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#### Reg 1137 Certificate of Public Convenience and Necessity

In order to be excluded from the definition of an aircraft jet fuel user under Revenue and Taxation Code Section 7389(a), an air common carrier must hold a certificate of public convenience and necessity issued by the United States or a foreign government. The certificate of public convenience and necessity issued by the U.S. Department of Transportation qualifies, but the Air Carrier Certificate issued by the Federal Aviation Administration does not qualify as a certificate of public convenience and necessity issued by the United States. 4/03/03.

## Memorandum

To: Mr. Robert Frank, Administrator  
Fuel Industry Section MIC: 33  
Date: April 3, 2003

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Subject: Aircraft Jet Fuel Tax—Air Carrier Certificates

### Introduction

This is in response to your request of February 4, 2003, in which you asked for an opinion as to the application of the Aircraft Jet Fuel Tax in specified circumstances. Specifically, you inquired whether sales of aircraft jet fuel by an aircraft jet fuel dealer to a person who presents a Federal Aviation Administration Air Carrier Certificate in lieu of a Certificate of Public Convenience and Necessity from this state, the United States or any foreign government would qualify as non-taxable.

### Conclusion

Under the Aircraft Jet Fuel Tax Law, tax is imposed on aircraft jet fuel dealers for the privilege of using or selling aircraft jet fuel to an aircraft jet fuel user. So long as the purchaser is, in fact, *not* an aircraft jet fuel user at the time of the purchase, no tax will be imposed on the aircraft jet fuel dealer, irrespective of the type of certificate the purchaser presents to the aircraft jet fuel dealer. The Board should advise aircraft jet fuel dealers of the following:

1. In order for an aircraft jet fuel dealer to be able to sell aircraft jet fuel without payment of tax, the purchaser of the fuel must be excluded from the definition of “aircraft jet fuel user;”
2. The FAA Air Carrier Certificate (FAA Certificate) and the Certificate of Public Convenience and Necessity (DOT Certificate) are two different documents; and
3. To be excluded from the definition of aircraft jet fuel user, the purchaser must hold the DOT Certificate.<sup>1</sup>

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<sup>1</sup> The information attached to the your memorandum indicates that the DOT posts a list of certificated air carriers on its website at <http://www.ostpxweb.dot.gov/aviation/certific/certlist.pdf>. Thus, an aircraft jet fuel dealer has a means to verify the status of the purchaser at the time of the sale of the aircraft jet fuel. Likewise, the Board has a means of verifying which air common carriers hold the required DOT Certificate. Purchasers who do not appear on the list would not be excluded from the definition of “aircraft jet fuel use” and the sale of fuel would be taxable.

Discussion

If an aircraft jet fuel dealer sells aircraft jet fuel to a person that is not an "aircraft jet fuel user," then no tax applies to the sale. As previously noted, an air common carrier engaged in business under a DOT Certificate is not an "aircraft jet fuel user."<sup>2</sup> One way for the aircraft jet fuel dealer to know the status of the purchaser is to obtain evidence that the air common carrier held a DOT Certificate. The Board's regulation 1137 prescribes the form of an "exemption certificate" that an aircraft jet fuel dealer should obtain and retain as evidence in support of the appropriateness of the dealer's non-payment of the aircraft jet fuel tax. Among other information, the prescribed form includes (i) a certification by the purchaser that the purchaser is an air common carrier whose purchases of aircraft jet fuel from the dealer are not taxable, and (ii) a blank space for entry of the purchaser's DOT Certificate number.<sup>3</sup>

In your memorandum, you indicate that many aircraft jet fuel dealers have accepted FAA Certificates to support non-payment of tax on sales of aircraft jet fuel to air common carriers. However, it is possible that the FAA Certificate may be issued to a person who does not hold and who is not required to hold a DOT Certificate.<sup>4</sup> For that reason, the aircraft jet fuel dealer should not rely on the presentation of the FAA Certificate as evidence that the purchaser of the aircraft jet fuel is not an aircraft jet fuel user, as defined. Rather, the aircraft jet fuel dealer should insist that the air carrier provide a copy of the DOT Certificate before selling the fuel ex-tax to the air carrier.

Irrespective of the type of evidence presented to an aircraft jet fuel dealer to support a non-taxable sale of fuel, if the aircraft jet fuel dealer sells aircraft jet fuel to a person that is not an aircraft jet fuel user, no aircraft jet fuel tax is due. The burden to show that the tax does not apply to the sale of aircraft jet fuel would be on the aircraft jet fuel dealer.<sup>5</sup>

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<sup>2</sup> Revenue and Taxation Code section 7389(a) in the Motor Vehicle Fuel Tax Law that took effect January 1, 2002. Previously, under the Motor Vehicle Fuel License Tax Law, the same definition of aircraft jet fuel user appeared at Revenue and Taxation Code section 7374(a)

<sup>3</sup> It is my understanding that while the DOT Certificate used to bear a certificate number, it no longer has a number. The Order that accompanies the DOT Certificate is numbered, however. Perhaps we should consider amending the exemption certificate form to reflect the change.

<sup>4</sup> It appears that the FAA will only issue an FAA Certificate to a person that has obtained "economic authority" from the Department of Transportation. However, such "economic authority" may consist of a DOT Certificate or it may consist of a "Part 298 Registration." This type of registration is available for "small aircraft". To qualify for this status, a cargo plane must have a cargo payload of 18,000 pounds or less and a passenger plane must have 60 seats or less.

<sup>5</sup> If the purchasers that presented the FAA Certificates to the aircraft jet fuel dealer are, in fact, excluded from the definition of "aircraft jet fuel user" because they do, in fact, hold DOT Certificates, then the fuel sold to the purchasers is not taxable. It is important to remember that the exemption certificate and the DOT Certificate only serve as evidence of the status of the purchaser. If, during the course of an audit, the aircraft jet fuel dealer provides copies of FAA Certificates instead of DOT Certificates to support exempt sales, the auditor may disallow the exempt sales. Nevertheless, if the aircraft jet fuel dealer subsequently produces evidence that the purchasers were not "aircraft jet fuel users," as defined, then audit adjustments would be in order to reflect the dealer's sales to air carriers that were not aircraft jet fuel users.

MJN:bb

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