

STATE OF ARIZONA

Department of Revenue



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Governor

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ARIZONA TRANSACTION PRIVILEGE TAX RULING TPR 16-2

(This Ruling supersedes Arizona Transaction Privilege Tax Ruling TPR 94-9)

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe this substantive policy statement imposes additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

The application of the jet fuel excise and use tax on the sale and purchase of jet fuel for periods beginning from and after January 1, 2015.

RULING:

The retail sale of jet fuel within Arizona is subject to the jet fuel excise tax. The storage, use or consumption of jet fuel within Arizona is subject to the jet fuel use tax. The Arizona jet fuel excise and use tax is based solely on the actual per gallon fuel. The tax applies only to the first ten million gallons of jet fuel purchased in the calendar year at a rate of 3.05 cents per gallon. Any amount over ten million gallons during the calendar year is not subject to tax.

Sales of jet fuel for resale in the regular course of business, sales of jet fuel subject to tax in another state, and sales of jet fuel for use on qualified international flights are exempt from jet fuel excise tax. All other retail sales of jet fuel are subject to the jet fuel excise and use tax.

Sales of jet fuel for use on qualified international flights are exempt if the flight departs a location in Arizona after loading passengers or cargo and the flight's next destination is outside of the United States for the discharge of cargo or passengers.

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The county transportation excise tax is levied on sales of jet fuel at a rate of not more than ten per cent of the state jet fuel excise tax rate. Only the first 10 million gallons of fuel purchased in the calendar year are subject to the county tax.

DISCUSSION:

Arizona Revised Statutes (A.R.S.) § 42-5352(A) imposes the jet fuel excise tax on every person engaging or continuing in the business of the retail sale of jet fuel. A.R.S. § 42-5351(3) defines "retail sale" as a sale for any purpose other than a sale for resale in the regular course of business. A.R.S. § 42-5351(4) provides that "[r]etailer" includes every person engaging or continuing in the business of selling jet fuel for storage, use or other consumption or in the business of selling jet fuel owned by that person or others for storage, use or other consumption.

The tax is imposed at a rate of 3.05 cents per gallon. A.R.S. § 42-5352(A) provides for a reduction in the tax rate for sales to persons who purchase more than 10 million gallons of jet fuel in a calendar year for certain periods prior to June 30, 1994. Persons who purchase more than 10 million gallons of jet fuel in a calendar year are not subject to tax on amounts over 10 million gallons.

A.R.S. § 42-5352(B) levies a jet fuel use tax on the storage, use or consumption in Arizona of jet fuel purchased from a retailer, at the same rate imposed by A.R.S. § 42-5352(A), when the jet fuel excise tax has not been paid to Arizona.

The statutory provisions establishing the jet fuel excise and use tax provide certain specified exemptions from the tax. Statute provides exemptions for:

1. Sales for resale in the regular course of business;
2. Sales of jet fuel subject to an excise tax imposed under the laws of another state of the United States, which is equal to or exceeds the tax imposed under Title 42, Chapter 5, Article 8; and,
3. Sales of jet fuel in this state to commercial airlines to be used on flights which originate in this state and whose first outbound destination is outside the United States.

No other exemptions are included in the statutes imposing the jet fuel tax.

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General Exemptions:

Prior to the creation of the jet fuel excise and use tax, the sale of jet fuel was subject to transaction privilege tax as a retail sale of tangible personal property. The statutes imposing the transaction privilege tax on retail sales provide specific exemptions from the tax. For example, exempt retail sales include sales of tangible personal property to qualifying hospitals or qualifying health care organizations.

It is a general rule of statutory construction that every interpretation shall be against exemptions from taxation statutes. Deductions and exemptions from tax are not to be implied; they must exist, if at all, within a specific statutory grant. Therefore, taxpayers can only utilize the specific exemptions provided in the jet fuel tax statutes. Those statutes provide the three specific exemptions delineated above. Any other sale or use of jet fuel is subject to the jet fuel excise or use tax.

Exemption for Qualified International Flights:

A.R.S. § 42-5354 provides an exemption from the jet fuel excise and use tax for sales of jet fuel to commercial airlines used on flights which originate in Arizona and whose first outbound destination is outside the United States, hereinafter referred to as "qualified international flights."

A "commercial airline" refers to a commercial air common carrier certified and authorized to transport passengers or cargo for hire on regular schedules over definite routes. "Flights which originate in this state" refers to flights which depart Arizona after loading passengers or cargo at an Arizona airport. A flight departure originates at the point from which the airplane takes off and terminates at its next scheduled destination. "First outbound destination outside the United States" refers to the next scheduled destination outside of the United States at which cargo or passengers are unloaded or discharged.

Therefore, a qualified international flight is a flight which loads passengers or cargo in Arizona and departs for a destination outside the United States. If a flight is loaded with exempt jet fuel for an intended qualified international flight, but makes a nonemergency stop at a location in the United States, the sale of jet fuel will not qualify as an exempt sale.

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For example:

Flight #1 departs San Francisco, California with passengers and cargo destined for Phoenix, Arizona. While in Phoenix, the plane takes on additional passengers and cargo. The plane is filled with jet fuel in Phoenix. Flight #1 continues to Mexico City where all passengers and cargo are discharged or unloaded. The purchase of jet fuel in Phoenix is not subject to taxation.

Due to industry practices in the sale and purchase of jet fuel, a purchaser may not know the specific use of the jet fuel when making the purchase. Therefore, the following procedure may be used to document an exempt use of jet fuel on qualified international flights.

Retailers and purchasers may use the Arizona Form 5000 Tax Exemption Certificate to establish the exemption from the jet fuel excise and use tax for jet fuel purchased for use on qualified international flights. [See Section D, *Reason for Exemption*, the line for *Other Deduction*. Cite A.R.S. § 42-5354.] This form is prescribed by the Department pursuant to A.R.S. § 42-5009.

The acceptance of a completed Certificate pursuant to statutory requirements relieves the vendor of any liability and the Department may require the purchaser to establish the accuracy and completeness of the certificate. If a vendor, however, uses a certificate other than the one issued by the Department, the burden of proof remains with the vendor as to the validity of the certificate. Purchasers should retain adequate documentation to establish that the exempt purchases of jet fuel were used on qualified international flights.

If a purchaser was subject to the jet fuel excise or use tax and later uses that jet fuel on a qualified international flight, the purchaser will have to apply to the retailer of the jet fuel for a refund of the tax.

Arizona Form 5008 – Jet Fuel Tax Rate Adjustment Certificate:

This certificate is to be used by a purchaser to claim the jet fuel tax rate adjustment for purchases of jet fuel proscribed by A.R.S. § 42-5352(A). The jet fuel excise tax is levied only on the purchase of the first ten million gallons of jet fuel by each purchaser of jet fuel in each calendar year at a rate of 3.05 cents per gallon. The purchaser, by completing and providing the certificate to the vendor, is certifying that it has purchased in excess of 10 million gallons of jet fuel in the calendar year. Purchases of jet fuel in

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excess of 10 million gallons in the calendar year are not subject to jet fuel tax or county transportation excise tax.

County Transportation Excise Tax:

County excise taxes "piggyback" the imposition of the state's transaction privilege tax. All sales that are subject to the transaction privilege tax are also subject to applicable county excise taxes. Most county excise taxes are imposed as a percentage of the applicable state rate.

Laws 2013, H.B. 2111 amended A.R.S. §§ 42-6105, 42-6106, 42-6107 regarding county transportation excise tax, effective January 1, 2015. The county transportation excise tax is levied at a rate of not more than ten per cent of the rate prescribed by A.R.S. § 42-5352(A). Only the first 10 million gallons of fuel are subject to the county tax. Sales of jet fuel over 10 million gallons are not subject to county transportation excise tax as of January 1, 2015.

Use business class (049) on the Arizona State, County and City Transaction Privilege and Other Tax Rate Tables when reporting. This business code and accompanying tax rates combine both the state jet fuel tax rate and any county excise tax.

Jet Fuel Use Tax:

A jet fuel use tax is levied and imposed on the storage, use or consumption in this state of jet fuel purchased from a retailer. The tax imposed applies to any purchaser which purchased jet fuel for resale but subsequently uses or consumes the jet fuel. [A.R.S. § 42-5352(B)] Use business class (051) on the Arizona State, County and City Transaction Privilege and Other Tax Rate Tables when reporting. There is no county excise tax.

LEGAL AUTHORITY:

A.R.S. § 42-5351 provides "[r]etail sale means a sale for any purpose other than a sale for resale in the regular course of business."

A.R.S. § 42-5352(A) provides, in pertinent part, that a jet fuel excise tax is levied on every person engaging or continuing in the business of the retail sale of jet fuel. The jet fuel excise tax is levied only on the purchase of the first ten million gallons of jet fuel by each purchaser of jet fuel in each calendar year at a rate of 3.05 cents per gallon.

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A.R.S. § 42-5352(B) provides:

Except as provided in subsections C and D, a jet fuel use tax is levied and imposed on the storage, use or consumption in this state of jet fuel purchased from a retailer at the same tax rate imposed by subsection A in any case in which the tax imposed by subsection A has not been paid to the state. The tax imposed by this section applies to any purchaser which purchased jet fuel for resale but subsequently uses or consumes the jet fuel.

A.R.S. § 42-5354 provides “[t]he tax levied by this article does not apply to jet fuel which is sold in this state to commercial airlines and used on flights which originate in this state and whose first outbound destination is outside of the United States.”

Grant Nülle, Deputy Director

Signed: September 20, 2016

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, detail, or supplementary information concerning application of the law. Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.