United States General Accounting Office

GAO

Report to the Chairman, Committee on Transportation and Infrastructure, House of Representatives

February 2000

INTERCITY PASSENGER RAIL

Amtrak Needs to Improve Its Accountability for Taxpayer Relief Act Funds

GAO

Accountability * Integrity * Reliability

GAO/RCED/AIMD-00-78

Contents

Abbreviations

IRS	Internal Revenue Service
TRA	Taxpayer Relief Act of 1997

United States General Accounting Office
Washington, D.C. 20548

B-283106

February 29, 2000

The Honorable Bud Shuster
Chairman, Committee on Transportation
and Infrastructure
House of Representatives

Dear Mr. Chairman:

The National Railroad Passenger Corporation (Amtrak) provides service to over 20 million passengers a year through the trains it operates in 45 states and the District of Columbia. Since Amtrak's inception in 1971, the federal government has provided the railroad with over $23 billion in capital and operating assistance. This total includes about $2.2 billion in fiscal years 1998 and 1999 from the Taxpayer Relief Act (TRA) of 1997 to make capital improvements and maintain Amtrak's equipment in intercity passenger rail service, as well as to make payments on certain debt.

This report responds to your request that we review Amtrak's use of TRA funds. In particular, this report discusses (1) how much Amtrak has spent in TRA funds and what types of activities it has funded; (2) whether Amtrak has used TRA funds in accordance with the act; (3) what the roles of the Amtrak Reform Council (Council)[1] and the Internal Revenue Service (IRS)[2] have been in monitoring Amtrak's use of TRA funds; and (4) whether Amtrak fully reports its use of TRA funds. Amtrak was the source of tax information contained in this report and consented to our discussing such information with IRS officials and in this report.

[1]The Amtrak Reform Council is an independent oversight body created by the Amtrak Reform and Accountability Act of 1997. Among other things, the Council is required to report quarterly to the Congress on Amtrak's use of TRA funds.

[2]Taxpayer Relief Act funds were provided to Amtrak as a refund of taxes attributed to railroads relieved of their responsibilities to provide intercity passenger rail service by the Rail Passenger Service Act of 1970. The 1970 act also created Amtrak to continue intercity passenger rail service. Because the IRS administers the Internal Revenue Code, it has a responsibility for overseeing Amtrak's use of Taxpayer Relief Act funds.

Results in Brief

Through June 1999 (the latest data available at the time of our review), Amtrak reported that it had spent about $1.3 billion of the $2.2 billion provided under the Taxpayer Relief Act. Amtrak's use of these funds for capital improvements have largely supported the initiatives laid out in its strategic business plan. For example, nearly two-thirds of the Taxpayer Relief Act funds spent ($804 million) was for capital improvements, including nearly $400 million for Amtrak's high-speed rail program. About one-third of these funds ($427 million) was spent for equipment maintenance expenses. An additional $48 million was spent on servicing debt.

We reviewed 20 expenditures associated with all of Amtrak's Taxpayer Relief Act capital improvement projects. We also reviewed three expenditures of Taxpayer Relief Act funds for reimbursement of expenditures that Amtrak incurred and paid before the passage of the act. Our limited review of Taxpayer Relief Act expenditures revealed a mixed performance. Of the 23 Amtrak expenditures (totaling about $10 million) funded through the act that we reviewed, 18 were consistent with the act. These 18 expenditures, such as the purchasing of carpeting for passenger cars, were reasonably related to the acquisition of capital improvements in intercity passenger rail service and were therefore eligible for Taxpayer Relief Act funding. We could not determine whether two of the 23 expenditures (totaling about $19,000) were eligible under the act because it was unclear whether portions of the project to which they were charged were eligible for Taxpayer Relief Act funding. In addition, we found that the three remaining expenditures were not eligible for Taxpayer Relief Act funds. We determined that Amtrak improperly used $9 million in Taxpayer Relief Act funding for these three expenditures because it erroneously concluded that the act's restrictions did not apply to them. In each of these three cases, Amtrak used Taxpayer Relief Act funds to reimburse itself for expenses that it had incurred and paid prior to the act. In response to our finding, Amtrak has asked the Internal Revenue Service to determine whether these five expenditures are qualified expenses under the act. Overall, Amtrak does not review individual expenditures to determine if they are eligible for funding under the act. Rather, Amtrak presumes that any expenditure charged to a capital improvement is an allowable expense (called a "qualified expense" in the act) as long as the capital improvement has been approved by its board of directors and reviewed by its legal department for Taxpayer Relief Act qualification. We are recommending that Amtrak have its Inspector General, in consultation with the

Corporation's independent financial auditor, review the adequacy of Amtrak's internal controls over Taxpayer Relief Act funds.

The Amtrak Reform Council has not yet monitored Amtrak's use of Taxpayer Relief Act funds, and the Internal Revenue Service has not yet examined Amtrak's tax returns on the use of these funds. In addition, the Council has not made quarterly reports to the Congress on Amtrak's use of Taxpayer Relief Act funds, as required by the Amtrak Reform and Accountability Act of 1997. Council officials stated that budget and staff constraints have limited the Council's ability to review Amtrak's use of Taxpayer Relief Act funds, and the Council chose not to undertake any examination of spending under the act while we were completing our review. According to Internal Revenue Service officials, it is too early for the Service to have examined Amtrak's tax return, including Amtrak's use of Taxpayer Relief Act funds, because the first tax return showing Amtrak's use of these funds was filed in March 1999. (Amtrak's 1998 tax year ended on Dec. 31, 1998.)

Amtrak's quarterly reports to the Amtrak Reform Council on its use of Taxpayer Relief Act funds do not fully disclose the extent to which Amtrak has used these funds for equipment maintenance. As a result, these reports are less useful than they could be in helping the Council comply with its responsibility to monitor Amtrak's use of Taxpayer Relief Act funds. Amtrak's reports show that it periodically places funds from its Taxpayer Relief Act investment accounts into its general cash account to pay for expected capital improvements. Amtrak told us that funds not immediately spent for capital improvements are considered reimbursements for equipment maintenance expenses. However, the quarterly reports to the Council do not show this stated use of these funds. We are recommending that Amtrak revise its quarterly reports to show this use of Taxpayer Relief Act funds.

Background

The Rail Passenger Service Act of 1970 created Amtrak to provide intercity passenger rail service. Prior to Amtrak's creation, this service was provided by a number of individual railroads that had lost money, especially after World War II. The act, as amended, gave Amtrak a number of goals, including providing modern, efficient intercity passenger rail service; giving Americans an alternative to automobiles and airplanes to meet their transportation needs; and minimizing federal operating subsidies. By statute, Amtrak is not a federal agency but a private corporation, subject to the District of Columbia Business Corporation Act. Since 1971, the federal government has provided Amtrak over $23 billion in capital and operating assistance. As of December 1999, Amtrak provided intercity passenger rail service on 42 routes in 45 states and the District of Columbia.

Among other things, TRA provided Amtrak with about $2.2 billion for "qualified expenses"—broadly defined as expenses incurred for the acquisition of equipment, rolling stock (such as locomotives and passenger cars), and other capital improvements; upgrading maintenance facilities; and the maintenance of existing equipment in intercity passenger rail service. The definition also includes payments of interest and principal on obligations incurred for these uses.[3] TRA does not require that expenditures support intercity passenger rail service exclusively; for example, Amtrak could use TRA funds to purchase or improve assets that would benefit other aspects of its business, such as commuter service. The act allows Amtrak to temporarily invest TRA funds but requires that the interest be used for qualified expenses. Any funds not obligated by January 1, 2010, as well as any funds used for purposes other than qualified expenses, are to be repaid to the United States. The Amtrak Reform and Accountability Act of 1997 (Amtrak Reform Act) established the Amtrak Reform Council and requires the Council to, among other things, evaluate Amtrak's performance, make recommendations to Amtrak for achieving cost containment and productivity improvements and financial reforms, and report quarterly to the Congress on Amtrak's use of TRA funds.

The IRS also plays a role in administering TRA funds, which were provided to Amtrak as a tax refund. Before receiving TRA funds, Amtrak was required to enter into an agreement with the IRS. Under this March 1998 agreement, Amtrak must place TRA funds and investment earnings into a segregated account or accounts; provide the IRS with all the reports it submits to the Amtrak Reform Council; and maintain information on all disbursements from such accounts until 2014. Amtrak is also to provide the IRS (as part of the Corporation's annual tax return) with an annual accounting of its disbursement of TRA funds until the funds have been fully expended or repaid. These provisions are designed to facilitate the IRS' monitoring of Amtrak's use of TRA funds in connection with the agency's normal tax review and enforcement processes and reflect the agency's desire to protect the federal interest in the proper use of TRA funds. The IRS is ultimately responsible for determining whether TRA funds were spent in compliance with the act.

[3] An additional $139 million was to be paid to states that did not receive Amtrak service.

Amtrak has established separate accounts to handle the investment of TRA funds. It uses several commercial investment managers, as well as its own investment managers, to oversee the day-to-day investments. To pay for qualified expenses, Amtrak transfers funds from its TRA investment accounts to its general cash account. The general cash account is used to pay expenses for the Corporation as a whole and includes funds from sources other than TRA, such as passenger revenue. Generally, transfers from TRA investment accounts are made on a quarterly basis to pay for projected capital improvement expenses. Transfers also are made periodically to reimburse the general cash account for previously paid equipment maintenance expenses because Amtrak does not use TRA funds to pay for equipment maintenance expenses at the time they are incurred.

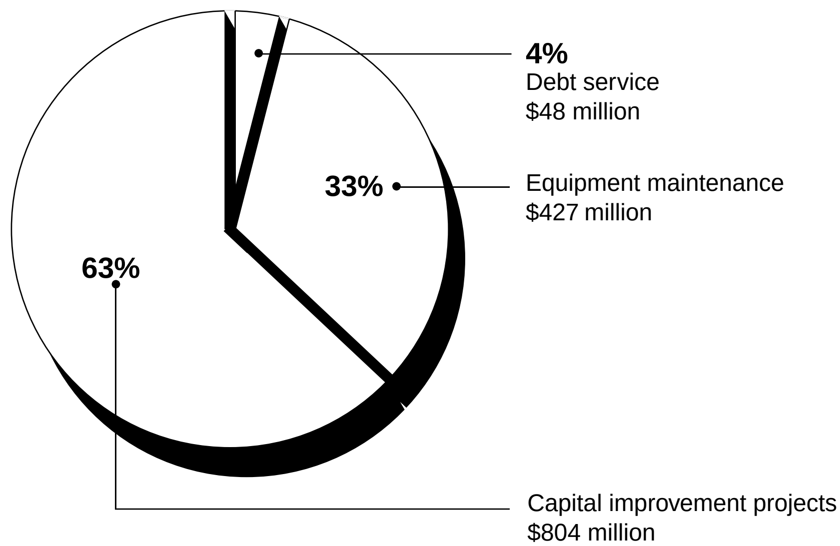
Amtrak uses its general cash account to pay virtually all TRA expenditures. According to Amtrak, the Corporation decided not to use a separate disbursement system to pay TRA expenditures because some capital and maintenance costs are attributable to multiple funding sources. Amtrak believes that it would have been too costly to develop separate accounting and disbursement systems for TRA funds.

Finally, Amtrak prepares monthly, quarterly, and annual reports summarizing its receipt and use of TRA funds. The quarterly reports are sent to the Amtrak Reform Council. These reports include such information as cumulative expenditures of TRA funds and a list of capital projects financed with such funds.

Amtrak Has Devoted TRA Funds Principally to Capital Improvement Projects

Through June 1999, the most recent date for which quarterly data were available at the time of our review, Amtrak reported spending about $1.3 billion of its TRA funds for capital improvement projects ($804 million), equipment maintenance ($427 million), and debt service ($48 million). Figure 1 shows the proportion of TRA funds used for these purposes. In addition, Amtrak had earned about $52 million in interest on TRA funds, all of which was reinvested in TRA accounts.

Figure 1: Proportion of TRA Funds Spent for Various Activities, Through June 1999



Source: GAO's analysis of Amtrak's data.

Nearly Two-thirds of TRA Funds Were Reported as Used for Capital Improvement Projects

Amtrak reported using almost two-thirds—or $804 million—of its TRA funds for capital improvement projects. Table 1 describes these projects and the TRA funds spent on them through June 1999. As the table shows, Amtrak had used about $553 million of the $804 million for infrastructure-related improvements. These include improvements to rights of way, facilities, structures, and communication and signals for intercity passenger rail service. Specifically, Amtrak reported spending $397 million of the TRA funds used for improvements to infrastructure on its high-speed rail program between Boston and Washington, D.C. (referred to as Acela service). TRA funds were used to improve track and structures, upgrade signal systems, and electrify tracks between New Haven, Connecticut, and Boston. TRA funds were not used to acquire high-speed rail locomotives and passenger cars (called trainsets). These trainsets will be paid for with loans taken out when the equipment is delivered. Amtrak also used $77 million of TRA funds used for improvements to infrastructure to address "state-of-good repair" needs on the Northeast Corridor—nearly 37 percent of Amtrak's total capital spending (about $210 million) for this purpose over the last 2 fiscal years.[4] An additional $79 million of TRA funds was spent on other infrastructure related projects, such as improvements to rights of way and facilities and technology investments.

[4]"State of good repair" is restoring track and other infrastructure to a point where only routine or cyclical maintenance is required. Bringing track and other infrastructure to a state of good repair is important for maintaining trip time and operational reliability.

Table 1: TRA Funds Spent on Capital Improvements, Through June 1999

Dollars in millions

Capital improvement	Amount spent
Infrastructure-related improvements	
Acela high-speed rail program	$397
State-of-good repair needs	77
Other infrastructure-related improvements	79
Subtotal	**$553**
Rolling stock-related improvements	
Progressive and heavy overhaul program	191
Other rolling-stock related improvements	27
Subtotal	**$218**
Safety-related improvements or legally required projects	**$19**
New business and corridor development improvements	
Mail and express service transfer and handling facilities	6
High-speed rail development activities outside the Northeast Corridor	2
Other new business and corridor development improvements	6
Subtotal	**$14**
Total	**$804**

Source: GAO's analysis of Amtrak's data.

Amtrak also spent $218 million of the $804 million for capital projects related to the acquisition of and improvement to rolling stock used in intercity passenger service. Of this amount, $191 million was spent on Amtrak's progressive and heavy overhaul program.[5] Amtrak also spent about $27 million on the purchase of new rolling stock and upgrades to its existing fleet.

Amtrak applied another $19 million of the $804 million to capital projects specifically designed to enhance safety or to projects that were contractually or legally required, such as projects designed to remediate

[5]Progressive overhauls are limited overhauls of passenger cars each year instead of single comprehensive overhauls every several years. Heavy overhauls are comprehensive overhauls and are generally performed every 4 years on passenger cars. According to Amtrak, both types of overhauls include the replacement of major components.

environmental problems or comply with the Americans with Disabilities Act of 1990.

Amtrak also used about $14 million of the $804 million in TRA funds for capital improvements related to new business and corridor development. Approximately $6 million of the $14 million was spent on Amtrak's mail and express program. (Express service is the delivery of higher-value, time-sensitive goods.) These funds were primarily used to establish mail and express transfer and handling facilities, to purchase package carts and information systems, and to improve facilities. As with the high-speed rail program, much of the equipment that will be needed for expansion will be acquired through loans. An Amtrak official estimated that the railroad will need at least 1,500 new pieces of equipment for the expansion of the mail and express program. Amtrak also spent about $2 million of the TRA funds used for new business and corridor development activities on capital projects intended to develop high-speed rail lines outside the Northeast Corridor. Amtrak believes its new Acela high-speed rail service in the Northeast Corridor will demonstrate the revenue potential for other parts of the country and will facilitate the development of similar service in other corridors. Finally, Amtrak spent $6 million on other new business and corridor development improvements, such as commercial development activities.

Amtrak's use of TRA funds for capital improvements has largely supported the initiatives laid out in its strategic business plan. Amtrak typically prepares a strategic business plan each year that establishes multiyear financial goals and describes its plans for reaching these goals. Amtrak's current plan (adopted in Oct. 1998) contains a number of initiatives focused on increasing revenues and eliminating the need for federal operating assistance by 2003, such as implementing high-speed passenger service on the Northeast Corridor and expanding the express service program.[6] Slightly over half (about $450 million) of Amtrak's spending for capital improvements through June 1999 was for projects that Amtrak had identified as having a high rate of return or leveraging funds from other sources. The remainder has been spent on other business plan purposes, such as progressive overhauls, year 2000 upgrades, improvements to Amtrak's rights of way, and items that Amtrak was legally or contractually required to pay.[7]

Equipment Maintenance Accounts for About One-third of All TRA Expenditures

Amtrak also reported spending $427 million—about one-third of all TRA expenditures—for equipment maintenance through June 1999. However, Amtrak did not identify the equipment maintenance expenses for which TRA funds were used. Rather, Amtrak applied these funds to a pool of equipment maintenance expenses as a whole, rather than to individual invoices, to reimburse itself for equipment maintenance payments made from other sources. Amtrak's strategic business plan identifies its intent to use TRA funds for equipment maintenance on a temporary basis and establishes the amount of money to be used for this purpose. According to Amtrak, there is always a sizable pool of allowable equipment maintenance expenses, and it stated that it used TRA funds for an amount smaller than the pool. Therefore, Amtrak believes that it has used TRA funds for authorized purposes. We do not object to Amtrak's approach as long as the pool of qualified expenses is larger than the amount of reimbursements for equipment maintenance expenses that Amtrak applies to the pool.

[6]The Amtrak Reform Act prohibits the use of federal funds for operating expenses, except for excess Railroad Retirement Tax Act payments, after fiscal year 2002.

[7]This includes $48 million for debt service. Some of the assets for which Amtrak incurred the debt at issue could be considered high return on investment.

Amtrak has established a long-term goal of using TRA funds for capital improvement projects. Therefore, Amtrak reimburses itself with TRA funds for equipment maintenance expenses only when it is running low on cash.[8] To meet its long-term goal, Amtrak has begun to “repay itself” for the TRA funds used for equipment maintenance expenses: it made a repayment of $100 million in October 1999. Amtrak expects to complete the repayment of TRA funds used for equipment maintenance by the end of fiscal year 2001 and does not anticipate additional borrowing of TRA funds for equipment maintenance after that time.

Of the $427 million in TRA funds it used for equipment maintenance, Amtrak does not intend to repay $15 million (through June 1999). In addition, it does not plan to repay $109 million used for its progressive overhaul program. This is because Amtrak views expenditures for its progressive overhaul program as capital expenditures, even though it records them as operating expenses under generally accepted accounting principles for financial reporting purposes. This amount is not included in the $427 million.

Debt Service Payments Have Been a Relatively Small Portion of TRA Expenditures

The Taxpayer Relief Act allows Amtrak to use TRA funds to pay interest and principal on obligations incurred to acquire capital improvements, upgrade maintenance facilities, or maintain equipment in intercity passenger service. Through June 1999, Amtrak had spent $48 million in TRA funds to pay the principal on its long-term debt. This represents nearly half of the total funds that went to pay long-term debt principal in fiscal years 1998 and 1999. Over three-quarters of the TRA funds used to service debt was attributable to Amtrak’s Intercity Strategic Business Unit.[9] According to Amtrak’s data, the debt serviced was used to acquire rolling stock and to rebuild facilities.

[8] Amtrak’s Chief Financial Officer stated that this situation is due to the timing of Amtrak’s receipt of federal capital appropriations. Amtrak receives 40 percent of its federal capital appropriation on the first day of the fiscal year and the remaining portion on the first day of the next fiscal year.

[9] Amtrak divides its operations among three Strategic Business Units (the Northeast Corridor, Intercity, Amtrak West) and a Corporate/Services Center.

Interest Earned on TRA Funds Is Reinvested in TRA Accounts

You were also interested in how Amtrak used interest it earned from investing TRA funds. Amtrak is permitted to earn interest on TRA funds but is required to apply interest earned to qualified expenses. Amtrak has established four separate accounts to handle the investment of TRA funds. External investment managers manage three of the accounts, and Amtrak manages the fourth.[10] As of June 30, 1999, Amtrak had earned approximately $52 million in interest, which was reinvested in TRA accounts.[11]

The investment of TRA funds is guided by Amtrak's TRA investment policy. In general, investments under this policy are designed to be short term, maturing within 5 years from the purchase date. The policy permits investment in such instruments as U.S. government securities, high-grade commercial paper, and corporate bonds. Fifty percent of TRA funds were invested in U.S. government securities as of June 30, 1999.

Limited Review Shows Mixed Results on Whether Amtrak Spent TRA Funds in Accordance With the Act

While Amtrak determines whether individual capital improvement projects and equipment maintenance functional categories meet Taxpayer Relief Act requirements, it does not determine whether individual expenditures do so. Amtrak presumes that any expenditure meets TRA requirements if it is charged to a project or function approved by its board of directors and the project or function has been reviewed by its legal department for TRA qualification. Eighteen of the 23 capital improvement expenditures we reviewed, such as the purchasing of carpeting for passenger cars, were reasonably related to the acquisition of capital improvements in intercity passenger rail service and were therefore eligible for TRA funding.

The remaining five expenditures presented a different picture. We could not determine whether two of the expenditures—recruitment costs for an executive to head a Northeast Corridor transformation project and working lunches associated with that project—were qualified expenses because it was unclear whether portions of the transformation project were eligible for TRA funding. We determined that the three other expenditures we

[10]Through June 1999, Amtrak had paid about $500,000 in management and other fees to three investment firms.

[11]At this same date, Amtrak had also earned approximately $103,000 in realized gains on its TRA investments. Amtrak also had about $2,000 in a deposit account that had not been invested.

reviewed—reimbursements related to certain capital improvements and debt service—were not eligible for Taxpayer Relief Act funding. Amtrak believes that the three expenditures that we questioned were not subject to TRA restrictions but nonetheless eligible for TRA funding. We disagree and believe that Amtrak improperly used TRA funds for these expenditures. The IRS is ultimately responsible for determining whether TRA funds were spent in compliance with the act.

Our findings are based on a judgmental sample of (1) 10 of the 216 capital projects that Amtrak's board approved for TRA funding; (2) 20 expenditures selected from these 216 projects; and (3) 3 capital improvement and debt service expenses to which Amtrak believed that restrictions in the Taxpayer Relief Act did not apply. We also reviewed all 48 of Amtrak's equipment maintenance function categories. In selecting items to examine, we chose some projects and expenditures that, on the surface, appeared likely to meet the requirements of the act and others that did not. (See the scope and methodology section at the end of this letter for additional discussion on how we selected activities for review.)

Limited Review Shows Most, But Not All, Capital Improvement Projects and Expenditures Were Consistent With the Act

For the most part, Amtrak uses its corporate planning process to select capital improvement projects for TRA funding. We found that 9 of the 10 capital projects and 18 of the 20 expenditures associated with projects that were subject to Amtrak's planning process were consistent with the act. In addition, we found that three expenditures that were not reviewed for TRA eligibility were ineligible for TRA funding.

Amtrak Generally Selects TRA Projects Through Its Corporate Planning Process But Does Not Review Individual Expenditures for Eligibility

Amtrak uses its corporate planning and review process to annually select capital improvement projects for funding, regardless of funding source. Under this process, Amtrak's strategic business units, service centers, and corporate offices identify their capital needs and submit them to Amtrak's corporate finance department. Amtrak reviews the projects to ensure they are capital in nature and that they meet Amtrak's capitalization policy.[12] Once projects pass the preliminary review and approval stage, Amtrak sets priorities for them and ranks them for funding purposes.[13] Amtrak's legal department then reviews the selected projects to determine whether they are eligible for TRA funding. According to Amtrak officials, in 1998 and 1999, at least two projects did not meet the criteria for funding under TRA and were not supported through TRA funds. The final list of projects is reviewed by senior Amtrak officials and approved by Amtrak's board of directors. (The board may also add and delete projects or modify funding amounts for specific projects.) Through June 1999, Amtrak had approved a total of 216 capital improvement projects, totaling $1.3 billion dollars, to be undertaken with TRA funds. (Some of these projects will also use non-TRA funds.)

[12]A capitalization policy establishes the threshold at which expenditures are capitalized because, among other things, they will provide future economic benefits. Amtrak's current capitalization threshold is $100,000.

[13]According to Amtrak, the highest funding priority is given to those projects that it is legally or contractually required to complete and those projects that are already receiving funds and need continued support. Second priority is given to those projects Amtrak thinks will result in a high return on investment. Up to half of the capital budget can be applied to these projects. Third priority is given to projects that leverage funds from nonfederal sources. Lowest priority is given to all other projects—called key tactical projects—which can receive up to 16 percent of the capital budget.

Amtrak does not consider whether individual expenditures charged to approved capital improvement projects are eligible for TRA funding. Amtrak exercises few internal controls to ensure that individual expenditures are spent for TRA-qualified expenses.[14] Rather, Amtrak presumes that the expenses charged to a project are qualified if the project as a whole has been approved by the board and reviewed by its legal department for TRA qualification. Amtrak officials explained that the Corporation expects project managers to exercise reasonable discretion in charging costs to capital projects and emphasized that project managers are subject to the constraints of their budgets.[15]

Most Capital Projects We Reviewed Met TRA Criteria

Nine of the 10 TRA-funded projects we reviewed (the 10 projects were budgeted for a total of $28.7 million)[16] met the criteria contained in the act.[17] These projects illustrate the variety of uses for which TRA funds are available and show that projects supported with TRA funds need not exclusively support intercity passenger service or directly relate to the transportation of passengers. For example, Amtrak used TRA funds to carry out environmental remediation efforts at its Beech Grove maintenance facility in Indiana. The Beech Grove facility is primarily used to maintain equipment used in intercity passenger rail service, but it is also used to perform maintenance on non-Amtrak equipment. Such a use is allowable because the Taxpayer Relief Act does not require that Amtrak

[14]An Amtrak official told us that Amtrak's Inspector General, its external auditor (KPMG), and its Capital Accounting Group (a group that, among other things, reviews work elements under capital projects to ensure that they adequately capture costs for capitalization under generally accepted accounting principles) are available to review specific expenditures as to their appropriateness for capitalization as part of an approved project. We interviewed the Amtrak Inspector General, KPMG, and Amtrak officials, who told us that none of these groups had reviewed specific expenditures as to their appropriateness for TRA funding.

[15]Amtrak has authorized project managers to make purchases within established limits without additional approval. Proposed purchases that exceed these limits require the involvement of a central or local buyer, also subject to preestablished spending limits, while large material requisitions are subject to the approval of relevant department heads. According to Amtrak, staff at Amtrak's centralized purchasing facility review proposed purchases and determine whether approved purchases are consistent with established spending limits.

[16]Through June 1999, Amtrak spent about $9.8 million of the budgeted amount. See app. II for details.

[17]This determination is for each project as a whole, rather than for all expenditures charged to a project. These projects fell into four categories: environmental remediation, mail and express, operational improvements, and new commercial ventures.

use acquired assets or improvements exclusively in intercity service– Amtrak may use TRA funds to purchase or improve assets that also benefit some other aspect of its operations, such as commuter service.

Several of the projects we reviewed relate to Amtrak's operations. One such project was the implementation of a new Human Resources Information System designed to calculate various aspects of pay and benefits for Amtrak's work force. While this project benefits Amtrak generally and does not relate directly to the transportation of passengers, it supports Amtrak's execution of administrative functions critical to its mission of providing intercity passenger rail service. As a result, we believe that this project was eligible for TRA funding.

Amtrak also carried out a project related to its Northeast Corridor service. According to Amtrak, the goal of the project is "to transform and elevate to world class quality the entire range of. . . services." The project appears to contain three discrete elements: the exterior and interior modification of Northeast Direct passenger cars, the development and implementation of an emergency response program for fire and rescue personnel stationed along the Northeast Corridor, and the development of operational and marketing strategies for Northeast Corridor service. We believe that the portion of the project dealing with the modification of passenger cars and a portion of the emergency response program dealing with developing training materials meet TRA criteria as capital improvements. However, from documentation supplied by Amtrak and our discussions with Corporation officials, it is unclear whether portions of the project, including developing operational and marketing strategies, are capital improvements under either generally accepted accounting principles or the Internal Revenue Code. (See app. I for a more detailed discussion of the projects we reviewed.)

Certain Capital Improvement Expenditures We Reviewed Are Qualified Expenses Under TRA

We selected for review 20 expenditures associated with the capital projects approved by Amtrak's board for TRA funding.[18] We found that 18 of these expenditures were incurred for—that is, they were reasonably related to—the acquisition of capital improvements in intercity passenger rail service and were therefore qualified expenses under the act.[19] Some of the expenditures that we reviewed seemed straightforward in terms of making a capital improvement for intercity passenger service. These expenditures included payroll, the freight and shipping of an oven for a dining car, and the renovation of a retail facility at Amtrak's 30th Street Station in Philadelphia.

[18]The 20 expenditures were selected from all capital projects that Amtrak determined were eligible for TRA funding. At the time of our review, about 81,000 transactions were associated with TRA-funded capital projects. The 20 expenditures we reviewed totaled about $1 million and ranged from $48 for a trophy to over $300,000 for an upgrade of Amtrak's Heritage food cars.

[19]By its own terms, the Taxpayer Relief Act limits Amtrak's use of funds to expenses that are related to the acquisition of capital improvements, upgrades to maintenance facilities, or equipment maintenance. Neither the statute nor legislative history provides a basis for a more restrictive or flexible approach to TRA expenditures. Both generally accepted accounting principles, for financial reporting purposes, and the Internal Revenue Code, for tax purposes, emphasize the relationship between particular expenditures and capital improvements. However, this report does not assess the appropriateness of Amtrak's decision to treat expenditures as capital expenditures rather than as operating expenses for financial reporting or tax purposes. In addition, this report does not assess the prudence of the expenditures discussed.

Other expenditures had a less obvious, but nonetheless reasonable, relationship to the capital projects to which they were charged. For example, TRA funds were used to purchase fitness facility passes and movie tickets in connection with a quality-of-life program jointly developed by Amtrak's Engineering Department and the Brotherhood of Maintenance of Way Employees to improve the morale and work habits of employees travelling while working on capital projects. Through the program, administered by three maintenance-of-way employees, Amtrak provides various types of recreational diversions, such as sports equipment, fitness facility passes, and tickets to sporting events and movies, to eligible employees. Amtrak officials assert that this program has resulted in productivity and safety improvements. In addition, Amtrak spent about $3,300 for remedial math and reading materials for certain Amtrak employees. Amtrak's contract with the consortium manufacturing high-speed rail equipment requires that employees assigned to three new high-speed rail mechanical service facilities pass an Amtrak-administered standardized test of basic reading and math skills.[20] Amtrak officials explained that the purchase of the remedial material was designed to allow current Amtrak employees an opportunity to qualify to work on high-speed rail equipment and to be eligible for jobs in the new maintenance facilities. On the basis of discussions with Amtrak officials and our review of Amtrak documents, and in the absence of more proscriptive statutory criteria, we believe that these expenditures were reasonably related to advancing the capital projects in intercity passenger rail service to which they were charged.

[20]This requirement is also reflected in applicable collective bargaining agreements.

Two of the expenditures we reviewed were charged to a project for transforming the Northeast Corridor, which is an amalgam of efforts designed to enhance Amtrak's Northeast Direct service to complement high-speed rail service. The project includes modifying Northeast Direct passenger cars, developing and implementing an emergency response program, and developing operational and marketing strategies for Northeast Corridor service. In connection with this project, Amtrak spent about $17,000 as part of its effort to identify candidates for a new position as Vice President for Northeast Corridor Service Initiatives. While Amtrak ultimately did not fill the position, a selected candidate's sole responsibility would have been to lead this project. Amtrak also spent approximately $2,000 for lunches for over 30 employees participating in meetings on the transformation initiative over 2 days.[21]

The information that Amtrak provided suggests that these expenditures were reasonably related to Amtrak's transformation initiative as a whole. However, as discussed earlier and in appendix I, it is not clear that the initiative is entirely capital in nature. Since we could not determine whether the project as a whole was capital in nature, we also could not determine whether these two expenditures (which appear to relate to multiple aspects of the transformation project) would be qualified under the act.

Several Expenditures Were Not Eligible for TRA Funding Despite Amtrak's Belief That They Were Not Subject to TRA Restrictions

We found that Amtrak did not review 30 capital projects totaling $199 million for TRA eligibility.[22] Amtrak decided that these projects did not require such a review because it concluded that the 1998 Department of Transportation and Related Agencies Appropriations Act (1998 appropriations act) amended the definition of "qualified expenses" contained in TRA. According to Amtrak, this amendment made $199 million in TRA funds available for any purpose for which Amtrak could have used its general capital funds. (Unlike TRA funds, general capital funds are available for capital improvements regardless of their relationship to intercity passenger service.)[23] We disagree with Amtrak's interpretation of

[21]Amtrak used TRA funds for other costs associated with its recruitment of a Vice President for Northeast Corridor Service Initiatives and for other lunches. These other costs were not part of our review.

[22]As of June 1999, Amtrak reported it spent about $188 million on these projects.

[23]For example, Amtrak operates commuter trains under contract. Amtrak's general capital funds could be used for this purpose, which is not considered intercity passenger service.

the 1998 appropriations act because neither the language nor the legislative history of this act support the view that the 1998 appropriations act explicitly or implicitly amended TRA in this way. (See app. II for a more detailed discussion of these issues.)

We reviewed summaries of the 30 projects. Based on this review, the projects appeared to be eligible for TRA funding. Nevertheless, we believe that Amtrak should not have used the $199 million without considering whether the projects actually met the statutory criteria. Moreover, even though these projects were eligible for TRA funding, we believe that Amtrak improperly used about $9 million of the $199 million in TRA funds to reimburse itself for expenses that it had incurred and paid prior to the act. (We did not determine if Amtrak reimbursed itself for other expenses incurred and paid prior to the act.) The improper expenditures that we identified were $7 million to reimburse itself for debt service payments, $1.6 million for payments in connection with the acquisition diesel locomotives, and about $600,000 for payments in connection with the purchase of passenger cars. We believe that TRA did not authorize Amtrak to reimburse itself for expenses incurred and paid prior to the act because, among other things, such use could effectively remove the restrictions imposed by the Congress on the use of these funds.

Equipment Maintenance Functions Were Eligible For TRA Funding

We also reviewed each of the 48 broad equipment maintenance function categories that Amtrak has established and found they were appropriate for TRA funding.[24] Amtrak categorizes its equipment maintenance activities into broad functions, such as extraordinary car cleaning and fumigation and shop overhead. According to an Amtrak official, this practice pre-dated TRA, and Amtrak reviewed the categories to determine which were eligible for TRA funding. Some of the function categories capture expenses associated with the operation and maintenance of facilities, such as power plants that provide electricity exclusively to support maintenance facilities, rather than actual equipment maintenance. Amtrak considers the expenses associated with operating and maintaining such facilities essential to maintaining equipment. Because Amtrak requires maintenance facilities and electric power plants to maintain equipment, we believe such expenses qualify for TRA funds.

[24]Amtrak also charges a portion of those Federal Employers' Liability Act and insurance costs related to equipment maintenance. These are not included in the 48 categories. The Federal Employers' Liability Act is a railroad injury compensation system.

According to Amtrak, any expenditure charged to a function category associated with maintaining equipment used in intercity passenger rail service qualifies for TRA funding. Amtrak relies on its maintenance facility managers to ensure that the work completed is charged to the appropriate function category. This is important since Amtrak, as discussed previously, does not identify the specific equipment maintenance expenditures paid for with TRA funds. Rather, Amtrak allocates TRA funds to a pool of equipment maintenance expenses. As a result, we did not determine whether specific equipment maintenance charges financed with TRA funds were eligible under the act.

Neither the Amtrak Reform Council Nor the IRS Has Yet Overseen Amtrak's Use of TRA Funds

The Amtrak Reform Council and the IRS have responsibilities regarding Amtrak's use of TRA funds. These include identifying how such funds have been used and whether Amtrak has complied with the act. In addition, Amtrak is required by the Taxpayer Relief Act to repay the United States for any TRA funds used for other than qualified expenses. To date, the Council has not monitored Amtrak's use of TRA funds and the IRS has not examined Amtrak's tax return showing its use of these funds.

The Amtrak Reform Council and the IRS Are Responsible for Overseeing Amtrak's Use of TRA Funds

Under the Amtrak Reform Act, the Amtrak Reform Council is required to report quarterly to the Congress on Amtrak's use of TRA funds. According to Council staff, the Council's responsibilities include not only reviewing Amtrak's expenditures for compliance with the Taxpayer Relief Act but also evaluating Amtrak's accounting practices and investment decisions for TRA funds. To help the Council carry out its responsibilities, Amtrak provides quarterly reports to the Council on its receipt and use of TRA funds.[25]

[25]Amtrak stated that it also provides the Amtrak Reform Council with monthly and annual reports that provide additional financial information.

The IRS is responsible for administering the tax refund provided to Amtrak under the act, including providing the funds to Amtrak and obtaining repayment of any TRA funds not expended in accordance with the act. In implementing the act, the IRS required Amtrak to enter into a closing agreement, which sets forth provisions regarding the distribution, monitoring, and collection of funds. IRS officials stated that these provisions reflect its desire to protect the federal government's interest in the proper use of TRA funds. Under this agreement, Amtrak is required to place funds and investment earnings into a separate account(s) and provide the IRS with annual reports on its disbursements of TRA funds. These annual reports were to begin in 1999 and continue until the funds are either entirely expended or repaid.[26] The agreement also requires Amtrak to provide the IRS with copies of all reports it provides to the Amtrak Reform Council and to exercise due diligence in obtaining and filing with the IRS the Council's quarterly reports to the Congress on Amtrak's use of TRA funds. These reports were required to help the IRS monitor Amtrak's use of TRA funds in connection with its normal review and examination of tax returns and tax return information. According to the IRS, Amtrak filed its first report on its use of TRA funds in March 1999. (Notwithstanding the requirements of this agreement, Amtrak has not provided the IRS with the quarterly reports it sends to the Amtrak Reform Council, although it has agreed to do so in the future.)

TRA requires Amtrak to repay improperly used funds to the United States. Under the IRS-Amtrak agreement, any portion of the tax refund not used for qualified expenses shall be deemed a tax liability recoverable by the IRS. Upon its determination that Amtrak has used TRA funds for purposes other than qualified expenses, the IRS would issue a notice and demand for payment. If Amtrak failed to pay the assessed amount within 10 business days of the date of the notice and demand for payment, the IRS would require Amtrak to pay interest on the assessed amount.

You were also interested in whether Amtrak's directors would be personally liable for repaying improperly used funds. Amtrak is incorporated in the District of Columbia and is subject to the provisions of the District of Columbia Business Corporation Act. This act does not explicitly set out a standard of care for boards of directors. Generally, under corporate law, directors must act within their authority, in good faith,

[26]The agreement also requires Amtrak to maintain these annual accountings until Mar. 15, 2014, the end of the period for making any assessment for unlawful uses of TRA funds.

and in a manner they reasonably believe to be in the best interests of the Corporation. The act provides for indemnifying directors who are not adjudged to be liable for negligence or misconduct. Amtrak's bylaws also authorize the Corporation to indemnify directors and to carry insurance on their behalf. Therefore, in a situation where TRA funds are improperly used, the liability of the board members would depend upon the manner in which they acted.

The Council Has Not Yet Monitored, and the IRS Has Not Yet Examined, Amtrak's Use of TRA Funds

The Amtrak Reform Council has not reviewed either the legality or merits of Amtrak's TRA expenditures. According to Council officials, Amtrak has provided the Council with quarterly reports on its use of TRA funds. According to the Council, it has not monitored Amtrak's use of TRA funds because of (1) a lack of financial resources provided by the Congress, (2) a legislative restriction prohibiting the Council from hiring outside consultants, and (3) a delay in obtaining the financial resources and authority to hire staff for the Council.[27] In addition, the Council decided to defer monitoring TRA expenditures until after we completed our work, so as to minimize duplication of effort. The Council also stated that since it believes that the Congress is unlikely to provide the Council with significant increases in operating funds, it would be more efficient in the future for Amtrak's outside accounting firm to audit Amtrak's TRA expenditures for compliance with the act. Finally, the Council has not made quarterly reports to the Congress on Amtrak's use of Taxpayer Relief Act funds, as required by the Amtrak Reform and Accountability Act of 1997.

The IRS has not yet examined Amtrak's use of TRA funds. Amtrak filed its income tax return for 1998—the first tax year for which TRA funds were available—in March 1999. (Amtrak's 1998 tax year ended Dec. 31, 1998.) As of January 2000, it is too early for the IRS to have reviewed the return, including Amtrak's use of TRA funds, according to an IRS official.

[27]According to Council officials, as of Spring 1999, the Council's staff consisted primarily of an executive director, counsel, and administrative staff.

Amtrak's Quarterly Reports to the Amtrak Reform Council Do Not Fully Disclose Funds Used for Equipment Maintenance

Amtrak's quarterly reports to the Council, which the Council could use in fulfilling its statutory obligation to monitor Amtrak's use of TRA funds, show the funds that have been transferred to Amtrak's cash account for capital improvement projects and for equipment maintenance expenses authorized by Amtrak's board of directors. However, the reports do not fully disclose how TRA funds are actually used once they are deposited into Amtrak's general cash account. Specifically, these quarterly reports show that funds were set aside for capital improvement projects when, in fact, Amtrak considers that it has used funds that were not yet expended for capital improvement projects for allowable equipment maintenance expenses.

Each quarter, Amtrak transfers TRA funds from its investment accounts to its general cash account. According to Amtrak, the amount of the transfer is based on projected capital improvement expenditures over the following 3 months.[28] As a result, for most or all of a 3-month period, the amount of TRA funds that are in the general cash account may be greater than the amounts needed during the period for capital improvement expenditures. The amount of funds not immediately needed varies over time. For example, the amount of TRA funds deposited in Amtrak's general cash account and not expended at the end of the month ranged from about $1.8 million on June 30, 1998, to about $46 million on June 30, 1999, and averaged about $32 million at the end of the month for June 1998 through June 1999.

[28]According to Amtrak, it does not generally use TRA funds to reimburse itself for the expenses of capital improvement projects that have been paid from other sources. Rather, Amtrak deposits TRA funds in its general cash account to be used for the expected expenses of capital improvement projects.

Amtrak's quarterly TRA reports show amounts that Amtrak has transferred from its investment accounts for the quarter and cumulatively. Although Amtrak's reports show that TRA funds have been transferred for capital improvement projects, Amtrak officials told us that any TRA funds drawn for capital improvement expenditures but not yet expended are considered reimbursements of previously paid equipment maintenance expenses—an allowable expense under TRA. However, Amtrak's quarterly reports to the Amtrak Reform Council do not show these reimbursements of equipment maintenance expenses.[29]

Conclusions

Amtrak reviews and approves capital improvement projects to determine that the projects qualify under TRA. However, it does not determine whether individual expenses incurred and paid are allowable under the act. We find Amtrak's lack of review of expenditures troubling because, without such a review, Amtrak does not have reasonable assurance that TRA funds are spent in accordance with the law.

We believe that Amtrak improperly spent about $9 million of TRA funds to reimburse itself for expenses incurred and paid prior to TRA as a result of an incorrect interpretation of the 1998 appropriations act. We did not determine if Amtrak similarly reimbursed itself for other expenses incurred and paid prior to the act. Amtrak's Inspector General would be an appropriate entity to determine whether Amtrak has used TRA funds to reimburse itself for such expenses. In addition, from information that Amtrak supplied, we could not determine whether portions of its transformation of the Northeast Corridor project met TRA criteria. As a result, we could not determine whether two additional expenditures, totaling about $19,000, associated with this project were eligible for TRA funding. A final determination on the propriety of the transformation project and the questionable expenditures needs to be made by the IRS.

Finally, Amtrak does not fully report its use of TRA funds for equipment maintenance to the Amtrak Reform Council. Since neither the Council nor the IRS has yet reviewed Amtrak's use of TRA funds, this incomplete reporting has had little practical effect to date. However, more accurate

[29]As noted above, the quarterly reports show amounts Amtrak has "loaned itself" for equipment maintenance under its strategic business plan. The nonreporting discussed here relates solely to Amtrak's asserted use of funds once they are placed in its general cash account.

reporting by Amtrak on its use of TRA funds for equipment maintenance would be beneficial when these organizations begin to oversee Amtrak's use of TRA funds.

Recommendations

To better ensure that TRA funds are spent in accordance with the act, we recommend that the President of Amtrak have the Corporation's Inspector General, in consultation with the Corporation's external auditor, review the adequacy of Amtrak's internal controls over TRA funds. If Amtrak finds that internal controls need to be strengthened, appropriate actions should be taken.

We also recommend that the President of Amtrak direct the Corporation's Inspector General to determine whether Amtrak has used TRA funds to reimburse itself for other expenses incurred and paid prior to the act. The Inspector General should then refer any such expenditures to the Commissioner of Internal Revenue for a determination of the propriety of these reimbursements.

To ensure more accurate reporting on the use of TRA funds to the Council and the IRS, we recommend that Amtrak disclose in its quarterly reports to the Council when funds transferred to Amtrak's general cash account for capital improvement projects are instead applied to equipment maintenance expenses.

Agency Comments and Our Evaluation

We provided a draft of this report to Amtrak, the Amtrak Reform Council, the Internal Revenue Service, and the Department of Transportation for their review and comment.

In commenting on our draft report, Amtrak disagreed with our conclusion that it was not authorized to reimburse itself with TRA funds for pre-TRA expenditures. Amtrak also disagreed with our statement that the three transactions totaling $9 million, which were funded from the $199 million of TRA funds used for general capital purposes, were improperly used. Amtrak believes that these expenditures were eligible as TRA expenses within the limits of the law. Despite these views, Amtrak stated that, to put to rest any question about its commitment to the proper expenditure of TRA funds, it was taking a number of actions. Importantly, Amtrak plans to have its Inspector General, working with its external auditors, review its internal controls over TRA expenditures. We believe that this proposed approach satisfactorily responds to the recommendation in our draft report that Amtrak review TRA expenditures and determine if they are consistent with the act, and we have revised our recommendation accordingly. Amtrak further said that it is taking additional actions, including (1) asking its Inspector General to review the transactions that make up the $199 million of general capital spending that we believe should be subject to TRA restrictions; (2) funding $9 million in pre-act expenditures we questioned from a non-TRA source; and (3) funding $19,000 of TRA funds for two expenditures related to the transforming the Northeast Corridor project from a non-TRA source.

Our draft report contained a proposed recommendation that the Commissioner of Internal Revenue examine Amtrak's transformation of the Northeast Corridor project, the two expenditures for executive recruitment and the working lunches associated with that project, and Amtrak's use of $9 million in TRA funds for the reimbursement of payments made before the act, and obtain repayment of any improperly used amounts, as appropriate. In response to our draft report, Amtrak has asked the IRS to examine the project and expenditures in question to determine whether they were allowable under the act. Because Amtrak's action accomplishes the proposed recommendation, we have dropped the recommendation from our final report.

Amtrak agreed with our finding that its quarterly reports to the Amtrak Reform Council did not fully disclose its use of TRA funds for equipment maintenance. In our subsequent discussions, Amtrak officials agreed to incorporate this information into its future TRA quarterly reports. Amtrak also agreed that it had not provided the Amtrak Reform Council's quarterly reports to the IRS, which it agreed to do in the future. Amtrak also provided technical clarifications, which we incorporated, as appropriate. Amtrak's written comments, as well as a statement on its use of $199 million of TRA funds for general capital purposes, are in appendix III.

In commenting on our draft report, the Amtrak Reform Council provided several reasons for not monitoring Amtrak's use of TRA funds, which we incorporated into our report. The Council's written comments are in appendix IV.

The IRS commented that it was not able to assess the accuracy of our draft report because Amtrak's first tax return with TRA funds was filed only recently and it has not yet been able to examine Amtrak's use of these funds. The IRS stated that, in its ordinary course of business, it would institute examination procedures as appropriate to determine if any remediation or collection action should be taken.[30] In discussing the draft report, IRS officials, including the Director of its Office of Industry Specialization Programs, told us that any examination could likely not start for several months because of the time required to process Amtrak's tax return. IRS officials also told us that it has not decided how any misuse of TRA funds should be handled, including whether Amtrak may reprogram non-TRA funds for questioned TRA expenditures. IRS provided technical clarifications that we incorporated as appropriate.

The Department of Transportation indicated that it had no comments on our draft report.

Scope and Methodology

To determine the amount of TRA funds that Amtrak has spent and the types of activities involved, we reviewed Amtrak's monthly and quarterly reports through June 30, 1999, the latest data available at the time of our review. In addition, we interviewed Amtrak officials and reviewed Corporation documents on how projects, activities, and expenditures are approved and how TRA funds are accounted for. We reviewed project descriptions that were used in the selection, review, and approval process for capital funding to identify the nature of the projects. We also compared Amtrak's use of TRA funds with the Corporation's October 1998 strategic business plan to determine if the Corporation was using funds according to its plan. To determine the amount of interest earned on TRA funds, we reviewed monthly statements from Amtrak and the external investment managers. To determine the disposition of interest earned on TRA funds, we interviewed Amtrak officials and reviewed investment statements and bank statements associated with the use and management of TRA funds. We also interviewed officials in Amtrak's Treasury Department to learn about the structure of Amtrak accounts and the application of TRA funds to qualified expenses.

[30]According to IRS officials, the agency cannot disclose whether it is reviewing a taxpayer's return or the results of any such review.

To determine whether Amtrak has used funds in accordance with the act, we examined both projects and individual expenditures. We selected 10 of the 216 projects that Amtrak's board of directors had approved for TRA funding and 20 expenditures for inquiry. We selected projects that, from summary descriptions, did not clearly appear to be capital improvements in intercity passenger rail service. For each project, we interviewed Amtrak financial and legal officials about the project's relation to TRA requirements. We selected 10 expenditures that, from short descriptions in Amtrak's financial database, appeared reasonably related to advancing capital projects and 10 expenditures that did not. The 20 expenditures were selected from the approximately 81,000 TRA expenditures recorded by Amtrak as of May 1999. During the course of our work we also identified three expenditures of TRA funds for reimbursements of expenses that Amtrak incurred and paid before TRA was enacted. Because this reimbursement seemed unusual, we investigated these three expenditures. For each expenditure, we reviewed supporting documentation, such as copies of cancelled checks, invoices, and purchase orders, that was available from Amtrak.[31] We then interviewed Amtrak's Controller and other Corporation officials to discuss the nature of the charges. We did not attempt to determine whether Amtrak used TRA funds to reimburse itself for other expenses incurred and paid before the Taxpayer Relief Act was enacted. Finally, we reviewed a list of functional categories to which Amtrak charges equipment maintenance expenses. We reviewed all 48 of these functional categories and discussed them with Amtrak officials.

To provide information on the monitoring activities performed by the Amtrak Reform Council and the IRS, we interviewed the executive director of the Council and other staff members and officials in IRS' Office of Coordinated Examination Programs and Office of Industry Specialization. We also reviewed Council responsibilities described in the Amtrak Reform Act and IRS-Amtrak responsibilities described in the agreement on Amtrak's use of TRA funds. To determine whether Amtrak's board of

[31]After our audit work was completed, we learned that Amtrak's external auditors recommended that Amtrak adjust about $10 million in advertising expenditures from capitalized expenditures to operating expenses and that Amtrak has made this adjustment. Amtrak told us that the $10 million in advertising expenditures were TRA funds. We did not attempt to determine whether these advertising expenditures were qualified expenses under TRA. Nor has Amtrak. In addition, we did not determine whether there are additional expenditures involving TRA funds that may require adjustment. In accordance with generally accepted government auditing standards, we are referring this issue to Amtrak's Inspector General.

directors might be liable for any misuse of TRA funds, we reviewed relevant law and corporate documents.

Finally, to provide information on Amtrak's reports on the Taxpayer Relief Act, we reviewed Amtrak's quarterly reports sent to the Amtrak Reform Council and schedules supplied by Amtrak on monthly cash balances in its general cash account. We compared these balances to TRA disbursements reported for each month. We also interviewed Amtrak officials on issues related to cash account balances and the use of TRA funds.

We conducted our review from June 1999 through February 2000 in accordance with generally accepted government auditing standards.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days after the date of this letter. At that time, we will send copies of this report to congressional committees with responsibilities for activities discussed in this report; the Honorable Rodney E. Slater, Secretary of Transportation; the Honorable Jolene M. Molotoris, Administrator of the Federal Railroad Administration; the Honorable Charles O. Rosotti, Commissioner of Internal Revenue; the Honorable Jacob J. Lew, Director, Office of Management and Budget; George D. Warrington, President and Chief Executive Officer, Amtrak; and Gilbert Carmichael, Chairman, Amtrak Reform Council. We will also make copies available to others on request.

If you or your staff have any questions about this report, please call me at (202) 512-2834. Key contributors to this report were Helen Desaulniers, Richard Jorgenson, Richard Kusman, Debra Prescott, and James Ratzenberger.

Sincerely yours,

Phyllis F. Scheinberg
Associate Director, Transportation Issues

Description of Capital Projects Selected for Review

The Taxpayer Relief Act of 1997 (TRA) specifies two types of capital items that Amtrak may acquire with TRA funds—equipment and rolling stock. It also makes funds available more generally for capital improvements in intercity passenger rail service.[1] Amtrak's authorizing legislation distinguishes between intercity and commuter rail service, essentially defining intercity service as rail service other than commuter service. This statutory reference to intercity service thus limits the National Railroad Passenger Corporation's (Amtrak) authority with regard to TRA funds. However, it does not require that Amtrak use acquired assets or improvements exclusively in intercity service or preclude it from using TRA funds to purchase or improve assets that benefit some other aspect of its operations, such as commuter service, as well.

The projects we reviewed, representing $9.8 million in expenditures as of June 1999, illustrate the wide array of purposes to which Amtrak may apply TRA funds. (See table 2.) Some of the projects serve aspects of Amtrak's operations in addition to intercity passenger rail service. Others do not immediately or directly relate to transporting passengers by rail. Based on the limited criteria contained in TRA, we believe that nine of the projects are "capital improvements in intercity passenger rail service" so that expenses properly charged to these projects are qualified for purposes of TRA funding. However, one of the projects is an amalgam of efforts related to the Northeast Corridor that contains three discrete elements. From the information Amtrak provided, we cannot determine whether two of the three discrete elements of this project are capital in nature.

[1]Amtrak officials advised us that the Corporation relies on generally accepted accounting principles when determining whether particular projects are capital improvements for purposes of either TRA funds or its general capital funds. Under generally accepted accounting principles, a capital expenditure involves the purchase or betterment of an asset for a future benefit. Such expenditures typically add to an asset's value, prolong its useful life, or adapt it to a new or different use. While the Internal Revenue Code and regulations define the term similarly for tax purposes, capitalization is the norm and deductions are the exception for such purposes. Therefore, the IRS typically addresses whether expenditures may be deducted rather than whether they may be capitalized.

Table 2: Funds Authorized and Spent as of June 1999 for Ten Capital Projects Using TRA Funds

Project	Authorized funding	Amount spent
Environmental remediation		
Environmental remediation at Beech Grove	$525,000	$141,045
Environmental remediation at Paoli Yard	2,250,000	1,629,113
Mail and express service		
Package express equipment	500,000	184,014
Mail and express facilities	3,225,000	3,225,000
Operational improvements		
Chicago Union Station renovation	4,649,000	1,949
Human Resources Information System	533,000	93,048
Transforming the Northeast Corridor	2,000,000	1,662,667
New commercial ventures		
Improvements to mechanical services facility	11,000,000	317,813
Retail development at 30th Street Station	710,000	450,975
Locomotive reconfiguration for surplus lease program	3,300,000	2,093,441
Total	**$28,692,000**	**$9,799,065**

Source: GAO's analysis of Amtrak's data.

Environmental Remediation

Amtrak used TRA funds to carry out an environmental remediation project at the Beech Grove maintenance facility in Indiana and is currently undertaking similar efforts at the now-closed maintenance facility at Paoli Yard in Pennsylvania. Amtrak acquired both facilities in the aftermath of the Penn Central Railroad bankruptcy. Amtrak officials asserted that both properties were contaminated at that time and that the values assigned to the properties reflected their environmental condition.

Amtrak's independent auditors concluded that the costs of Amtrak's cleanup efforts at the two sites are capital costs under generally accepted accounting principles. We did not review the auditors' work but note that both generally accepted accounting principles and decisions of the Internal Revenue Service (IRS) provide a basis for treating Amtrak's correction of preexisting environmental conditions as capital improvements. As a general matter, the costs of correcting preexisting environmental conditions reflected in the purchase price of property are considered capital costs under generally accepted accounting principles on the grounds that the corrections will add to the property's value. While the IRS has allowed taxpayers to treat certain environmental cleanup costs as deductible business expenses rather than capital expenditures, its decisions to this effect have been generally limited to circumstances involving the restoration of property acquired in a clean condition and contaminated by the taxpayer in the course of its operations.[2]

Amtrak acquired the Beech Grove maintenance facility for its intercity passenger rail operations and continues to use it primarily for maintenance work on equipment used in intercity passenger service. Amtrak acquired the Paoli Yard site as part of the Northeast Corridor and used it for maintenance purposes, subject to an easement held by commuter railroads. While the facility is now closed, Amtrak expects to use the property for an intermodal transportation facility in the future. Given this current and planned use, the improvements made to the two assets can be characterized as capital improvements in intercity passenger rail service.

Mail and Express Service

Amtrak used TRA funds to purchase package carts for express delivery service on the Northeast Corridor as well as information systems to support this express service program. Amtrak also used TRA funds to design, develop, and construct mail and express service transfer and handling facilities both on and off the Northeast Corridor.[3] These investments were designed to accommodate an expected increase in Amtrak's mail and express business.

[2]See, for example, Rev. Rul. 98-25, 1998-19 I.R.B. 4, and Rev. Rul. 94-38, 1994-1 C.B. 35 (both allowing the taxpayer to deduct certain environmental clean-up costs).

[3]According to Amtrak, transfer facilities will allow it to transfer mail and express goods in a timely fashion from rail car to truck while roadrailer facilities will allow it to use vehicles operated on both rail lines and highways. Amtrak expects to rely on these facilities to provide "dock to dock" shipping service.

The Rail Passenger Service Act of 1970 provided that Amtrak continue its predecessors' practice of carrying mail and express goods on intercity passenger trains—that is, as part of its passenger service.[4] Several amendments to the act directing Amtrak to increase its revenues from the transportation of mail and express service reflect the relationship between the transportation of such commodities and intercity passenger rail service.[5] In a May 1998 decision, the Surface Transportation Board[6] also addressed the relationship between Amtrak's passenger service and its transportation of express goods in the context of a dispute between Amtrak and Union Pacific/Southern Pacific over Amtrak's plans to increase express service over the freight railroad's lines.[7] The Board declined to restrict Amtrak's transportation of express goods according to the size and nature of the commodities shipped, type of equipment, or other operational factors, as requested by Union Pacific/Southern Pacific. Instead, the Board defined "express service" as a premium transportation service, characterized by expedited handling on regularly scheduled passenger trains, at prices that are typically higher than conventional freight service. In so doing, the Board emphasized Amtrak's authority to transport express goods as part of its passenger operations insofar as its express service is compatible and integrated with—rather than separate and independent from—passenger service.[8] The Board noted, however, that, notwithstanding that authority, Amtrak's prime purpose must be passenger service and the service must be genuine.

[4]See Pub. L. No. 91-518, section 305, 84 Stat. 1327, 1332 (1970).

[5]The House Committee on Interstate and Foreign Commerce stated that one such amendment was "intended to enable Amtrak to restore revenues that once existed as a valuable adjunct to rail passenger service." H.R. Rep. No. 92-905, at 10 (1972). Discussing its version of the same bill, the Senate Commerce Committee noted the potential presented by a "remarriage of passengers, mail, and express on a compatible basis." S. Rep. No. 92-756, at 9, reprinted in 1972 U.S.C.C.A.N. 2393, 2398.

[6]The Board is an independent agency responsible for the economic regulation of freight railroads, among other things.

[7]By statute, freight railroads are required to permit Amtrak to operate passenger trains over their lines and, in most circumstances, to give Amtrak preference over freight service over the same lines. See 49 U.S.C. section 24308.

[8]Amtrak's authority to provide express service that is independent of its intercity passenger operations was not at issue in the case. According to Amtrak officials, Amtrak has not concluded whether it would be authorized to provide such service and made no argument to that effect before the Surface Transportation Board.

According to Amtrak officials, the equipment and facilities described above will be used exclusively for mail and express transportation on intercity passenger trains, as described by the Surface Transportation Board. Amtrak's authorizing legislation and the Surface Transportation Board's recent decision support the view that, to the extent the equipment and facilities are used in connection with mail and express transportation on regularly scheduled intercity passenger trains, they are capital improvements in intercity passenger rail service.

Operational Improvements

Two of the projects we reviewed relate to Amtrak's operations generally. First, Amtrak renovated its offices at Chicago Union Station, which houses the staff of its Intercity Strategic Business Unit, by consolidating staff on two floors and improving the mechanical systems, light fixtures, and work stations.[9] Second, Amtrak implemented a new Human Resources Information System—hardware and software—designed to calculate various aspects of pay and benefits for Amtrak's approximately 25,000 employees and to replace systems that were not Y2K compliant. These two projects involved the purchase or betterment of assets for increased efficiency and capacity over a period of several years; as such, they are capital in nature. Although they did not relate directly to the transportation of passengers, as does the purchase or improvement of rolling stock or infrastructure, they clearly supported Amtrak's execution of administrative functions critical to its mission of providing intercity passenger rail service. Accordingly, they can be characterized as capital improvements in intercity passenger rail service.

[9] According to the project description, Amtrak has also air-conditioned the Great Hall at Chicago Union Station. It expects this improvement to result in improved customer satisfaction and increased revenue-generating opportunities.

Amtrak also carried out a project related to transforming its Northeast Corridor service. According to Amtrak, the goal of the project was "to transform and elevate to world class quality the entire range of . . . services." The project appeared to contain three discrete elements: the exterior and interior modification of Northeast Direct passenger cars, the development and implementation of an emergency response program for fire and rescue personnel stationed along the Northeast Corridor,[10] and the development of operational and marketing strategies. This project was apparently designed to complement the high-speed rail project and appears closely related to Amtrak's efforts to associate a single brand name with high-quality service throughout the Northeast.

Amtrak's Northeast Corridor service is clearly part of its intercity passenger rail operation; so capital improvements acquired in this area would meet the statutory requirement that capital improvements financed with TRA funds be in intercity passenger rail service. Amtrak's modification of its Northeast Direct passenger cars, including changes to carpeting and seats, are also capital in nature. They are designed to enhance the value of the cars and result in higher-quality service well into the future.

The other elements of the transformation project are somewhat less tangible and thus significantly more difficult to assess. According to Amtrak officials, "Operation Respond," the emergency response initiative, is an 18-month effort to train fire and rescue personnel along the Northeast Corridor in new emergency response techniques. It includes the enhancement and distribution of software containing safety information, such as the layout of all Amtrak cars and locomotives, to emergency dispatch centers along the Corridor. It also includes the development of a video on the technical aspects of emergency response using the software and the development and implementation of a training course for fire-and-rescue departments.

[10]Amtrak documents identified the development of training programs for all Northeast Corridor employees as an element of the project. However, in response to inquiries about the training aspect of the project, Amtrak advised us that training for employees in Amtrak's newly developed service standards was not charged to this project and provided information on the emergency response initiative. Amtrak officials also advised us that the Corporation generally does not consider costs of training to be capital in nature unless the training is integral to the implementation of a new activity.

Both generally accepted accounting principles and the Internal Revenue Code provide a basis for treating certain expenditures related to training as capital expenditures. Specifically, the initial costs of training materials, such as manuals and videos that will be used beyond the year in which they are created, as opposed to routine updates to such materials, are viewed as capital expenditures.[11] To the extent that they will be used beyond the year in which they were created, the video and related materials developed in connection with “Operation Respond” may be characterized as capital items. However, on the basis of the information Amtrak provided, we cannot determine whether generally accepted accounting principles would treat the costs of actually training personnel as capital costs. The IRS has treated such costs as capital costs when the training is integral to a new operation and is intended to obtain future benefits significantly beyond those traditionally associated with training ordinarily provided.[12] The documentation provided by Amtrak alludes to Operation Respond as involving new emergency management techniques, but the extent to which Amtrak has maintained such a program in the past is unclear. Decisions applying the Internal Revenue Code would support the view that the costs of providing initial training to relevant personnel are capital costs to the extent that the emergency management program is a new operation.

The development of marketing and operational strategies related to the improvement of service on the Northeast Corridor presents the most difficult issue, given the intangible nature of such efforts. As a general matter, the costs of ordinary advertising are treated as operating rather than capital expenditures under generally accepted accounting principles. Furthermore, under the Internal Revenue Code, the costs of advertising campaigns are deductible as ordinary business expenses.[13] In response to our inquiries, Amtrak officials stated it has not used TRA funds for such expenses in connection with this project.

[11]See *Domestic Management Bureau v. Commissioner*, 38 B.T.A. 640, 643 (1938) acq. 1939-1 C.B. 10; Tech. Adv. Mem. 95-44-001 (July 21, 1995).

[12]See *Cleveland Electric Illuminating Co. v. United States*, 7 Cl. Ct. 220, 227-9 (1985) and Rev. Rul. 96-62, 1996-2 C.B. 9 (both emphasizing that the costs of initial training for employees in a new business are capital expenditures, while the costs of training employees to operate new equipment in an existing business are generally deductible as ordinary and necessary business expenses).

[13]See *RJR Nabisco v. Commissioner*, 76 T.C.M. (CCH) 71 (1998); Rev. Rul. 92-80, 1992-2 C.B. 57.

Documents that Amtrak provided contained little information as to the nature of the operational strategies initiative. In response to our inquiries, Amtrak officials stated that the transformation project involved "program management including scheduling, design review, program management, and program planning and development [as well as equipment design and development and Operation Respond]." Amtrak officials also advised us that the operational strategies element of the project involves repositioning the Northeast Direct service into something entirely new and assessing the steps Amtrak needs to take to make itself the preferred transportation choice on the Northeast Corridor with the limited resources it has available.

On the basis of the information provided about this effort, we cannot determine that it is a capital initiative under generally accepted accounting principles. In this regard, it is not clear that the operational strategies portion of the project involves the purchase or betterment of an asset for a future benefit. Rather, although unclear, this portion of the project appears to include significant operational aspects. In addition, we could not determine whether this initiative is the type of new business or operation whose costs would be considered capital expenditures under the Internal Revenue Code. In determining whether particular costs are capital in nature, the IRS has emphasized that the costs at issue must be for a new operation rather than improvements to an existing operation.[14] While the repositioning of Amtrak's Northeast Direct service involves improvements to Amtrak's existing operations, such as new or refurbished equipment and new service initiatives, it is not clear that these changes constitute a new business or operation as described in IRS decisions. (Amtrak's Acela regional service is intended to replace its existing Northeast Direct, Empire, and Keystone services.)

[14]See 6 Mertens Fed Income Tax section 25.57; *Cleveland Electric Illuminating* Co., 7 Cl. Ct. at 227-9.

New Commercial Ventures

Amtrak has characterized three of the projects that we selected for review as new commercial ventures. One such effort involves the modifications of an Amtrak mechanical services facility at Rensselear, New York, including improvements to machinery, repair pits, and platforms, to enhance its capacity for overhaul and maintenance work on commuter and short-line equipment, as well as on Amtrak equipment. A second involved modifications to the retail space at the 30th Street Station in Philadelphia and Penn Station in New York City, including improvements in lighting, restrooms, and space for retail tenants, to accommodate an expected growth in the volume of customers there. For the third, Amtrak used TRA funds to reconfigure locomotives in storage for a short-term (7 years) lease to a freight railroad.[15] According to Amtrak officials, the reconfigured locomotives will have an enhanced capacity for passenger service and will be used by Amtrak at the conclusion of the lease term for switching services, particularly in connection with its mail and express operations.[16]

Each of the three projects involves the permanent betterment of Amtrak assets and can thus be characterized as capital improvements. Furthermore, although the projects will benefit commuter and freight service, those benefits do not render them ineligible for TRA funding since they will benefit Amtrak's intercity operations. Amtrak currently uses the mechanical services facility and stations in intercity passenger service and expects the improvements to result in enhanced capacity and amenities for passengers. Admittedly, Amtrak will not use the reconfigured passenger locomotives in intercity service until its lease with the freight railroad expires. However, the leasing of this equipment does not preclude Amtrak from using it in intercity passenger service at the end of the lease term.[17]

[15]The freight railroad may renew the lease with respect to any of the reconfigured locomotives for 1 year and subsequently on a year-to-year basis subject to termination by itself or Amtrak.

[16]The three projects are consistent with Amtrak's statutory goal of maximizing the use of its resources so as to minimize the need for federal subsidies. Section 24101(d) of title 49, United States Code, encourages Amtrak to maximize the use of its resources through agreements with the private sector and initiatives that are consistent with good business judgment and designed to maximize its revenues and minimize government subsidies.

[17]The lease specifically provides that the freight railroad has no option to purchase the locomotives. Furthermore, at the expiration or termination of the lease, the freight railroad is required to return the locomotives to Amtrak in at least the condition set forth in an inspection report jointly prepared by Amtrak and the freight railroad at delivery, normal wear and tear excepted.

This would not be true if Amtrak sold or otherwise permanently disposed of the equipment. Therefore, we do not find that Amtrak's interim lease of the equipment, in lieu of maintaining the equipment in storage, renders the project ineligible for TRA funding.

Amtrak's Treatment of $199 Million in TRA Funds

Amtrak interpreted the Department of Transportation and Related Agencies Appropriations Act for fiscal year 1998 (1998 appropriations act) as authorizing it to use $199 million in funds provided under the Taxpayer Relief Act for general capital purposes rather than "qualified expenses" as defined in the act. As a result of this interpretation, Amtrak used $188 million in TRA funds as of June 1999 for the expenses of various projects and for reimbursements to itself for payments made prior to the act. In doing so, it did not consider whether those projects and reimbursements were eligible for TRA funding. Instead, Amtrak considered the projects and reimbursements under the guidelines applicable to general capital funds. We disagree with Amtrak's view of the 1998 appropriations act. We considered the projects at issue and determined that they were eligible for TRA funding. However, in our view, Amtrak's use of TRA funds to reimburse itself for expenses incurred and paid prior to TRA was not authorized under the act.

Background

Section 977 of TRA made Amtrak eligible for a $2.3 billion tax refund to be used, along with any interest earned on the refund, for qualified expenses.[1] However, the availability of the refund was contingent on the enactment of Amtrak reform legislation. Following the enactment of TRA, but prior to the enactment of Amtrak reform legislation, the Congress passed the 1998 appropriations act, which made $199 million available for grants to Amtrak for capital improvements but deferred the distribution of the $199 million until July 1, 1998.[2]

[1]Section 977 also required Amtrak to pay each non-Amtrak state—those states not receiving intercity passenger rail service as of Aug. 5, 1997—1 percent of the refund for specified purposes.

[2]Pub. L. No. 105-66, 111 Stat. 1425, 1435-6 (1997).

The 1998 appropriations act also contained alternative provisions to ensure that Amtrak would not receive both the $199 million provided for capital improvements and the full complement of TRA funds. The first rider provided that if Amtrak reform legislation were enacted before the transfer of the $199 million for capital improvements to Amtrak, the $199 million would not be available for obligation and distribution to Amtrak. The second rider provided that if Amtrak reform legislation were enacted after the transfer of some portion of the $199 million to Amtrak, the Secretary of the Treasury would be required to reduce Amtrak's refund under TRA by the amount that Amtrak had received.[3] Since Amtrak reform legislation was enacted before July 1, 1998, the first rider took effect, and Amtrak never received the $199 million for capital improvements.

TRA Funds Were Not Available for General Capital Purposes

The first issue for consideration is whether $199 million in TRA funds were available for general capital purposes, that is, for capital improvements without regard to their relationship to intercity passenger rail service. The definition of the term qualified expenses in TRA specifies the purposes to which the funds may be applied: "(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service, and (ii) the payment of interest and principal on obligations incurred for such acquisition, upgrading, and maintenance." However, in Amtrak's view, the 1998 appropriations act essentially directed the payment of $199 million in general capital funds out of the funds made available through TRA and therefore authorized it to use $199 million of TRA funds for general capital expenditures without regard to whether those expenditures were qualified expenses as defined in TRA.[4]

In Amtrak's view, the two riders in the 1998 appropriations act, taken together, expressly amended TRA. Amtrak bases its conclusion on the fact

[3]This language was not drawn from either the House or Senate bill, and the Conference Report accompanying the 1998 appropriations act notes only that it would require the "Secretary of Transportation [sic] to reduce the tax credit enacted under the Taxpayer Relief Act of 1997 by the amount appropriated for capital improvements, should Amtrak reforms be enacted." See H.R. Conf. Rep. 105-313, at 73 (1997).

[4]Amtrak's Oct. 1998 Strategic Business Plan states: "[t]he total funds made available [under TRA] equaled $2.323 billion less a required 1% payment to each of six states that do not receive Amtrak service *less a required $199 million to replace the FY 1998 Capital appropriation*." (emphasis added).

that the second rider included in the 1998 appropriations act would have permitted it to receive and spend $199 million as general capital if a delay in the adoption of reform legislation had deferred the availability of TRA funds until after July 1, 1998. Amtrak emphasizes that if this rider had taken effect, the Secretary of the Treasury would have had to reduce the maximum amount of TRA funds available to Amtrak by the amount of 1998 general capital funds actually received. Under this express amendment of TRA, up to $199 million of the TRA funds would have been stripped away, and Amtrak could have spent them without regard to whether they were qualified expenses under TRA. According to Amtrak, the presence of this rider in the 1998 appropriations act indicates an intent to amend TRA no matter which rider took effect. Otherwise, Amtrak argues, it would be necessary to attribute to the Congress an intent to change the purpose for which the $199 million could be spent solely as a result of the circumstance of whether the Amtrak reform legislation was adopted before or after July 1, 1998, an intent never evidenced by the Congress.

Amtrak believes that in the absence of legislative history on this point, the appropriate reading of the 1998 appropriations act is that the Congress intended Amtrak to spend the $199 million for general capital purposes, whether funded by the appropriation or by TRA, in accordance with Amtrak's capital plan prepared in the fall of 1997 when the 1998 appropriations act was adopted. With respect to any payment to be made out of the $199 million that was not a qualified expense as defined in TRA, Amtrak argues that the Congress would not have intended to change the nature of funding in the middle of the fiscal year, potentially leaving Amtrak without the means to fund certain expenditures, particularly nondiscretionary debt service.

We do not believe that the 1998 appropriations act expressly amended the TRA. In our view, Amtrak's arguments that the 1998 appropriations act made $199 million available for general capital purposes regardless of the source ignore the language of the appropriations act. The two riders in the appropriations act—read together or separately—did not amend the purposes for which the funds from either the appropriation or TRA were to be available but only demonstrated the Congress' unwillingness to allow Amtrak to receive both the general capital funds provided under the appropriations act and the full complement of funds provided under TRA. We must presume that the Congress was aware that the purposes for which TRA funds would be available were similar though not identical to the purposes for which general capital funds would be available and chose not to address the distinction between the two by making $199 million available for general capital purposes regardless of the source. In other words, given the plain language of the statute and the absence of any indication in the legislative history that the Congress intended to make $199 million in TRA funds available to Amtrak for general capital purposes, we cannot reach that conclusion.[5] The alternate riders did create some practical difficulty for Amtrak. However, these provisions could be implemented. In addition, as discussed below, the difficulty associated with the 1998 appropriations act was diminished by the significant overlap in the purposes for which general capital and TRA funds could be used.[6]

[5]In support of its position, Amtrak notes the statement of Senator Roth during the debate on the 1998 appropriations act conference report. Senator Roth stated "[d]ue to a provision added in conference, the Treasury Department will be forced to reduce the Amtrak tax refund by $200 [sic] million. This conference report violates the budget agreement [and] amends the recently enacted [TRA]" 143 Cong. Rec. S10754 (daily ed. Oct. 9, 1997). The reference to an amendment of TRA is quite clearly limited to the amount of funds to be made available rather than to the purposes for which such funds could be used. As noted below, we agree that the second rider in the 1998 appropriations act would have expressly amended TRA, had it taken effect.

[6]We note that TRA funds are available for maintenance of equipment expenses as well as expenses incurred for capital improvements. Thus, Amtrak could have used additional TRA funds in fiscal year 1998 to support its operations in the event that its revenues and operating grant were insufficient to meet its needs.

In addition, we do not believe that the 1998 appropriations act implicitly amended TRA to permit Amtrak to use $199 million of TRA funds for general capital purposes, as Amtrak has also suggested. A fundamental principle of statutory construction holds that amendments or repeals by implication are not favored.[7] Therefore, such amendments or repeals are only found where there is an irreconcilable conflict between two statutes or where a later statute covers the whole subject of an earlier one and is clearly intended as a substitute.[8] Nothing in the 1998 appropriation for Amtrak addressed the purposes to which Amtrak was to apply TRA funds once they became available. Furthermore, by its own terms, the rider in the 1998 appropriations act that took effect did not conflict in any respect with the provisions of TRA or purport to replace it.[9] It did not address any aspect of the refund to be provided to Amtrak. It merely limited the Secretary of Transportation's authority to provide Amtrak with the specified amount and, in this regard, differed little from the rider deferring payment of that amount until July 1, 1998. Because of the absence of an irreconcilable conflict between the two provisions or a manifest intent to amend TRA's definition of qualified expenses, we cannot conclude that the 1998 appropriations act implicitly amended the definition of qualified expenses in TRA.

Projects Appear Eligible for TRA Funding, but Reimbursements for Pre-Act Payments Were Not Authorized Under TRA

Our conclusion that the 1998 appropriations act did not authorize Amtrak to treat $199 million of TRA funds like general capital funds requires consideration of a second issue—whether Amtrak's use of these funds was consistent with the definition of qualified expenses in TRA. Amtrak used these funds for the expenses of projects contained in its 1998 capital plan and for reimbursements to itself for payments made prior to the act. Consistent with its view that this $199 million was available for general capital purposes, Amtrak did not consider whether the expenses of these projects would be qualified expenses under TRA. Similarly, Amtrak did not consider whether it could use TRA funds to reimburse itself for expenses incurred and paid prior to the act. Amtrak concluded instead that these

[7] *U.S. v. United Continental Tuna Corp.*, 425 U.S. 164, 168 (1976).

[8] *Radzanower v. Touche, Ross & Co.*, 426 U.S. 148, 154 (1976).

[9] In contrast, the second rider would have expressly amended TRA by reducing the amount of the tax refund payable to Amtrak by up to $199 million.

expenses and reimbursements were properly payable out of general capital funds.

A review of the project summaries included in Amtrak's 1998 capital plan suggests that these projects qualified for TRA funding. Among other things, Amtrak purchased or improved various types of equipment and facilities related to its intercity passenger operations and undertook projects for environmental remediation efforts at several locations.[10]

Amtrak used approximately $9 million of TRA funds to reimburse itself for payments that it had made—prior to the date TRA was enacted—for the projects contained in its 1998 capital plan, because it believed that these funds were available for general capital purposes. Specifically, in connection with the purchase of two coach cars for use in passenger service in the Pacific Northwest, Amtrak used $600,000 of TRA funds to reimburse another project for amounts paid under the purchase contract late in calendar year 1996 or early in calendar year 1997. Similarly, Amtrak records show that it used $1.6 million of TRA funds to reimburse its cash account for payments made between January and August 1997 in connection with a project initiated in 1996 to acquire 98 new diesel locomotives. Finally, Amtrak used $7 million in TRA funds to reimburse its cash account for 1997 debt service payments that had not been included in its fiscal year 1997 capital plan as a result of underestimation.

Amtrak believes that these payments were authorized because of the absence of a limitation in the TRA or its legislative history. Furthermore, Amtrak points out that its use of TRA funds for expenses incurred and paid prior to the act was limited and that it had previously decided to fund the payments at issue through its fiscal year 1998 capital plan for good business reasons. Finally, Amtrak states that a conclusion that it had improperly used $9 million in TRA funds is more theoretical than real since, if it chose to do so, Amtrak could unilaterally charge TRA for $9 million more in maintenance of equipment, and charge the $9 million to a non-TRA source.

[10]As discussed earlier, environmental cleanup efforts may be considered capital improvements under some circumstances.

We do not believe that Amtrak was authorized to use TRA funds to reimburse itself for expenses incurred and actually paid prior to the act. While the statute does not specifically address this issue, statutes are not typically construed to apply retroactively unless a retroactive construction is required by express language or by necessary implication or unless it is demonstrated that this is what the Congress clearly intended.[11] Further, a conclusion to the contrary would conflict with the act's purpose. The legislative history of TRA contains several references to Amtrak's precarious financial condition and its need for a reliable source of funding to enable it to achieve financial viability.[12] These references clearly suggest that TRA was enacted to enable Amtrak to make payments that it would not have otherwise been able to make. As a matter of logic, Amtrak's use of TRA funds to reimburse itself for payments that it had in fact made months before the act was passed could not be consistent with such a purpose.[13]

Moreover, such a practice would effectively eliminate the statutory restrictions on TRA funds. As discussed, Amtrak may apply TRA funds to the purposes identified in the definition of the term qualified expenses. For example, the definition of qualified expenses includes expenses incurred for the ordinary maintenance of existing equipment in intercity passenger rail service—an operating expense. However, it does not include expenses incurred for the ordinary maintenance-of-way—also an operating expense. Were Amtrak authorized to reimburse itself with TRA funds for payments made prior to the act, it could choose to do so with respect to some or all of

[11]See *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988). Although we do not address Amtrak's practices with respect to its general capital funds, we note that Comptroller General decisions have authorized grantees to apply grant funds to costs incurred prior to the grant award, as well as to those incurred prior to the availability of funds from which the award was ultimately made. We note, however, that we have not extended these decisions to costs incurred prior to the enactment of the underlying program authorization. See 56 Comp. Gen. 31 (1976); 32 Comp. Gen. 141 (1952); 31 Comp. Gen. 308 (1952); B-197699, June 3, 1980; see generally U.S. General Accounting Office, Principles of Federal Appropriations Law, 10-80 to 10-82 (2d ed. 1991).

[12]See, for example, 143 Cong. Rec. S8477 (daily ed. July 31, 1997) (statement of Sen. Roth); 143 Cong. Rec. S6692 (daily ed. June 27, 1997) (statement of Sen. Chafee).

[13]According to Amtrak officials, the two coach cars associated with the $600,000 payment were actually delivered after TRA was enacted. Amtrak has suggested that even if $199 million in TRA funds was not available for general capital purposes, this reimbursement would be authorized because the equipment was delivered after TRA was enacted. In our view, the timing of the payments rather than the timing of equipment delivery governs the determination of whether Amtrak's use of TRA funds to reimburse itself for the payments was authorized.

the expenses for maintenance of equipment paid with operating funds since its inception. Such an approach would allow Amtrak to apply TRA funds to the host of purposes to which its operating funds could have been applied. Taken to its logical extreme, such an approach to TRA funds could thus render the statutory limitations on the use of those funds meaningless. On that basis, an interpretation of TRA that would allow this approach should be avoided.

Amtrak emphasizes that it has not engaged in such a practice and that it had planned to fund the payments at issue through its 1998 capital plan. In so doing, Amtrak seems to argue that the payments at issue were authorized because Amtrak had expected to fund them out of its 1998 capital grant. However, this argument appears to be based on the premise that some portion of TRA funds were available for general capital purposes. As discussed above, we do not agree with Amtrak's position on this issue. Finally, Amtrak asserts that it could unilaterally charge $9 million more in maintenance-of-equipment expenses to TRA and charge the $9 million at issue to a non-TRA source. As noted elsewhere in this report, both TRA and Amtrak's agreement with the IRS require Amtrak to repay to the United States amounts used for other than qualified expenses. This agreement does not contain a specific provision for this type of adjustment. However, if the IRS determines that Amtrak improperly used $9 million of TRA funds, it would also determine the appropriateness of such an adjustment.

Amtrak does have significant flexibility with respect to its use of TRA funds for current payments on loans and capital leases entered into prior to the act. Amtrak used about $40 million for such payments for the projects in its 1998 capital plan. While the statute provides that the tax refund is available for obligation only until January 1, 2010, the definition of the term qualified expenses contains no reference to the timing of those expenses. Furthermore, the legislative history of the statute does not compel a restrictive view of Amtrak's authority with respect to TRA funds. Arguably, the references in the legislative history to Amtrak's difficult financial situation support a less restrictive interpretation.[14] It would seem anomalous for TRA funds to be available exclusively for payments associated with new rolling stock and equipment but not for those required for Amtrak to retain rolling stock and equipment presently in use.

Similarly, Amtrak is authorized to withdraw TRA funds to repay amounts properly applied to qualified expenses in order to manage its cash. Early in Amtrak's history, we endorsed a similar practice for grant funds advanced for capital expenditures and federally guaranteed loans restricted to capital purposes.[15] We held that Amtrak was authorized to repay grant funds used for capital purposes with capital loans as long as it maintained sufficient accounting safeguards to ensure that the borrowed funds were used only with respect to authorized acquisitions. The Amtrak Reform and Accountability Act of 1997 supports the view that Amtrak may engage in such a practice with TRA funds. Section 209 of that act provides that "Amtrak may <u>not</u> use any amount received under [TRA] (1) for <u>any purpose other</u> than making payment to non-Amtrak states . . . or financing qualified expenses . . . ; or (2) to offset other amounts used for <u>any purpose other</u> than the financing of such expenses" (emphasis added). By implication, section 209 authorizes Amtrak to use TRA funds to offset other payments, as long as these payments were for qualified expenses. Accordingly, we do

[14]The Senate-passed bill, S. 949, would have established an Intercity Passenger Rail Fund consisting of 0.5 cent per gallon of the motor fuel excise taxes imposed after Sept. 30, 1997 and before Apr. 16, 2001 and would have limited qualified expenses to those incurred during this time period. While it might be argued that this legislative history supports a more restrictive view of TRA, we note that when reviewing legislative history for guidance as to the meaning of a statute, courts have inferred that the deletion of language giving rise to a certain result strongly militates against the judgment that the Congress intended that result. See, for example, *Gulf Oil Corp. v. Copp Paving Co.*, Inc., 419 U.S. 186 (1974). For the reasons discussed, we do not believe that the deletion of this language by itself authorized Amtrak to use TRA funds to reimburse itself for expenses incurred and paid prior to the act, as well as to make current payments on pre-existing obligations.

[15]See B-175155, Apr. 22, 1975 and B-175155, Sept. 29, 1972.

not object to Amtrak's practice of paying expenses incurred for the maintenance of equipment in intercity passenger rail service—a qualified expense—with other funds available for that purpose and subsequently repaying those amounts.

Comments From the National Railroad Passenger Corporation

Note: The National Railroad Passenger Corporation (Amtrak) provided two letters on this report, which are both included in this appendix. Our comments on the first letter follow immediately thereafter. We have no comments on the second letter.

National Railroad Passenger Corporation, 60 Massachusetts Avenue, N.E., Washington, DC 20002 Telephone (202) 906-3000

Amtrak

January 26, 2000

Ms. Phyllis F. Scheinberg
Associate Director, Transportation Issues
United States General Accounting Office
Washington, DC 20545

Dear Ms. Scheinberg:

I appreciate the opportunity the General Accounting Office (GAO) has afforded us to review the final draft of your report on Amtrak's handling of the Taxpayer Relief Act (TRA) funds. Although we emphatically disagree with GAO's conclusion that Amtrak should not be entitled to reimburse itself with TRA funds for pre-TRA capital obligations, we are pleased that out of the $1.3 billion in TRA funds obligated by Amtrak through June 1999, the disagreement is limited to just $9 million in capital reimbursement payments. Nevertheless, in order to put to rest even the slightest question about Amtrak's commitment to the proper expenditure of TRA funds, we are taking the following steps:

See comment 1.

1. I have asked our Inspector General (IG) to work with our external auditors to review the internal controls Amtrak has in place for expenditure of the TRA funds. Both the Board of Directors and management were concerned with some of the findings in the report on how TRA funds were used. Some of the expenditures, although they may clearly be eligible expenditures well within the limits of accounting standards and the law, are not consistent with the current Boards' view and policy on how TRA funds should be spent. As a result, we believe it would be prudent to have our external auditors look at this as well and offer suggestions, if necessary, for a further tightening of the internal procedures.

See comment 2.

2. Your report raises a question about the inclusion of data describing TRA funds that Amtrak used for maintenance of equipment purposes. Amtrak does include such information in its monthly and annual financial reports which are shared with the ARC. It is true that this data was not included in the quarterly TRA report sent to ARC. We have regularly asked the ARC to provide input for improving

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See comment 3.

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the format and substance of our reports, but have not yet received their recommendations. Nevertheless, the suggestions provided by your staff are useful and have already been integrated in the quarterly TRA reports sent to ARC.

3. The IRS has received the 1998 annual report of the expenditure of TRA funds, but did not receive copies of the quarterly ARC reports. We promptly forwarded the required reports to the IRS. In the future, we will ensure that all such documents are sent to the IRS in compliance with our agreement with them.

4. The GAO has raised concerns about three transactions totaling $9 million, which were funded from $199 million of TRA funds used for general capital purposes. The legal issues raised in your report are addressed in the attachment to this letter, which was prepared by our counsel. Suffice it to say that we believe our interpretation of the statute is consistent with the intent of Congress.

   Further, I have asked our IG to review the transactions that make up the $199 million of general capital spending. While we believe that Amtrak faithfully adhered to the law for the use of these funds, an IG review conducted in this manner would be useful and will lay to rest any concerns regarding the use of these funds. I have asked the IG to put together, by February 15, 2000, a plan for doing this and a timeline for this work. It is my hope that this review can be done in a time frame and manner similar to the one done by the GAO.

5. Your report raised a question about approximately $19,000 of TRA funds. We believed the use of these funds was related to ongoing capital initiatives, but in order to obviate further discussion, Amtrak will fund these activities from a non TRA source.

As you know, we viewed the receipt of our TRA funds in 1997 as an opportunity to make investments that would strengthen our company, as well as to demonstrate to Congress that we were able stewards of a large sum of dedicated capital funding. We believe we have accomplished both of those objectives. During the course of this review, we appreciated your candid appraisal of Amtrak's administration of these funds, as well as of the process used to determine how TRA funds would be expended. We believe the expenditure of TRA funds has been done legally and in full compliance with the Act. That notwithstanding, the actions Amtrak is taking indicate how serious we are about making certain no question remains with respect to the use of these funds.

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Again, I appreciate the hard work of your staff in reviewing this report and for your objective review of the administration and expenditure of these funds. I look forward to our continuing work in this area. Please feel free to contact me if you have any questions.

Sincerely,

George D. Warrington
President and Chief Executive Officer

January 25, 2000

Amtrak's Statement on use of $199 million of TRA funds for general capital

1. *Summary*

The GAO disagrees with Amtrak's position that $199 million of TRA funds could be expended as general capital. The GAO also asserts that Amtrak improperly used approximately $9 million of the $199 million to reimburse itself for outlays incurred prior to adoption of the TRA.

As explained below, Amtrak disagrees with GAO's position on expenditure of the $199 million. Amtrak continues to adhere to its position that $199 million in TRA funds paid to Amtrak in 1998 could be spent as Amtrak general capital without having to pass muster as "qualified expenses" under the TRA. Further, Amtrak believes that the questions raised by the GAO about the $9 million in prior period outlays are now moot. The amount at issue is relatively small, and Amtrak has determined to re-program more 1998 maintenance of equipment expense as a TRA outlay. Amtrak will fund the amount of pre-TRA outlays questioned by the GAO from a non-TRA source.

2. *Interpretation of the TRA and the Appropriations Act Provisos*

As a threshold matter, Amtrak believes that the GAO is incorrect in analyzing the effect on the TRA of the two provisos in the fiscal year 1998 DOT Appropriations Act as a question of repeal by implication. The authorities cited by GAO that speak to the general prohibition of repeal by implication are inapposite. The two Supreme Court cases cited by the GAO involved statutes that were separated by both time and purpose. Here, by contrast, the statutes were enacted within a short span of a few months and had as a common objective the funding of Amtrak's future capital needs.

The TRA was enacted August 5, 1997, and the DOT Appropriations Act was passed by both houses of Congress two months later on October 9 and enacted October 27, 1997. In addition, the section of the TRA providing funds to Amtrak was not effective until after adoption of Amtrak reform legislation, which occurred on December 2, 1997. Therefore, when the DOT Appropriations Act was adopted, Congress had reason to believe that the relevant section of the TRA and the Appropriations Act provisos would take effect together in the near future upon adoption of Amtrak reform legislation. Nothing as subtle as repeal by implication could have been intended under the circumstances, and the legislative history indicates that the provisos in the DOT Appropriations Act, taken together, expressly amended the TRA. Therefore, the most straightforward reading is that Amtrak was permitted to use $199 million of TRA funds as general capital without having to pass muster as a qualified expense under the TRA.

Amtrak also bases its conclusion on the language of the 1998 DOT Appropriations Act. That Act appropriated $199 million for Amtrak general capital improvements, but delayed the availability of that appropriation until July 1, 1998, which was approximately nine months after the date of adoption. Because of the substantial likelihood that Amtrak reform legislation would be adopted either in the then current session or the next session of Congress, the DOT Appropriations Act included two provisos which instructed the Secretaries of Transportation and Treasury to take certain steps with respect to the $199 million, depending on whether Amtrak reform legislation was adopted before or after July 1, 1998.

The first proviso stated:

> *Provided*, That if Amtrak reform legislation as required by section 977(f) of the [TRA] is enacted into law prior to the distribution by the Secretary [of Transportation] of any of the [$199 million], then the [$199 million] shall not be available for obligation and the Secretary [of Transportation] shall not transfer any of the [$199 million] to Amtrak.

The second proviso stated:

> *Provided further*, That in the event Amtrak reform legislation required by section 977(f) of the [TRA] is enacted into law after the distribution of some or all of the [$199 million] ...by the Secretary [of Transportation] to Amtrak, then the Secretary of the Treasury shall reduce the amount refunded to Amtrak under section 977 ... by an amount equal to the funds distributed to Amtrak [from the $199 million], ...and no additional funds [of the $199 million] shall be transferred by the Secretary [of Transportation] to Amtrak for capital improvements.

Under the first proviso, the Secretary of Transportation was instructed not to transfer any of the $199 million to Amtrak. Under the second proviso, the Secretary of the Treasury was instructed to reduce the amount of funds to be transferred to Amtrak under the TRA by the amount of the $199 million received by Amtrak, and the Secretary of Transportation was instructed to transfer no more of the $199 million to Amtrak.

It seems obvious that both provisos must be considered together in discerning the intent of Congress, since the absence of the first or the second could have lead to a radically different result with respect to the $199 million. For example, if only the first proviso had been enacted, the Secretary of Transportation could have transferred the full $199 million to Amtrak if reform legislation was adopted after July 1, 1998. If only the second proviso had been enacted – and reform legislation was adopted after July 1, 1998 - the Secretary of Transportation would not have transferred any portion of the $199 million not previously released.

Because both provisos are necessary to create a logical and complete set of instructions to the Secretaries of Transportation and Treasury, both provisos must be read as one. Taken together they create three possibilities with respect to the $199 million: (i) Amtrak would receive it in whole from the Secretary of Transportation; (ii) Amtrak would receive it in part from the Secretary of Transportation and in part from the Secretary of the Treasury; and (iii) Amtrak would receive the whole from the Secretary of Treasury.

Because the Secretary of the Treasury would have had to reduce the maximum amount of TRA funds available to Amtrak by the amount equal to the portion of the $199 million transferred by the Secretary of Transportation, the provisos were an express amendment of TRA. Senator Roth so stated during the debate on the Appropriations Committee Conference Report:

> Mr. President, I rise today to oppose the fiscal year 1998 Department of Transportation conference report. Due to a provision added in conference, the Treasury Department will be forced to reduce the Amtrak tax refund by $200 (sic) million. This conference report violates the budget agreement, **amends the recently enacted [Taxpayer Relief Act],** and unnecessarily straps Amtrak....

Cong. Rec. S10754 (October 9, 1997) (emphasis added). In effect, if Amtrak had received any of the $199 million from the Secretary of Transportation, then an equivalent amount of the TRA funds would have been stripped away from the TRA and Amtrak could have spent the general capital funds without regard to whether they were "qualified expenses" under TRA.

When both provisos are read together as an amendment to the TRA, then the intent of Congress becomes clear for fiscal year 1998: the *amount* of the funds provided to Amtrak by the Federal Government for capital will not exceed the total funds provided under the DOT Appropriations Act or the TRA, whichever is greater. But Congress did not intend to change the purpose for which the $199 million could have been spent. If so, the second proviso would have not only prohibited the Secretary of Transportation from making further transfers, but also would have required Amtrak to use for TRA "qualified expenses" any portion of the $199 million received but not yet spent.

GAO has erroneously looked only at the first proviso - the one that addressed adoption of reform legislation before July 1, 1998 - and therefore concluded that no amendment to the TRA was enacted. Hence, it argues that Amtrak had to treat all TRA funds under the same statutory standard. Amtrak believes that because both provisos are necessary to create a logical whole, there was a congressional intent to amend the TRA *whichever rider took effect.*

Further, to argue otherwise, as the GAO does, is to attribute to Congress an almost whimsical intent to change the purpose for which some or all of the $199 million could be spent solely as a result of whether the Amtrak reform legislation was adopted before or after July 1, 1998. No such intent was ever evidenced by Congress.

Amtrak believes that in the absence of legislative history supporting GAO's position on this point, the appropriate reading is that Congress would have intended Amtrak to spend the $199 million for general capital purposes, whether funded by transfer from the Secretary of Transportation or the Secretary of the Treasury, in accordance with the capital plan prepared in the fall of 1997 when the 1998 Appropriations Act was adopted. With respect to any payment to be made out of the $199 million which was not a TRA "qualified expense," Congress would not have intended to change the nature of funding in the middle of the fiscal year, potentially leaving Amtrak without the means to fund certain expenditures.

3. *Use of TRA Funds for Prior Period Outlays*

GAO argues that Amtrak could not use TRA funds to pay for outlays prior to August 1997, when the TRA was adopted. Amtrak continues to adhere to the position that given the absence of an express limitation in the TRA, or the absence of an implication of such a limitation in the legislative history of the TRA, such an absolute ban cannot be read into the TRA. Further, even if GAO's position with respect to prior period outlays were correct, the amount involved is a relatively small $9 million, and GAO's interpretation that they were unauthorized comes down to its view that the *timing* of such outlays was off by merely a matter of months.

To obviate debate on such technical issues, Amtrak has determined to reprogram the amount in question so that additional TRA funds will be used for 1998 maintenance of equipment expenses, and the questioned prior period outlays will be funded from a non-TRA source. Amtrak will appropriately report additional maintenance of equipment expenses for 1998 to the IRS and report the elimination of a corresponding amount of pre-TRA capital outlays.

National Railroad Passenger Corporation, 60 Massachusetts Avenue, N.E., Washington, DC 20002 Telephone (202) 906-3000

Amtrak

February 10, 2000

Ms. Phyllis F. Scheinberg
Associate Director, Transportation Issues
United States General Accounting Office
Washington, DC 20545

Dear Ms. Scheinberg:

In response to your draft report concerning Amtrak's use of TRA funds for a particular project and several expenditures, we have sent the enclosed letter to Victor Penico at the IRS. The letter requests an examination of the issues raised in the GAO's report on Amtrak's use of Taxpayer Relief funds.

Sincerely,

James T. Lloyd
Senior Vice President and General Counsel

Enclosure

AN EQUAL OPPORTUNITY EMPLOYER

National Railroad Passenger Corporation, 60 Massachusetts Avenue, N.E., Washington, DC 20002 Telephone (202) 906-3000

Amtrak

February 10, 2000

Victor L. Penico, Esq.
Chief, CC:DOM:CORP:3
Office of the Assistant Chief Counsel (Corporate)
Internal Revenue Service
Washington, D.C. 20224

Dear Mr. Penico:

As you know, the National Railroad Passenger Corporation ("Amtrak") entered into a Closing Agreement with the IRS dated March 12, 1998, with respect to the payment of a deemed tax refund of approximately $2.3 billion under section 977 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34 ("TRA"). A copy of that Closing Agreement is attached for your reference.

Recently, in a draft report prepared for Congressman Bud Shuster, the General Accounting Office ("GAO") has taken the position that under section 977, approximately $9 million of the amounts refunded to Amtrak should not have been used by Amtrak for reimbursement of payments made prior to adoption of the TRA. Amtrak understands that the GAO has provided a copy of the draft report to the IRS and sought its comments.

As explained in the attached Statement dated January 25, 2000, Amtrak strongly believes that the GAO's conclusion is wrong as a matter of law, and that the $9 million was properly used by Amtrak to fund a portion of its $199 million capital program for fiscal year 1998. However, because Amtrak wished to avoid continuing disagreement with the GAO on this issue, Amtrak revised its expenditure of TRA funds, as reported with its 1998 Form 1120, to utilize non-TRA funds for the expenditures questioned by the GAO. Amtrak submitted to the IRS the necessary revisions to its report of TRA expenditures, as stated in the attached letter, dated January 27, 2000, to the Service Center in Bensalem, Pennsylvania.

In response to the GAO draft report, and consistent with our Board resolution of January 24, Amtrak requests that the Commissioner of Internal Revenue examine Amtrak's use of $9 million in TRA funds for reimbursement of payments made before the Act, and advise Amtrak and GAO of your findings.

AN EQUAL OPPORTUNITY EMPLOYER

Amtrak also requests that the Commissioner of Internal Revenue examine Amtrak's transformation of the Northeast Corridor project and two expenditures totaling $19,000 associated with that project, as also questioned in the GAO's report. It should be noted that Amtrak subsequently funded these activities from a non-TRA source in order to lay this issue to rest.

Please provide copies of any correspondence with Amtrak or other responses to these requests to the GAO.

Thank your for your attention to this matter.

Sincerely,

James T. Lloyd
Senior Vice President and General Counsel

Attachments

Cc: Ms. Phyllis F. Scheinberg
Associate Director, Transportation Issues
General Accounting Office

GAO's Comments

The following are GAO's comments on Amtrak's letter dated January 26, 2000.

1. Our draft report clearly disclosed that we had examined 23 expenditures, totaling about $10 million. We did not examine all $1.3 billion of TRA expenditures through June 1999, as suggested by Amtrak.

2. Amtrak did not identify the specific reports that it supplies to the Council. Nevertheless, we believe that each report it sends the Council should accurately disclose its use of TRA funds.

3. We have added this action to the discussion of IRS' oversight of Amtrak's use of TRA funds in this final report.

Comments From the Amtrak Reform Council

☆ ☆ ☆ **AMTRAK REFORM COUNCIL** ☆ ☆ ☆

January 28, 2000

Ms. Phyllis F. Scheinberg
Associate Director, Transportation Issues
United States General Accounting Office
Washington, DC 20548

Dear Ms. Scheinberg:

This letter was prepared in response to your January 14, 2000, letter and attached proposed report, *Intercity Passenger Rail: Amtrak Should Improve Its Handling of Its Taxpayer Relief Act Funds.*

As noted in the General Accounting Office's (GAO's) draft report, the Amtrak Reform Council (Council) has a statutory responsibility to monitor Amtrak's expenditures funded by special tax refunds authorized by Section 977 of the Taxpayer Relief Act of 1997 (TRA) pursuant to the Amtrak Reform and Accountability Act of 1997 (ARAA). Passage of the ARAA was a precondition for release of funds to Amtrak under the TRA. Although the ARAA gave the Council responsibility for monitoring Amtrak's expenditure of TRA funds, the lack of a Council staff until the spring of 1999[1] coupled with the complexity and number of projects for which Amtrak is using TRA funds (more than 81,000 transactions were recorded as TRA funded projects through June 1999) prompted a Congressional request to the General Accounting Office (GAO) to conduct a review of Amtrak's TRA expenditures.

The TRA made approximately $2.184 billion[2] of TRA funds available to Amtrak for defined qualified investments. Because the TRA expenditures were so thoroughly integrated into Amtrak's operating maintenance expenditures and regular capital expenditure programs, monitoring the use of TRA funds requires a full scope audit of Amtrak's maintenance and capital expenditure process and a thorough review of Amtrak's financial information system. Such a major review and auditing task is much more consistent with the resources available to GAO, which has assigned for several months a team to review and report on the

[1] The GAO report should reference Appendix A of the Council's First Annual Report, which includes a brief history of the Council. Clearly the Council could not monitor the TRA expenditures until the summer of 1999 due to the lack of financial resources provided by Congress, the legislative restriction prohibiting the Council from hiring outside consultants, and the delay in obtaining the financial resources and authority to hire a staff for the Council. In addition, the Council's overall financial resources would have to be substantially increased for the Council to be able to monitor Amtrak's TRA expenditures.

[2] A maximum of $2.324 billion of TRA funds were authorized, but approximately $140 million of such funds are required by statue to be passed through by Amtrak to states without Amtrak service, leaving approximately $2.184 billion of TRA funds for Amtrak investment.

JM-ARC, Room 7105
400 Seventh Street, SW
Washington, DC 20590-0001
Phone: 202-366-0591
Fax: 202-493-2061

☆

The ARC is an independent federal commission established under the Amtrak Reform and Accountability Act of 1997 (P.L. 105-134)

Ms. Phyllis F. Sheinberg
Page 2

TRA expenditures that was comparable in size (when measured on a full time equivalent staff basis) to the size of the Council's professional staff.

The Council staff met with you and members of the GAO staff assigned to monitor Amtrak in July 1999, shortly after the GAO was assigned the task by Congress of reviewing Amtrak's TRA expenditures. At that meeting, it was agreed (due to the massive scope of work required and in the interest of minimizing duplication of taxpayer funds) that the Council would defer monitoring TRA expenditures until after the GAO completed its initial study and report, and that the Council would utilize the work and findings of the GAO study before analyzing TRA expenditures other than from an overall policy perspective of determining the broad impact of TRA expenditures on Amtrak's ability to operate after FY2002 without federal operating subsidy grant funds.

The Council believes that this understanding needs to be fully disclosed in the GAO's report, or this letter from the Council should be attached to provide this important historical perspective explaining the reasons why the Council has not taken a more active role to date in monitoring Amtrak's TRA expenditures on a quarterly basis.

Going forward, the Council is not likely to be provided by the Congress with the significant increase in its annual operating budget that would be needed for the Council to do the TRA monitoring task. We believe that it would be more efficient for Amtrak's outside certified public accounting firm to be given the added responsibility to audit the TRA expenditures for compliance with all applicable laws and accounting practices, using the GAO report as a template, and to provide a special report annually addressed to the Council (and possibly other government entities with an interest in monitoring such expenditures) indicating the results of its special TRA review procedures and Amtrak's overall compliance with TRA legislative restrictions. In addition, we believe that this approach is appropriate since Amtrak's auditors have an obligation to at least test the approximately \$2.2 billion of TRA expenditures for compliance with all laws and IRS regulations as part of its overall audit of Amtrak, so the special report addressed to the Council should not be a large additional burden placed on the independent auditors.

We share the GAO's concerns and look forward to working closely with the GAO in the future.

Sincerely,

Tom Till

Thomas A. Till
Executive Director

cc. Gilbert Carmichael, Chairman
Amtrak Reform Council members

Comments From the Internal Revenue Service

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

February 8, 2000

Ms. Phyllis F. Scheinberg
Associate Director, Transportation Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Ms. Scheinberg:

Thank you for the opportunity to review and comment on your recent draft report entitled "Intercity Passenger Rail: Amtrak Should Improve Its Handling of Its Taxpayer Relief Act Funds." We are pleased you have sought our comments on sections of your report. We are not able to comment on the accuracy of the report. Amtrak's first return with Taxpayer Relief Act (TRA) funds was only just recently filed. We have not yet been able to conduct an examination of Amtrak's use of these funds.

The Congress, the Amtrak Reform Council (Council) and the Internal Revenue Service (IRS) all play roles in the payment, monitoring, and recovery of TRA funds. The IRS is uniquely involved because the TRA funds were authorized by the Congress as a deemed tax refund. IRS's role is primarily to conclude a Closing Agreement with Amtrak that would implement the payment of TRA funds. The IRS is also to institute such collection procedures as determined necessary by the quarterly reports on Amtrak's use of TRA funds and further examination of Amtrak's books and records.

The IRS takes its responsibilities under TRA very seriously. Consistent with the consent from Amtrak, we can disclose that upon enactment of the Amtrak Reform and Accountability Act, the prerequisite for release of TRA funds, we issued a Private Letter Ruling that prescribed how Amtrak would elect to receive TRA funds. The IRS and Amtrak entered into a Closing Agreement in March 1998. The provisions of this agreement facilitate the monitoring of Amtrak's use of TRA funds by the Congress, the Council, and the IRS and the collection of any TRA funds not appropriately expended.

The IRS will, in its ordinary course of business - and in accordance with the legislation and the intent of the Congress - monitor the reports and initiate an examination, as appropriate, to determine whether any remediation or collection action is needed. Because the taxpayer's first return with TRA expenditures is only now working its way through our return processing system, we have not yet examined actual expenses. When the processing stage is completed, we will consider the information you provided in the report.

See comment 1.

2

Your report recommends the IRS examine Amtrak's Northeast Corridor project, the two expenditures for executive recruitment and working lunches associated with that project, and Amtrak's use of $9 million in TRA funds for reimbursement of payments made before the implementation of the Act. You also said we should obtain repayment of any improperly used amounts, as appropriate. We will take your recommendations under advisement.

I have enclosed a number of suggested changes to the report. I believe these changes will enhance the accuracy of the report.

We look forward to continuing our work on implementing this important piece of legislation and protecting the government's interests. Please call me or Thomas W. Wilson at 202-622-4400 if you would like to discuss this further.

Sincerely,

Charles O. Rossotti

Charles O. Rossotti

Enclosure

IRS' Suggested Changes to the Draft GAO Report

See comment 2.

1. We strongly suggest you include a paragraph stating that Amtrak was the source of the tax information including IRS' March 1998 agreement with Amtrak, discussed in the report. You should also mention that Amtrak consented to having this information made public. It is extremely important that you document adherence to disclosure provisions of the tax law. An appropriately redacted (removal of tax identification number) copy of Amtrak's disclosure consent form should be included as an appendix to the report.

See comment 3.

2. We believe a careful reading of the Amtrak Reform and Accountability Act (Act) of December 1997 will clarify that the Congress created the Amtrak Reform Council to oversee Amtrak's reform efforts and, specifically, in section 209 of the Act, monitor and report on Amtrak's use of TRA funds. GAO should revise its report, specifically on pages 18-20, to assure this responsibility is properly reflected.

See comment 4.

3. On pages 2 (bottom paragraph), 18 (middle paragraph), 20 (lead sentence and middle paragraph) the report states: "IRS has not monitored Amtrak's use of TRA funds." We ask you to rephrase that sentence on each of these pages to read: "IRS has not yet examined Amtrak's use of TRA funds." We believe this simple wording change will give the reader a better sense of IRS' position on this matter. It would also more accurately reflect that the reason we have not yet examined the funds is because Amtrak just filed its return for 1998 in March 1999.

GAO's Comments

The following are GAO's comments on the Internal Revenue Service's letter dated February 8, 2000.

1. We deleted this recommendation from our final report. See the agency comments section of the report for why we dropped this recommendation.

2. We added information to this final report noting that Amtrak, not the IRS, was the source of tax information discussed in this report.

3. We revised our discussion in this final report to more clearly differentiate IRS and the Amtrak Reform Council's roles regarding TRA funds.

4. We revised our discussion in this final report to more clearly identify that IRS has not yet examined Amtrak's use of TRA funds.

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