
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING # 97-12

SUBJECT: Aviation Gasoline
(Sales and Use)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 55-5-280
S. C. Code Ann. Section 12-36-2120(9)(d)
S. C. Code Ann. Section 12-36-2120(15)(a)
S. C. Code Ann. Section 55-5-20(12)
S. C. Code Ann. Section 12-28-710(16)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1996)
SC Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question(s):

Code Section 55-5-280 provides that “the tax on aviation gasoline” is to be credited to the State Aviation Fund. The following questions have arisen concerning the phrase “the tax on aviation gasoline”:

1. What is “the tax” referred to in the phrase?
2. What is “aviation gasoline”?
3. Is the tax on jet fuel and motor vehicle gasoline used in airplanes to be credited to the State Aviation Fund?

Conclusion(s):

1. “The tax[es]” on aviation gasoline are the sales and use taxes.

2. “Aviation gasoline” is gasoline which meets the specifications contained in the “Manual on Significant Tests for Petroleum Products: 5th Edition” published by the American Society of Testing and Materials (“ASTM Manual”).
3. The sales and use taxes imposed on sales of jet fuel and motor vehicle gasoline used in airplanes are not to be credited to the State Aviation Fund.

Facts:

Code Section 55-5-280 reads:

All moneys received from licensing of airports, landing fields or air schools, the tax on aviation gasoline and fees for other licenses issued under this chapter shall be paid into the State Treasury and credited to the fund known as the ‘State aviation fund.’ (Emphasis added.)

Code Section 55-5-290 provides that the moneys in the State Aviation Fund are to be used for the necessary expenses of the Aeronautics Division of the Department of Commerce.

The purpose of this document is to address questions that have arisen concerning the phrase “the tax on aviation gasoline.”

Discussion:

We will first determine the type of tax referred to in Code Section 55-5-280.

Effective July 1, 1955, the gasoline tax law was amended by adding the following language:

Gasoline sold or dispensed for use in aircraft shall not be subject to the now existing gasoline tax, but shall be subject to the retail sales and use tax.

At the same time, the sales and use tax law was amended by adding the current language which specifically states that gasoline used in aircraft is not exempt from the sales and use taxes.

Therefore, “the tax[es]” referred to in Section 55-5-280 are the sales and use taxes. There are no other state taxes imposed on gasoline used in aircraft.

As for the meaning of the term “aviation gasoline,” Section 55-5-20(12) of The Uniform State Aeronautical Regulatory Law defines “aviation gasoline” as “gasoline manufactured exclusively for use in airplanes and sold for such purposes.” For a more complete definition of the term, we look to the “Manual on Significant Tests for Petroleum Products: 5th Edition,” which is published by the American Society of Testing and Materials (“ASTM”). This manual contains the accepted standards for fuels, as well as other products, and is used by the South Carolina Department of Agriculture’s Laboratory Division to ensure that fuels sold and used in South Carolina are in compliance with state regulations.

Chapter 5 of the ASTM Manual contains the specifications for aviation gasoline. Those gasolines which meet the specifications contained therein are, for purposes of Section 55-5-20(12), "aviation gasoline." They are "manufactured exclusively for use in airplanes and sold for such purposes."

We will now address whether the sales and use taxes imposed on sales of jet fuel and automotive gasoline used in airplanes are to be credited to the State Aviation Fund.

There are two sections in the sales and use tax law pertinent this issue - Section 12-36-2120(9)(d) and Section 12-36-2120(15)(a). Section 12-36-2120(9)(d) provides an exemption for "...fuel sold to...transportation companies for the generation of motive power for transportation" and Section 12-36-2120(15)(a) provides that "gasoline used in aircraft is not exempt from the sales and use tax." We will address the issue concerning jet fuel and automotive gasoline, in light of these sections.

As for jet fuel, Chapter 5 of the ASTM Manual contains information and specifications for "aviation turbine fuels" (i.e. "jet fuels"). As stated in the Manual, "aircraft gas-turbine engines require a fuel with quite different properties from those for aviation gasoline." In other words, jet fuel is not aviation gasoline; therefore, the tax on sales of jet fuel is not to be credited to the State Aviation Fund. NOTE: Section 12-36-2120(9)(d) exempts sales of fuel to transportation companies. Therefore, sales of jet fuel to other than transportation companies are subject to the sales and use taxes.

Lastly, we consider automotive gasoline. As stated in Section 12-36-2120(15)(a), sales of gasoline used in airplanes are taxable. Even though most gasoline used in aircraft today is "aviation gasoline," as defined in the ASTM Manual, some aircraft still use automotive gasoline. Because automotive gasoline is not manufactured exclusively for use in airplanes - it may also be used in motor vehicles - the sales and use taxes on sales of automotive gasoline used in airplanes is not to be credited to the State Aviation Fund.

NOTE: For answers to technical questions concerning the specifications in the ASTM Manual for aviation gasoline, jet fuel and automotive gasoline, please contact:

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SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
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