

DEPARTMENT OF STATE REVENUE

Commissioner's Directive #49

October 2017

Effective Date: July 1, 2017

(Replaces Commissioner's Directive #49 dated July 2013)

SUBJECT: Aviation Fuel Excise Tax**REFERENCES:** [IC 6-2.5-5-49](#); [IC 6-6-13](#)

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SUMMARY

Other than nonsubstantive, technical changes, this directive is updated to reflect that the aviation fuel excise tax has increased to twenty cents per gallon effective July 1, 2017. This directive is also updated to reflect a change in distribution of the tax.

DEFINITIONS

A "retailer" is a person who engages in the business of selling or distributing aviation fuel to the end user in Indiana.

As used in this directive, "aviation fuel" includes gasoline, jet fuel, and a synthetic fuel or fuel derived from any organic matter used as a substitute for gasoline or jet fuel used to power an aircraft.

AVIATION FUEL EXCISE TAX IMPOSITION

Pursuant to HEA 1002-2017 and effective July 1, 2017, the aviation fuel excise tax under [IC 6-6-13](#) is increased from ten cents (\$.10) per gallon to twenty cents (\$.20) per gallon on the gross retail income received by a retailer on each gallon of aviation fuel purchased in Indiana. A retailer shall add the per-gallon amount of excise tax to the selling price of each gallon of aviation fuel sold by the retailer so that the ultimate consumer bears the burden of the tax.

Every retailer of aviation fuel is required to register with the department. The retailer shall complete Form AVF-1 (Registration). Form AVF-1 is available online at <http://www.in.gov/dor/3512.htm>.

REMITTANCE AND REPORTING OF AVIATION FUEL EXCISE TAX

A retailer is required to remit to the department the aviation fuel excise taxes imposed on transactions that occurred during a particular calendar month to the department on or before the fifteenth (15th) day of the following calendar month. The tax shall be remitted by electronic funds transfer (EFT). A retailer who properly remits the aviation fuel excise tax shall be allowed to retain one and six-tenths percent (1.6%) of the taxes collected to cover the costs of collecting, reporting, and timely remitting the aviation fuel excise taxes.

Each retailer is required to report monthly the number of gallons of aviation gasoline and jet fuel sold by the retailer, along with the number of gallons of exempt fuel sold. The monthly report of taxable and exempt sales shall be filed electronically through Form AVF-150 (Aviation Fuel Excise Tax), which allows for monthly reporting of taxable and exempt sales.

Effective July 1, 2017, fifty percent (50%) of aviation fuel excise tax collected by the department is deposited in the state general fund and fifty percent (50%) is deposited in the airport grant development fund established by [IC 8-21-11-4](#).

PENALTIES FOR VIOLATIONS

A person who knowingly fails to collect or timely remit the aviation fuel excise tax is liable for the uncollected tax plus a penalty equal to one hundred percent (100%) of the uncollected tax. A person who recklessly, knowingly, or intentionally fails or refuses to remit the tax to the department commits a Level 6 felony. A person who negligently disregards any provision of [IC 6-6-13](#) (aviation fuel excise tax) is subject to a civil penalty of five

hundred dollars (\$500) for each separate violation.

EXEMPTIONS FROM THE AVIATION FUEL EXCISE TAX

The sale of aviation fuel is exempt from the excise tax if the aviation fuel is placed in the fuel supply tank of an aircraft owned by:

- The United States or an agency or instrumentality of the United States;
- The State of Indiana;
- The Indiana Air National Guard; or
- A common carrier of passengers or freight.

Another exemption from the aviation fuel excise tax exists for wholesalers. The tax is imposed on each gallon of aviation fuel purchased in Indiana. The newly enacted [IC 6-6-13-5](#) defines "retailer" to mean a person who engages in the business of selling or distributing aviation fuel to end users in Indiana. Accordingly, a person who purchases aviation fuel for resale to another person who, in turn, will sell the aviation fuel to an end user may purchase the fuel exempt from the excise tax.

A purchaser who claims an exemption is required to present an exemption certificate to the retailer instead of paying the tax. The person shall issue a properly completed and signed Form AVF-105 (Aviation Fuel Excise Tax Exemption Certificate), which shall be kept on file at the retailer's location. Form AVF-105 is available online at <http://www.in.gov/dor/3512.htm>.

SALES TAX EXEMPTION

Effective July 1, 2013, pursuant to [IC 6-2.5-5-49](#), a transaction involving aviation fuel is exempt from the state gross retail tax. Because aviation fuel is exempt from sales tax, there is no requirement for retail merchants to report or remit sales tax on purchases of aviation fuel.

MISCELLANEOUS CHARGES RELATED TO AVIATION FUEL

Pursuant to [IC 6-2.5-2-1](#), sales tax applies to all retail transactions made in Indiana. [IC 6-2.5-4-1](#) provides that a person is a retail merchant making a retail transaction when, in the ordinary course of his regularly conducted trade or business, he acquires tangible personal property for the purpose of resale and transfers that property to another person for consideration.

The amount of a retail transaction that is subject to sales tax is the gross retail income of the transaction, as defined by [IC 6-2.5-1-5](#). Among other things, gross retail income includes the cost of materials used, labor or service cost, delivery charges to the customer, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller. However, if the charges relate solely to the transfer of aviation fuel, then there is no transfer of taxable tangible personal property on which to subject the other charges to sales tax. Accordingly, charges that are solely related to the transfer of aviation fuel, such as delivery or transportation charges, are not subject to sales tax.

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Commissioner

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