing with the particular subject matter or agency." Elsewhere, the Association stated its views thusly:

> We regard the rider as 'deficient in formulating a legislative policy on this subject.' Further, the rider, which fails to discriminate between private benefit services and Government regulatory functions and which fails to distinguish between a wide range of Government services, varying from charges for copying documents to that of transferring the major costs of a regulatory agency to those regulated, is far too sweeping in scope to reflect completed legislative policy considerations. The terms of the rider are both vague and broad in the grant of total discretion as to whether to charge or not to charge fees for any or all of the great variety of services and functions identified in the fee authorization.
>
> Since the rider does not require the imposition of fees, it is the view of the Association that it is an inappropriate legislative basis for an agency rule making action, and that the rider should be repealed so that proposals of this sort may be considered on their individual merit by the appropriate legislative Committees of the Congress.

The Senate Committee issued its report in 1956, and in substance reaffirmed the conclusions stated six years previously.

> It is and has been the view of this committee that such changes in law or legislative authority as may be required with respect to the feasibility and practicability of establishing appropriate fees and charges for special services rendered by the Government, for the benefit of persons or agencies other than for the public benefit, should be considered by the respective jurisdictional committees. As has been previously recommended, fee assessments and adjustments to

be made by individual Federal agencies should be evaluated and approved by the appropriate committees and, if necessary, remedial legislation should be recommended to the Congress by such committees.

It is, therefore, recommended that the committees of the Congress having oversight jurisdiction over agencies rendering special services in this category, should (1) ascertain from such agencies the need for effecting adjustments in existing schedules of fees; and (2) initiate appropriate leglative action required to implement fully agency fee programs in the public interest.

Executive Action

Despite the reasoned merit of these conclusions, on the basis of Title V the Administration urged all Executive agencies to find opportunities to establish or increase fees for their services. The Budget Bureau laid down some general policies and in 1959 added guidelines and requirements for reports of fees collected by issuing its Circular No. A-25. It too has some interesting language.

By its terms, it is the President's general policy that: "A reasonable charge, as described below, should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit. . . . Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service."

Circular No. A-25 provides examples by saying ". . . a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service: (a) enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, crop insurance, or a license to carry on a specific business); or (b) provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes, or safety inspections of craft); or (c) is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public (e.g., receiving a passport, visa, airman's certificate, or an inspection after regular duty hours)."

The only exclusion is of dubious value. It says, "No charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefiting broadly the general public (e.g., licensing of new biological products)." The logic of the differentiation between the licensing of a biological product and a public carrier service is tenuous at best.

In commenting on the determination of costs, the circular directs the agencies that "The cost computation shall cover the direct and indirect costs to the Government of carrying out the activity," including such things as personnel costs, rent, maintenance, management, supervision, enforcement, research, establishing standards and regulation. If there are legislative prohibitions to fees, agencies are directed to submit legislative proposals to remove them. If the accounting system does not make fee calculation practical, the agencies are not to change the system but to estimate the costs from what records they have. The circular does say that fees shall not exceed the total cost of the service, but it also requires annual review and adjustment. It also bows to practicality by allowing that, if the cost of fee collection is "unduly large" in comparison to the receipts, an exception may be allowed.

Once again, the FCC was the guinea pig. Succumbing to Budget Bureau pressure, FCC revived its proposal to establish fees for license applications. Despite meritorious and virtually unanimous objections from the responding public, the FCC fees were adopted in 1963.

Court Action

Recognizing this as a landmark case, aviation interests, including AOPA, sought relief in the U.S. Court of Appeals in Chicago. The Court decided in favor of the FCC. The case was appealed but the Supreme Court refused to review it. *Thus, a Supreme Court decision on the merits is still lacking.*

Aftermath

Administrative action to establish or raise fees followed in a hurry. Agency after agency published notices of proposed rule making for the purpose and followed them up with final rules.

In 1966 President Johnson sent a memo to all heads of departments and agencies telling them to give user charge legislation continuing active support and to keep administrative user charges current.

Congress adopted a law to finance a special "Land and Water Conservation Fund" from user charges and other sources, leaving the amount of the charges to be determined by the Executive. Loud protests erupted from recreational water users. Several bills to prohibit such fees were introduced. Revenues did not materialize as expected. Congress recently made some changes backwards and is trying to figure out what to do next.

The Federal Aviation Administration has studied the user charge problem for years and published several reports on it. FAA's studies included proposals to raise the Federal gas tax to as much as 12½ cents to recover the "total cost" of the civil share of just the air traffic system. Their current proposals are only slightly more modest. They've also studied license fees, graduated registration fees, aircraft mileage charges, ton-mileage charges, gross revenue charges, passenger charges and freight charges, both separately and in various combinations.

FAA has also made minor adjustments in its existing nominal fees. In 1967, it issued a notice of proposed rule making to establish new and substantial fees for a wide variety of "services," certificates, and other papers. Objections were strong. As of December 1968, no final action had been taken.

In August 1967, the Senate Aviation Subcommittee held four days of hearings on the unmet requirements for an adequate national airport system. The testimony was mixed, but several witnesses—usually those responsible in one way or another for financing airports—called for various types of user charges: fuel, taxes, landing fees, passenger head taxes, and fees on various other bases. An interim report filed by the Subcommittee in January 1968 offered the opinion that the public was no longer willing to finance airports and airways and called for trust funds supported by user charges to pay for these programs. After more hearings, the Senate Commerce Committee reported a bill along these lines but it generated so much opposition that the Senate did not consider it.

In 1968, despite a storm of objections, the Port of New York Authority imposed a $25 minimum landing fee for airplanes operating at three of its airports during "peak hours" of traffic. This fee was specifically aimed at removing small aircraft operations from these airports but was still classified as a user charge.

The Virginia Legislature adopted a bill to impose a state head tax on all passengers originating at about a dozen Virginia airports served by airlines, but Congressional agreement is required and it's unlikely to go into effect. The Evansville, Indiana, City Council imposed a local head tax on passengers at its airport and this is being challenged in court as an impediment to interstate commerce. Several other state and local legislative bodies are toying with similar ideas. The power of suggestion is strong indeed. On the other hand, the Georgia legislature opposed the trend by adopting a law prohibiting the imposition of landing fees on non-commercial aircraft landings at public airports.

The House Ways and Means Committee, which has jurisdiction over revenue matters, has refrained from giving more than passing recognition to the user charge issue. It's difficult to say whether this is good or bad. It has taken no action to correct or eliminate the Title V rider. President Johnson asked for airways user charges again in 1966. The Committee held two days of hearings late in the session and did nothing further. It has appeared the Committee was not eager to open up this can of worms. Yet in reporting the transportation tax bill in April 1968, it used these words:

The domestic air transportation tax also is generally considered to be a

user tax, which insures that airline passengers pay at least a part of the cost of the airway facilities furnished and operated by the Government. This tax on foreign air travel recognizes the necessity of ultimately recovering from international air operations the cost of air and navigation facilities and air traffic control provided by the U.S. Government.

It is significant that the Committee used the term "generally considered to be a user tax" in referring to the excise tax. This has never been established as such, and the revenues are reported by the Treasury Department along with other excise revenues on goods and services. The bill did not pass.

In May 1968, the House Appropriations Committee returned to the subject in its report on the money bill for independent offices with these chilling words:

> The Committee is concerned that the Federal Government is not receiving sufficient return for all the services which it renders to special beneficiaries. This is particularly noteworthy with respect to the value to the recipient of certificates, franchises and operating permits. For instance, the license fees paid in the multibillion dollar radio and television industry are negligible in comparison to the value of these franchises. Other operating rights granted by agencies and commissions of Government have substantial values to the recipients. Accordingly, the Committee recommends that the applicable agencies review their schedule of fees and charges with a view to making increases or adjustments as may be warranted, taking into consideration beneficial certificates and privileges granted, to offset in part the increasing needs for direct appropriations for operating costs of the agencies concerned.

The Secretary of Transportation followed up by recommending bigger expenditures for airways improvements, a billion dollar Federal loan program for construction, mainly at big city airports, and a hundred million dollar grant program for construction at airports served by subsidized local service airlines. The grant money would come from the general fund. No trust fund would be established. But to pay for all this, he recommended that Congress enact passenger and cargo ticket taxes and general aviation fuel taxes sufficient to pay the entire cost of the Federal Aviation Administration except for the National Capital Airports, the supersonic transport, and the Federal Airport Aid Program which he intended to terminate. Thus, general aviation and the airline customers would pay for what the airlines want—while the airlines themselves would pay nothing. And this was called a "user charge" program!

Hearings on these recommendations were held and the Senate Commerce Committee reported a bill along similar lines for action in July 1968. No further action was taken so the bill died. But some version of it will doubtless reappear.

The threat has materialized. How will it end?

USER CHARGES FOR OTHER ACTIVITIES

While aviation is now the primary target for application of user charges on a grand scale, it is by no means the only one. The Government has made small advances in many areas which can be expanded rapidly as soon as this concept is accepted as a major method of financing Federal programs.

Source

In reporting on the user charge program, the Budget Bureau classifies the amounts collected according to source. In 1966 the total came to over $1,000,000,000. In addition there was $4,000,000,000 in fuel and other excise taxes going into the highway trust fund and $4,000,000,000 in postal revenues. Total Federal revenue that year was $132,600,000,000.

Permits and Licenses include admission and recreation fees; commissions on business concessions; immigration, passport and consular fees; patent and copyright fees; and other permits, registrations, and licenses totaling about $118,000,000.

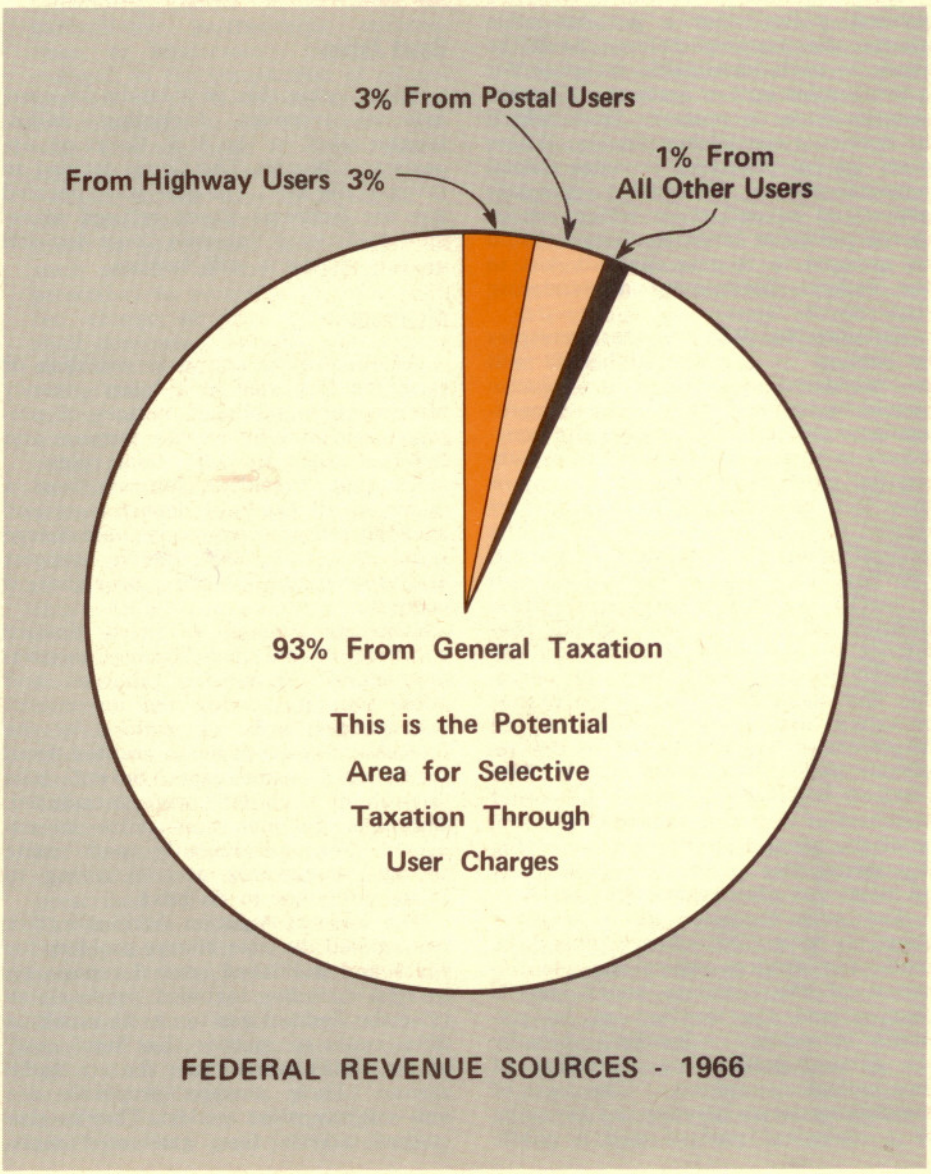
Rents and Royalties include royalties of various kinds, rents of real property, and rents of equipment totaling about $607,000,000.

Sale of Products includes timber, wildlife, agricultural and other land products; minerals and mineral products; power and other utilities; publications and reproductions; and miscellaneous products and by-products totaling about $387,000,000.

Miscellaneous Fees and Charges include those for testing, inspection and grading services; administrative, professional and judicial services; subsistence, laundry and health services; and miscellaneous others totaling about $69,000,000.

Collecting Agencies

Every major department of the Government and several lesser agencies



FEDERAL REVENUE SOURCES - 1966

collect fees of some kind. Over 60% of the fees go into the general fund of the Treasury; and the rest goes into revolving or trust funds or is returned to the particular agency.

One question arises at this point. With so many user charges for so many things, many of which have existed for a long time, why the fuss now? The answer lies in the fact that most of *these charges* were nominal in amount, intended only to cover the extra cost involved, and *were for goods or services rendered to specific individuals as a special circumstance rather than as a consequence of a general program for the purpose.*

For example, the Federal Aviation Administration has aircraft specially equipped to test the accuracy of the radio navigation aids which it owns and operates. A private airport owner can install his own navigation aid and the FAA will test it with their equipment for a fee to reimburse their extra expense for doing so. This *is* an extra service to a special beneficiary who should be charged for it, and no one argues the point. But few people conceive of the regular testing program by FAA of its own navigation aids as a special benefit for a special beneficiary because the aids were established for the purpose of facilitating air commerce in the public interest. *This difference lies at the heart of the issue.*

GENERAL CONSIDERATIONS

What should we consider as we assess the wisdom of making user charges a major method of raising money for Federal programs?

Constitutionality

Are user charges constitutional? The matter has never been litigated before the Supreme Court. It took a constitutional amendment in 1913 to permit unequal taxation of incomes. Any effort to use selective taxation as a means of more or less completely financing governmental programs would undoubtedly be subjected to challenge.

A different constitutional issue involves the separation of powers of the branches of Government. Congress has declared and authorized most Federal programs as being in the public interest. There is considerable doubt that the Executive has the right to declare them to be otherwise and therefore subject to user charges.

The Public Interest

What is it? Who determines it?

Like morality, the greatest good and similar concepts, "the public interest" has been analysed and debated repeatedly by various interested parties—with no final decision. Apparently, it varies with the viewpoint of the interested party, the time and circumstance of the consideration. But as a practical matter, in the context of our consideration, it seems reasonable to say that the public interest is what the representatives of the people, the Congress, say it is.

Establishment, operation and maintenance of an airways system is specifically called for by the Federal Aviation Act of 1958. In Section 103, the provision of this service is specified to be in the public interest. Section 303 specifically authorizes the FAA Administrator to expend funds for this purpose within the limits appropriated by Congress. With so clear a statement that the airways services are for benefit of the public at large and that the financial provision for these services shall come from monies assumedly derived from general taxation, since no special trust fund or other special source is mentioned, it is clear that the public supported and the Congress adopted this obligation in that frame of reference. Any move to revise this concept, to suggest that the provision of an airways system is no longer in the public interest but has become a special interest program for which selected users must pay, requires the most careful review. And a change in the law.

If the public interest justifies reasonable Federal aid to provide a nationwide system of airports—and Congress has said it does—is halting the program or slowing it down with "self-sustaining" requirements before the objective is achieved contrary to the public interest? It would seem to be.

Specialized Programs

The dominant feature of a well-developed civilization is the specialization of its people which results in greater efficiency and abundance. To obtain these results Congress has often enacted programs to assist particular activities and felt it was in the public interest to do so. It is hardly proper that those engaged in these activities should pay a penalty for being so engaged. Thus, since Congress decided it was in the public interest to improve the flow of commerce by establishing and maintaining an airways system, those who use that system and thereby make commerce flow more freely should not have to pay a fee because they are accomplishing what Congress wanted. Such a fee contravenes the purpose of the legislation.

Since transportation is the means by which we bind the economy together and make it operate, it is obvious that everyone has an interest in it. Placing the financial burden solely upon the direct user is not only unfair, but inhibits timely development of adequate transportation resources.

Who Benefits?

The community, the state, the nation—and all their people—benefit from air commerce. Airports and airways are the tools of air commerce. They enable aircraft to speed the distribution of goods and services, the dispersion of industry, the generation of new jobs and business enterprises. They facilitate national defense and disaster relief. They stimulate business, industry, agriculture and forestry and make them more efficient and productive. Greater tax revenues are produced as a result. The community without transportation facilities stagnates and dies. In our present economy, where more and more of the travel is by air, some kind of air service is essential to the local community if it wants to have any commerce worthy of the name. In these terms, the local communities, as well as the nation, are also "special beneficiaries."

Nevertheless, it is claimed that aviation users receive special benefits above those accruing to the general public. Again, this claim overlooks the specialized nature of our society and the greater abundance of benefits the general public derives as a result. We are specialists in aviation and use aviation-related services. Others are specialists in other areas and similarly use the Government services devised for them, whether it be in agriculture, commerce, education, medicine, social welfare or other.

Moreover, the "benefits" frequently carry substantial penalties to the direct users. For many years pilots could fly into tower-controlled airports without an aircraft radio. A few years ago, the Federal Aviation Administration changed its rules to require radio. Thousands of aircraft owners were forced to spend large sums of money as a consequence. Currently, to comply with all the requirements of the radar system now being installed, aircraft owners must invest thousands of dollars in more new equipment.

Our Government limits and regulates the freedom of individuals in a wide variety of ways in the public interest. Is it proper to charge a fee of the person regulated as a consequence? The beneficiary of the regulation is the public—not the individual. Application for a license is by order of the Government which established the requirement in the first place—not at the "request" of the recipient. He "requests" it only because the law forces him to do so. If the public interest requires a program, the public should pay for what it wants and orders by law to be achieved. User charges are not an equitable way to finance public interest programs. They are a subterfuge to make a few pay for what the many want.

Is It Really In The Public Interest?

Anticipation of user charge revenues sometimes encourages administrations to recommend and legislators to adopt programs as being "in the public interest" when in fact they are not. This occurs when the administration refuses to ask for or the public refuses to pay the required additional taxes and the treasury is unable to support the program from existing revenues. Recent proposals for airways and airport development to satisfy airline demands are examples. Thus, consideration of what is actually in the public interest and what ought to be established by law becomes confused and irrational when user charges are involved.

Funding Federal Programs

Most activities of the Federal Government are financed from general tax revenues. User charges, even including the highway taxes and postal revenues, produce only 7% of the total revenues.

This raises several questions:

Are user charges the proper or better way to finance Government programs? If they are, it would seem much greater use would have been made of them. Why wasn't it?

Would general taxation decline in compensation for the revenues from user charges? It seems unlikely. The Government wants *more* money.

Would user charges be imposed on some activities and not on others of a similar nature? Probably, politics being what they are.

What criteria should be used to determine which programs are financed by user charges and which are not? This is what bothers the Senate Government Operations Committee.

Would the revenues go into a special trust fund for the particular activity? Congress and the Executive Branch have differed on this.

Should the particular activity be limited to what its fund would support? If the marketplace is the test, it should.

If the general public benefits in any way from these programs, how would that benefit be reflected in financing?

And, if there is no public benefit, should the program exist at all?

Would imposition of user charges sufficient to recover the full cost of Federal investment and operation of the National Aviation System promote or inhibit air commerce? Chances are that air commerce would slow to a trickle.

If user charges are to be imposed in one area, should they be imposed in all areas? Reasonable equity would seem to demand that they should—and at the same time. It would seem, too, that corresponding reductions and adjustments should be made in the general tax structure. This means a complete overhaul of the Federal Tax System, a task of colossal magnitude and consequence.

Taxation By Whom?

Congress often lays down broad guidelines and then gives administrators wide discretion to establish requirements. Should user charges come into being as a result? The Federal Aviation Administrator, for instance, is empowered to require a wide variety of certificates. Should he be able to create revenues by this method? We think not. But the FAA is now considering doing just that.

What is the difference between a tax and a fee? Does Congress have the power to delegate its taxing authority? While some might agree that it does, most would not. But, assuming for the sake of argument that it does, is the delegation in Title V properly made? We agree with the American Bar Association that it is not.

Who should determine what user charges should be imposed? We agree with the Senate Government Operations Committee that the responsible Congressional legislative committees should determine whether user charges should be imposed after full and complete public hearings. This should not be done by an Appropriations Subcommittee working behind closed doors and listening only to the Executive Branch of the Government. *But it seems to us that the wisdom of taking this course at all should first be studied by the committees responsible for raising revenue.* If it is wise, certainly some guidelines need to be established to ensure reasonable uniformity of treatment by other committees.

In determining whether or not user charges should be adopted as general policy, Congress should consider still many more questions.

What Safeguards?

What safeguards should be established to protect all concerned if user charges are to become the principal means of financing Federal programs?

Should trust funds for each program be established? What detailed cost accounting should be set up to identify appropriate costs, measure volume of use by the various classes of users, and levy appropriate charges? Without these features, users cannot be fairly assessed.

No simple formula like a fuel, ticket, or license tax accurately or even approximately measures use—particularly in aviation. The only merit of taxes of this kind is that they are easy to impose, simple to pay and collect. They are good instruments to collect revenues generally but need to be broadly and uniformly applied to avoid injustice. Those who favor selective use of such taxes as a form of user charge are usually much more concerned with the ease of collection or payment than with the accuracy of the measure of use.

What features are needed for effective control? How can—or should—services be limited by the trust funds available? How can—or should—all classes of users have an effective voice in determining what services are provided? Without such controls, a user can be charged for services he neither wants nor can afford, and contrariwise, may not receive services he needs and wants. In aviation for instance, most Federal facilities and services have been expanded to meet military and airline demands and standards. As a consequence, many of the facilities and services are excessive to the need of, or built to meet more sophisticated standards than are appropriate for the general aviation user—yet he would be obligated to pay for them.

Advocates of the user charge trust fund concept often point to the gas tax supported highway trust fund as a successful example of this approach. This overlooks several significant failings. Urban drivers pay a disproportionate share of taxes for their use of the interstate system. The interstate system comprises a small fraction of the nation's highways but takes about 75% of the money in the fund. Not all highway-related excise taxes go into the fund; on the other hand, some non-highway-related ones, such as the aviation gasoline taxes, do. Pressures to secure the 90% matching funds for the interstate system have led to the neglect of more pressing needs for urban highway construction which gets only 50% matching. And though the interstate system is also labeled and justified as a defense requirement, Congress appropriates no money from general revenues to cover this general public share of the costs. There is considerable dissatisfaction with the inequities in this 12-year-old program.

What Impact On Private Enterprise?

What effects would "user charges" have on private enterprise?

Historically, providing goods and services to individuals for a price has been the function of private enterprise—not the Government. Adoption of the user charge philosophy encourages the Government to provide these things when they ought to be left to private enterprise.

In his 1969 budget message, President Johnson indicated how far the Executive Branch was willing to go in competing with private enterprise:

> I am also proposing a broad program of transportation user charges *to apply the test of the marketplace to these activities*, and to relieve the general taxpayer of some of the burden of financing special benefits for certain individuals and industries (emphasis supplied).

Is the testing of goods or services in the marketplace the proper role of Government? It hasn't been considered so in the past.

Should this historic concept be changed? Provision of facilities and services by Government on a user charge basis degrades, and in some cases denies, opportunities for the forces of competition to operate. It is illogical and inconsistent to favor user charges and simultaneously ask the Government to "get out of business."

Is A Regulated Utility A Possibility?

What if a program does not justify general tax support but is "tainted with the public interest"? Is there a practical alternative other than user charges? There certainly is. The regulated public utility. Many public services are provided by private enterprise through this mechanism. The advantage from the user's point of view is that the utility has to "sell" instead of "regulate" to promote its service, and it permits the user to purchase only those services which he wants. If a utility similar to the Bell Telephone Company or Comsat were to run the national aviation system, would aviation and the public be better off? We suspect it might.

Charges By Non-Federal Authorities

Aircraft owners are subject to a num-

ber of costs by state and local authorities. How would Federal user charges, loaded on top of this situation, affect aviation development?

Most states already assess some sort of aircraft and pilot license fees. Many impose registration fees in lieu of personal property assessments. Many local authorities impose property taxes in those jurisdictions where "in lieu" taxes are not in force. The states also collect fuel taxes. Refunds, if any, for non-highway use are seldom complete. Some state and local authorities are currently attempting to levy head taxes on passengers who pass through the airports in their jurisdictions. Some local airport authorities impose tolls in the form of landing fees on aircraft which use their airports. These charges add up to a substantial burden on the aircraft operator. Quite often the revenues derived are used for non-aviation purposes. What recognition should be given to these factors?

A Federal user charge program in aviation would duplicate many of these state and local charges and more than redouble the burden on the aircraft owner. But in the most comparable other area, the highways, the Federal gas tax is usually about half that of the state and local taxes and the Federal Government imposes no auto or driver licensing fees. Yet serious proposals have been advanced for Federal aviation fuel taxes more than double those levied by most states and for aircraft and pilot licensing fees as well. Justice would seem to demand some uniformity in treatment. How can these inequities be eliminated? Or can they?

Bearing The Burden

How much of the burden is the user already bearing? In aviation, quite a bit.

First of all, he pays income taxes to support not only the programs in aviation but all those in other areas as well. Since flying is not exactly inexpensive, he usually is in one of the higher income brackets and pays more taxes than the average taxpayer. For similar reasons, he's also usually a heavier than average payer of excise taxes of various sorts.

At the state level he pays fuel taxes. In Virginia for example, general aviation pilots pay well over a million dollars—almost thirteen times as much as the airlines. They also pay state license taxes from which the airlines are exempt. The situation is similar in most other states.

At the local level, the general aviation user pays property and other taxes like everybody else to support the public programs which may or may not include airport facilities. He pays rentals and buys goods and services on the airports, a percentage of which goes to the authorities.

About 45% of the airports open for public use are provided by private enterprise and the user supports these entirely. Of those public airports receiving Federal aid, 75% of the money to build and improve them comes from state and local sources—and much of this money comes from user revenues of one kind or another—as does virtually all of the money for maintenance and operations.

The general aviation user buys his own aircraft and equips it to Federal standards without financial assistance of any kind. All of the air carriers were subsidized for many years and the regional ones still are. The carriers also have a Federal loan guarantee program.

The air was provided by Nature at no cost to anyone.

PRACTICAL PROBLEMS

AOPA has studied many proposals for aviation user charges. None provide equitable solutions to the problems involved. It is virtually impossible to determine and impose aviation user charges fairly because of the diversity of services, users, their kinds and volumes of use.

Cost

Should all past, present and future capital investments be included in charge calculations? The competitive strength of some forms of transportation is due in great part to past aid. Should this be ignored and only present or future aid recipients be penalized with user charges?

In previous studies of user charges for aviation, the objective has been to recover only the cost of operating the "airways." But a recent proposal by the Secretary of Transportation has as its objective, recovery of virtually all FAA costs. There are strong differences as to which is the proper objective.

In the past, FAA studies have always separated capital and operating costs. This resulted in the inclusion of charges for amortization, depreciation and interest. Depreciation and amortization are tax deductions granted to individuals and corporations subject to taxation. The Government is not supposed to be a profit-making enterprise and it isn't subject to taxation. Interest is income earned by money loaned. The money FAA has invested was given to it. No interest was charged to the FAA so it should not be included as a cost. The FAA's current proposal is based on revenue and expense accounting and omits these costs. When might the FAA change its mind again?

The cost of the airways system has gone up partially as a result of the FAA's paternalistic decision to give free medical examinations to many of its employees. The cost of facilities is also increased by requirements of laws such as the Fair Labor Standards Act, minimum wage laws, and acts relating to the purchase and manufacture of materials and supplies. Should these incremental costs, caused by decisions or laws enacted to fulfill non-aviation objectives, be borne by the aviation user?

What features of the National Aviation System should be included? The air traffic control system, aviation research and development, airman and aircraft certification, airport aid, aviation weather and overseas services are all related to the aviation system, but their benefits to the user are often dubious and hard to assess.

Use Measurement

No yardsticks now known measure airways use reasonably accurately, either individually or in combination. Even the FAA has asserted this to be the most complex problem in user charges. Every measure, whether fuel consumed, aircraft operations, instrument operations, instrument approaches, flight plans, hours flown or any other, fails in some respect, separately or in any conceivable combination.

Most features of the National Aviation System are justified and provided to facilitate flight under instrument conditions, but most flying occurs in visual conditions. Due to pilot and equipment requirements, most operators are not even legally authorized to use the system under instrument weather conditions and some are prohibited from using tower-controlled airports. Two-thirds of the airports are privately rather than publicly owned. It is possible to use portions of the airways system without the knowledge of anyone. A few aircraft operators make heavy use of the federally provided services, while most use them relatively little and a large number don't use them at all. Thus far, it has been impossible to devise a system of use measurement that compensates for all these factors, does not degrade efficiency and safety, and is reasonably feasible to administer and comply with. How can such a system be devised?

User Imposition

Granting discovery of a way to measure airways use, what are the guiding principles in charging for it? Should the Defense and other departments reimburse the FAA for their shares of use? State and local governments also use aircraft; what payment should they make? It is not solely a matter of changing money from one pocket to another—but one of determining the total cost of a given Government program.

Traditionally, commercial activities operated for a profit bear a heavier charge than non-commercial ones. Should this be changed? Current proposals would relieve interests categorized as "commercial air transportation" of any burden whatsoever! This amazing piece of favoritism would transfer directly to the consumer all obligation for the airlines' share of use. This, when the airlines enjoy profits, have been and in some cases still are subsidized, and the Government is spending additional millions to develop cargo and supersonic aircraft to help them make even more money. Some argue that the customer bears the cost in the final result, so what's the difference? They forget that not all cost increases reach the consumer; quite often some have to be absorbed by the vendor.

Calling passengers and cargo shippers "users" of the airways is stretching the concept of a user beyond recognition. By the same token, every consumer of bus services should pay a ticket or waybill tax and the bus operator should pay nothing—not even the excise tax on his gasoline. The airways system deals in the movement of aircraft which are the only things that can "use" it in any real sense.

The airlines use the airways for test, training and ferry flights when no passengers or freight are on board. Since exempt from fuel tax, this use of the airways would be completely free.

General aviation has a problem in diversity. Its aircraft are used for pleasure; business; charter for hire; scheduled air taxi; flight training; rental; industrial aid in agriculture, forestry, fishing, construction; recreation; and a multitude of other non-aviation business activities, both separately or in any combination in any proportions. Under current concepts it is uncertain which of these uses are "commercial air transportation." How does the operator, who uses his aircraft in the morning for services requiring a ticket tax and in the afternoon for fire spotting, determine his obligation? Does the business airplane become "commercial" by the same type of logic that makes "users" out of airline passengers?

Airways Components

Despite the law, the airway system has been designed and expanded to meet air carrier and military requirements almost exclusively. A sophisticated, costly system, that is also costly to use, has resulted. It has redundant features, "gold-plated" specifications, and the most advanced electronic equipment. The airlines have pressed for positive control of traffic; though expensive, the FAA is responding. General aviation has opposed this program because it does not satisfy more fundamental requirements. The military demanded and got the TACAN program —and thereby multiplied several times the cost of the basic radio navigation system. An existing system quite adequately met civil needs. The system is and has been cost-free to both. The airlines pay little in income taxes.

General aviation's requirements largely have been ignored. It uses and wants more flight service stations but the number has been reduced 30% and more drastic cuts are probable. Pleas for fewer gold-plated specifications, more low-cost facilities and adequate weather service bear little fruit. General aviation suffers the lowest priorities for airport aid; 83% of the money has gone into less than 700 airports which have or once had airline service.

General aviation is more than aware of the soaring costs of the air traffic control system, but these costs are not of its making. In fact, in 1963, it was not the Administration, Budget Bureau, Congress, FAA, and certainly not the airlines or the military, but AOPA that called the attention of Congress to the swelling size of the FAA budget and asked for substantial cuts. We did so again in 1968—but Congress declined.

The Fair Share

Some have said that they are willing to pay "their fair share." This sounds reasonable, responsible and statesmanlike—until subjected to analysis. Before really digging into the matter, AOPA made the same mistake a few times. The difficulty is that the statement is meaningless because it agrees to the unobtainable. Statements of this kind are misleading and encourage wasteful pursuit of fruitless remedies.

The Identifiable Recipient

The Budget Bureau and others have made much of the idea of imposing user charges on "identifiable recipients" of "special interest" programs. This too is misleading. Every Government program comes to bear ultimately upon some individual. When it does, he becomes identifiable. And bureaucratic logic will be able to rationalize him into being a recipient. It has already done so with those who are regulated in aviation as well as other areas.

SUMMARY AND RECOMMENDATIONS

The two fundamental questions are:

1. Is it wise for the Federal Government to undertake programs in selected national problem areas?

2. In the long run, will it be more beneficial to the nation's citizenry to finance Federal Government programs in selected national problem areas by general taxation or by selective taxation in the form of user charges?

AOPA thinks it is wise to undertake such programs and that it is more beneficial to finance them with general tax revenues. This has been the historical pattern in our country and has been successful in achieving progress for our nation and improving the welfare of our people.

However, AOPA believes that the "user charge" issue must be resolved so that energies can be devoted to more productive pursuits. Therefore, AOPA holds and recommends that the Congressional committees responsible for revenue measures should thoroughly explore the entire subject and hold adequate public hearings. If, after full consideration, it is determined that implementation of user charge concepts is proper, wise and beneficial, then Congress should establish broad policies regarding the employment of user charges. In accord with these policies, specific proposals should then be made for each area in which user charges are to be employed.

In its exploration, Congress should include in its consideration the following questions:

1. What categories of programs are appropriate for user charges?

2. What are the criteria for determining public as well as private shares and benefits?

3. What standards should be established for determining cost allocations?

4. What guidelines should be established for administration of user charge programs?

5. What implementing policies and guidelines should be established for general program areas (e.g., transportation)?

6. What implementing policies and guidelines should be established for special program areas (e.g., aviation)?

7. In what ways and to what extent will application of user charges be accompanied by corresponding reductions in general taxation?

8. How will user charge revenues and existing taxes related to particular programs be placed in individual trust funds for the support of the respective programs on which user charges are imposed?

9. In what way will proper cost accounting for services by type of user and type of service be provided?

10. Who will periodically review administration and accounting, and by what means, to assure that charges are appropriate?

11. To what extent and by what methods will users, as a group, be given a determining voice in what operational components are included and what improvements, if any, need to be made in the service for which they are charged? Should any single user interest be able to control those decisions?

12. How can user charges be scaled to the user's operational requirements?

13. Should the user be required to pay for things he does not need or use?

14. What differences in the user charges assessed should be made between commercial and noncommercial uses?

15. To what degree will the allocation of costs to be recovered by user charges fully reflect the use made by Government for its own purposes of administration, law enforcement, defense, and the like?

16. What steps will be taken to assure that users are not assessed for using facilities which the Government would maintain in their absence, in excess of the incremental cost of that use?

17. Since every Government program exists as a result of law adopted in the public interest to promote the general welfare, and the general public derives substantial benefits therefrom, how and to what extent will this public interest be financed through general taxation?

18. If user charges are imposed on one kind of user, should they not be imposed on all kinds of users?

REMEDIAL ACTION

If what you have read disturbs you, let your legislators know. They have the power to decide whether user charges should or should not become a major method of funding Government programs. What they decide depends upon what they hear from their constituents. □