

12billion.org airline fuel tax brief:



Airline-backed Federal Rule Change Could Cost State, Local Governments Estimated \$190 million in Revenue Annually

A new federal administrative rule amendment, effective December 8, 2014, limits how many state and local taxes on airline jet fuel may be used. While supported by airlines, the rule was instituted over objections from airport authorities and the State of Georgia.¹

Localities at Risk

The FAA rule imposes a federal penalty on state and local government entities that levy taxes on jet fuel that were not in effect on December 30, 1987 and are not fully dedicated to airport-related purposes.²

For states, counties and cities with large airports that receive federal assistance, the restrictions on how tax revenue is used could add up quickly.

For example, compliance with the new federal rule could mean a loss of an estimated total of over \$100 million combined for the State of California and California local governments. In Georgia, an estimated \$38 million in annual revenue is at risk for Clayton County, home to Hartsfield-Jackson Atlanta International Airport, half of which specifically funds county schools.

State budgets in Illinois, New York and Michigan could also be hit hard.

\$100 million



\$38 million



TABLE: At risk state and local government taxes³

Government Entity	Specific Taxes at Risk	Total Estimated Annual Revenue Loss
State of California	1.75% state sales tax	\$76 million
Clayton County, GA	1% Local Option Sales Tax 1% Education Local Option Sales Tax	\$38 million
City of Boston, MA	\$0.151 per gallon jet fuel excise tax	\$21 million
State of Illinois	1.25% state sales tax	\$18 million
State of Michigan	2% Education Sales Tax	\$15.9 million
Los Angeles County, CA	0.5% Los Angeles County Transportation Commission Sales Tax 0.5% Los Angeles County Metro Transportation Authority Sales Tax	\$6 million
State of New York	Petroleum Business Tax	\$8 million
San Francisco, CA	0.25% San Francisco County Public Finance Authority Sales Tax 0.5% San Francisco County Transportation Authority Sales Tax	\$4.5 million
San Mateo County, CA	50% of revenue from San Francisco Airport jet fuel sales taxes	\$4.5 million
City of Chicago, IL	0.25% local sales tax	\$3.5 million
State of New Jersey	Petroleum Business Tax	\$1.6 million

States will still be allowed to collect taxes whose proceeds are fully dedicated to airport-related purposes, including aviation programs.

Opposition From Airports and State Government

The FAA published the proposed rule amendment, federal Docket No. FAA-2013-0988, in the Federal Register on November 14, 2013 and solicited comments through March 2014. In that period, Delta Air Lines and Airlines for America submitted comments supporting the rule. Airport authorities and the State of Georgia, among others, objected to the proposal.⁴

Airports Council International – North America (ACI-NA), commented:

“ACI-NA believes the FAA’s proposal impermissibly interferes with fundamental state taxing and spending powers in a manner that is well outside the statutory language in 49 U.S.C. 47107(b) and 47133 regarding aviation fuel taxes and is incongruent with Executive Order 13132, 64 Fed. Reg. 43255 (Aug. 10, 1999) on federalism, which precludes federal agencies from this type of interference.”⁵

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The Georgia Department of Law, on behalf of the state’s Departments of Transportation and Revenue, added,

“The GDOT (Georgia Department of Transportation) is concerned that the Proposed Policy may result in the revocation of grants and/or other sanctions imposed on airports it assists and that the Proposed Policy will have a deleterious effect on the State economy.”⁶

Despite the potential loss of an estimated \$190 million in revenue annually for state and local governments as a result of the rule amendment, the FAA did not publish, in connection with the rule-making process, any estimate on financial implications of the amendment for current state and local government taxes. It is unclear if affected government entities are aware of the full impact. No state or local government, other than the Georgia Department of Transportation and Georgia Department of Revenue, commented on the proposed rule change, which the FAA had classified as a “clarification.”

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In its final decision, the FAA dismissed many objections that were raised in public comments, although did allow for greater time to come into compliance. The airlines had wanted enforcement beginning just 60 days after the rule change.⁷ The FAA states that in 2015, governments should submit plans to the FAA for becoming compliant within three years, and will face penalties if they do not comply with the amended rule by December 2017 or do not submit a plan in 2015.

Windfall for Airlines

If the federal rule change goes unchallenged and states choose to eliminate non-compliant taxes, airlines' anticipated record profits⁸ could soar even higher at taxpayer expense. Delta, American and United Airlines purchase billions of gallons of fuel each year at hub airports in affected localities.

Months before the new FAA rule was announced in December 2014, Delta Air Lines and airline industry lobby arm Airlines for America cited the federal law under which this rule was adopted when they lobbied for jet fuel tax breaks in Michigan estimated at the time at over \$30 million per year.⁹ The new rule affects only an estimated \$15.9 million per year in the state because the remaining taxes are grandfathered under federal law.¹⁰ The Michigan State Senate passed a version of the jet fuel tax break in November, but the State House of Representatives did not act on the Senate bill before the end of the 2014 legislative session.¹¹

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Airlines receive an estimated \$1 billion annually in state and local tax breaks on their jet fuel purchases.

Endnotes

1 <http://www.regulations.gov/#!docketDetail;D=FAA-2013-0988>

2 <http://www.regulations.gov/#!documentDetail;D=FAA-2013-0988-0036>

3 **Clayton County, Georgia:** Clayton County has 2 one-percent sales taxes that apply to jet fuel that are not grandfathered. The Local Option Sales Tax (LOST): http://saportareport.com/wp-content/uploads/2013/10/LOST_guide_2011.pdf, page 2, a 1 percent sales tax, and the 1 percent Education Local Option Sales Tax (ELOST): <http://www.gadoe.org/Finance-and-Business-Operations/Facilities-Services/Pages/Splost.aspx>. Airlines purchase estimated 1 billion gallons of fuel in Atlanta each year. <http://www.regulations.gov/#!documentDetail;D=FAA-2013-0988-0016>. Estimates for fuel costs and airport domestic travel statistics from Bureau of Transportation Statistics data: http://www.transtats.bts.gov/Data_Elements.aspx?Data=1.

City of Boston, MA: The jet fuel excise tax for January 1, 2015 - March 31, 2015 is 15.1 cents gallon <http://www.mass.gov/dor/docs/dor/business/taxguide/fuels/fuelsratecurr.pdf>. In 1987, the jet fuel excise tax was 5 cents/gallon: <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/1980-1989-releases/tir-87-7-jet-fuel-tax.html>. http://www.cityofboston.gov/images_documents/04%20Revenue%20Estimates%20and%20Analysis_tcm3-44075.pdf. Page 165: The City expects this revenue source to exceed the midyear annual projection of \$30.8 million in FY14 and to increase to \$32.0 million in FY15.

Two-thirds of the Boston jet fuel excise tax revenue is at risk in FY15.

Email from Deputy Director, Operating Budget, City of Boston on December 18, 2014:

The Jet Fuel Excise revenue has no restrictions for its use. It is used to run the general operation of the City of Boston but needs to be appropriated.

- State of California** 1.75 percent sales tax at risk: <http://www.boe.ca.gov/sutax/taxrateshist.htm>. Local and state sales taxes do not fund airports or aviation programs: <http://www.boe.ca.gov/news/sp111500att.htm>. CA District Taxes, Rates, and Effective Dates: <http://www.boe.ca.gov/pdf/boe105.pdf>. www.12billion.org/states/CA.pdf.
- CA District Taxes, Rates, and Effective Dates: <http://www.boe.ca.gov/pdf/boe105.pdf>. Page 2, **Los Angeles County**: Los Angeles County Transportation Commission (LATC), Rate: 0.50%, Effective Date: 04-01-91. Los Angeles County Metro Transportation Authority (LAMT), Rate: 0.50%, Effective Date: 07-01-09. Email from Treasurer, Los Angeles County Metropolitan Transportation Authority (LACMTA) on December 18, 2014: Jet fuel sales generate over \$9 million annually in transactions and use tax revenue to LACMTA. The major airlines, shipping companies air operations, and third party suppliers of jet fuel account for the revenue.
- District Taxes, Rates, and Effective Dates: <http://www.boe.ca.gov/pdf/boe105.pdf>. Page 3, **San Francisco City and County**: San Francisco County Public Finance Authority (SFPF), Rate: 0.25%, Effective Date: 10-01-93. San Francisco County Transportation Authority (SFTA), Rate: 0.50%, Effective Date: 04-01-90.
- Revenue from sales taxes on jet fuel collected at San Francisco International Airport is split equally between San Francisco and San Mateo County: <http://www.boe.ca.gov/lawguides/business/current/btlg/vol1/ulsutl/7204-03.html>.
- State of New York**: Email from New York State Department of Revenue, on December 18, 2014. The PBT was 2.75 percent before 1990, and applied to jet fuel in the same way as is currently (Page 9: only fuel used in-state): http://www.tax.ny.gov/pdf/memos/multitax/m90_12c_7m.pdf.
- State of Michigan**: <http://www.legislature.mi.gov/documents/2013-2014/billanalysis/House/pdf/2013-HLA-4571-483C248F.pdf>.
- City of Chicago**: <http://www.chicagotribune.com/news/ct-emanuel-city-budget-1015-20141015-story.html>. In 2015, Chicago will collect an estimated \$17 million in taxes airlines had previously avoided. The 1.25% Chicago Home Rule Occupation Tax (local sales tax) was 1 percent before 2005. Page 11: <http://www.civicfed.org/sites/default/files/Jan12013SelectedConsumerTaxesinChicago.pdf>. 0.25% of the 1.25% local sales tax is at risk, or \$3.5 million in City of Chicago revenue.
- 1.25% state sales tax did not exist in 1987.
- State of New Jersey**: Email from Government Records Access Unit, State of New Jersey Department of the Treasury on December 19, 2014: Is revenue from the Petroleum Products Gross Receipt Tax on aviation fuel currently dedicated to airports and aviation? If so, how much?
- Taxation's response: no, revenue from the Petroleum Products Gross Receipt Tax on aviation fuel is not currently dedicated to airports and aviation. How much money was collected from the Petroleum Products Gross Receipt Tax on aviation fuel for the most recent fiscal year available? Taxation's response: the amount of money collected from the Petroleum Products Gross Receipt Tax in the fiscal year 7/13 through 6/14 is \$1,598,485.32. What was the Petroleum Products Gross Receipt Tax on aviation fuel in effect on December 30, 1987? Taxation's response: there was no Petroleum Products Gross Receipt Tax in 1987. On December 30, 1987, was revenue from the Petroleum Products Gross Receipt Tax on aviation fuel dedicated to airports and aviation? Taxation's response: On December 30, 1987, revenue from the Petroleum Products Gross Receipt Tax on aviation fuel dedicated to airports and aviation was \$0.00.
- 4 <http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=O%252BPS;D=FAA-2013-0988>
 - 5 <http://www.regulations.gov/#!documentDetail;D=FAA-2013-0988-0035> Page 2-3.
 - 6 Page 3: <http://www.regulations.gov/#!documentDetail;D=FAA-2013-0988-0016>
 - 7 <http://www.regulations.gov/#!documentDetail;D=FAA-2013-0988-0033>
 - 8 <http://www.usatoday.com/videos/money/business/2014/12/11/20204263/>
 - 9 http://www.senate.michigan.gov/committees/files/2014-SCT-FIN_-05-14-1-01.PDF. May 14, 2014, Page 20: The 2% sales tax is not grandfatherable. The Senate Finance Committee proposal passed on May 15, 2014, exempted aviation fuel from all 6% of Michigan's sales tax, not just the 2% that is not grandfatherable, a tax break worth up to an estimated \$30.4 million per year. <http://www.legislature.mi.gov/documents/2013-2014/billanalysis/Senate/pdf/2013-SFA-4571-F.pdf> (page 2).
 - 10 <http://www.legislature.mi.gov/documents/2013-2014/billanalysis/House/pdf/2013-HLA-4571-483C248F.pdf>. The House version of the bill only exempts aviation fuel from the 2% non-grandfatherable sales tax, an estimated \$5.4 million tax break increase.
 - 11 [http://www.legislature.mi.gov/\(S\(eqzhix45v12kmwjzypcqb45\)\)/mileg.aspx?page=GetObject&objectname=2013-HB-4572](http://www.legislature.mi.gov/(S(eqzhix45v12kmwjzypcqb45))/mileg.aspx?page=GetObject&objectname=2013-HB-4572).

