

830 CMR 64J.00: AIRCRAFT (JET) FUEL TAX

Section

64J.4.1: General Application of the Aircraft (Jet) Fuel Tax

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(1) General Provisions. The administrative provisions of M.G.L. c. 62C so far as pertinent and consistent, apply to the aircraft (jet) fuel tax imposed by M.G.L. c. 64J. *See* M.G.L. c. 62C, § 2.

(2) Definitions. As used in 830 CMR 64J.4.1, the following words shall, unless the context otherwise requires, have the following meanings:

Aircraft, any machine or device, including airplanes and helicopters, capable of atmospheric flight.

Aircraft fuel, jet fuel, aircraft (jet) fuel, all combustible gases and liquids, used or sold for use in propelling turbine propeller jet, turbojet and jet driven aircraft and aircraft engines.

Average price, the weighted average selling price per gallon of aircraft (jet) fuel which is subject to tax under M.G.L. c. 64J exclusive of any federal or state aircraft fuel tax imposed thereon sold by licensees, as determined by the Commissioner.

Commissioner, the Commissioner of Revenue.

Purchaser, shall include, but not be limited to, in addition to its usual meaning, a person who transfers aircraft (jet) fuel into an aircraft, or into a receptacle from which aircraft (jet) fuel is supplied by the person to the person's own or other aircraft. For purposes of 830 CMR 64J.4.1, the term purchaser means a purchaser of aircraft (jet) fuel.

Sale, shall include, in addition to its usual meaning, the transfer of aircraft (jet) fuel by a supplier into an aircraft or into a receptacle from which aircraft (jet) fuel is supplied by the supplier to the supplier's own or other aircraft, and all sales shall be deemed to occur at the place in the Commonwealth where the fuel is transferred into the aircraft by which it is to be used.

Seller, any person who sells aircraft (jet) fuel including but not limited to an aircraft (jet) fuel supplier or user-seller.

Supplier, any person who primarily sells or delivers aircraft (jet) fuel to a user-seller and customarily dispenses aircraft (jet) fuel from bulk storage tank facilities located and maintained outside airport property. A supplier also includes:

- (a) any person who imports aircraft (jet) fuel into the Commonwealth, except aircraft (jet) fuel contained in the usual tank or receptacle connected with the engine of an aircraft in the operation of which the aircraft (jet) fuel is to be consumed, and resells or uses the same in an aircraft owned or operated by such person, or
- (b) any person who otherwise would be a user-seller and who has been granted permission by the Commissioner to qualify and be licensed as a supplier. For purposes of 830 CMR 64J.4.1 supplier means a supplier of aircraft (jet) fuel.

Tax paid fuel, aircraft (jet) fuel upon which the aircraft (jet) fuel tax due under M.G.L. c. 64J has previously been paid.

Tax per gallon, five percent of the average price of aircraft (jet) fuel, as determined by the Commissioner for each calendar quarter, but not less than five cents per gallon.

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Use, shall include, in addition to its usual meaning, the receipt of aircraft (jet) fuel by any person into a fuel supply tank of an aircraft or into a receptacle from which aircraft (jet) fuel is supplied by any person to the person's own or other aircraft, and all uses shall be deemed to occur at the place in the Commonwealth where the fuel is transferred into the aircraft by which it is to be used.

User, any person other than an aircraft (jet) fuel supplier or user-seller who uses aircraft (jet) fuel in propelling aircraft.

User-seller, any person, not licensed as a supplier of aircraft (jet) fuel, who dispenses such fuel, customarily from receptacles (fuel farms) within airport property, into the fuel tanks of, or attached to aircraft, including any such person who so dispenses aircraft (jet) fuel for consumption in such aircraft, owned, leased or operated by the person or others. For purposes of 830 CMR 64J.4.1, user-seller means a user-seller of aircraft (jet) fuel.

(3) Licensing.

(a) General. Any person acting as a supplier or user-seller of aircraft (jet) fuel in one or more cities or towns which have accepted the provisions of M.G.L. c. 64J must be licensed under M.G.L. c. 64J.

(b) Supplier License. Any person who sells or delivers aircraft (jet) fuel within Massachusetts to any person who dispenses aircraft (jet) fuel into fuel tanks of, or attached to, aircraft; and any person who imports such fuel into Massachusetts, (other than in the usual tank of an aircraft to be consumed in the operation of such aircraft) and resells or uses such fuel in aircraft owned or operated by such person, must be licensed under M.G.L. c. 64J and will generally qualify for status as and be licensed as a supplier of aircraft (jet) fuel. No person may sell or deliver aircraft (jet) fuel within Massachusetts to any other person including a licensed user-seller of aircraft (jet) fuel unless such person is a licensed supplier. A person who primarily sells or delivers aircraft (jet) fuel to a user-seller and who customarily dispenses aircraft (jet) fuel from bulk storage tank facilities located and maintained outside airport property will generally qualify for status as and be licensed as a supplier of aircraft (jet) fuel.

(c) User-seller License.

1. Any person, not licensed as a supplier, who dispenses aircraft (jet) fuel into the fuel tanks of, or attached to, aircraft, including aircraft such person owns, leases or operates must be licensed as a user-seller of aircraft (jet) fuel.

2. A person who dispenses aircraft (jet) fuel from receptacles (fuel farms) owned, leased or maintained by such person within the airport property, into fuel tanks of, or attached to, aircraft including aircraft such person owns, leases or operates is generally licensed as a user-seller of aircraft (jet) fuel. Such person must be licensed as user-seller if such person is not licensed as a supplier. No person may maintain a storage facility for aircraft (jet) fuel and dispense such fuel therefrom into any fuel tank attached to aircraft unless such person is licensed as a supplier or user-seller by the Commissioner.

3. A person not licensed as a supplier who owns, leases or otherwise maintains a storage facility for aircraft (jet) fuel within airport property who hires outside personnel, or contracts out for fueling labor and/or equipment, is a user-seller of aircraft (jet) fuel and must be licensed as such.

4. A person who dispenses aircraft (jet) fuel into the fuel tanks of or attached to aircraft who does not own, lease or otherwise maintain an aircraft (jet) fuel storage facility but who merely acts on behalf of a user-seller is not required to be licensed as a user-seller of aircraft (jet) fuel.

5. Any person licensed as a user-seller who seeks licensing as a supplier may request such change in status by filing a new license application form with the Commissioner. (Form JFT-1). The granting of the change in status and new license is in the Commissioner's discretion.

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Example 1: ACME Oil Company owns a 500,000 gallon fuel tank located in Chelsea, Massachusetts. ACME customarily sells aircraft (jet) fuel to Fly Wright, a major air carrier doing business at Logan Airport. ACME delivers the fuel by tank truck to Fly Wright's storage facilities at Logan. Fly Wright owns storage facilities consisting of four 50,000 gallon buried steel tanks. Fly Wright delivers fuel into its own planes through the use of hydrant carts; and pursuant to a contract with DBA, an international air carrier, delivers fuel into refueler trucks owned by Jackson, a Fixed Base Operator, who in turn dispenses fuel into the aircraft of DBA.

In the above fact situation the companies mentioned are characterized as follows:

ACME is a supplier and must be licensed and bonded as such because it primarily sells and delivers aircraft (jet) fuel to a user-seller, maintains bulk storage tank facilities located outside airport property, and does not own or operate a fleet of its own aircraft.

Fly Wright is a user-seller and must be so licensed because it maintains storage facilities within airport property, takes title to and possession of fuel it purchases, and dispenses aircraft (jet) fuel into its own or other aircraft.

DBA is a user and is not required to be licensed or to file returns.

Jackson is merely performing a service for DBA and is not required to be licensed as either a supplier or user-seller of aircraft (jet) fuel. However, if Jackson otherwise maintains fuel storage facilities at Logan in connection with its business as a Fixed Base Operator, it generally will be required to be licensed as a user-seller and to pay aircraft (jet) fuel tax at the time it purchases fuel.

(d) License Not Required. Any person who maintains storage facilities for aircraft (jet) fuel and dispenses aircraft (jet) fuel therefrom into any fuel tank attached to an aircraft, or any person who sells or delivers aircraft (jet) fuel within Massachusetts to any person who dispenses aircraft (jet) fuel into fuel tanks of, or attached to, aircraft, exclusively in cities or towns that have not accepted the provisions of M.G.L. c. 64J is not required to obtain a license as a user-seller or supplier. Such person must obtain a user-seller or supplier license if one or more cities or towns in which such person engages in the above mentioned activities, subsequently accepts the provisions of M.G.L. c. 64J.

(e) License Denial.

1. Every person applying to the Commissioner for a license as a supplier or user-seller of aircraft (jet) fuel must certify upon such application, under penalties of perjury, that he, to the best of his knowledge and belief, has filed all state tax returns and paid all state taxes required under law. No license will be issued unless such certification is made. See M.G.L. c. 62C, § 49A.

2. Pursuant to M.G.L. c. 62C, § 47A and 830 CMR 64J.4.1 the Commissioner will not issue or renew an aircraft (jet) fuel supplier or user-seller license if the Commissioner determines that the applicant has neglected or refused to file any returns or pay any state tax due.

3. The Commissioner may deny an application for a license or renewal of a license if the applicant does not supply all information requested on the application form and any other information that the Commissioner may determine is necessary to decide on an applicant's application.

(f) Date of Licensing. Any person acting as a supplier or user-seller of aircraft (jet) fuel, as defined by 830 CMR 64J.4.1, and M.G.L. c. 64J, is required to be licensed by the Commissioner no later than the date on which the provisions of M.G.L. c. 64J become effective in any city or town where such person acts as a supplier or user-seller of aircraft (jet) fuel.

(g) Expiration of License. All aircraft (jet) fuel supplier and user-seller licenses expire each year on the 31st day of December. See M.G.L. c. 62C, § 67. All licensees seeking license renewal must file an application for license renewal with the Commissioner sufficiently in advance of the license expiration date so that the application may be processed and license sent to the applicant prior to January first of the next year.

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(h) License Fee. The fee for licenses and each renewal thereof will be determined annually by the Secretary of Administration under M.G.L. c. 7, § 3B. The Secretary of Administration has not determined a license fee for 1985 licenses; therefore, no fee is required for aircraft (jet) fuel supplier or user-seller 1985 licenses.

(i) Penalties for Failure to Obtain License. Any person not licensed who is required to be licensed under M.G.L. c. 64J may be restrained from acting as a supplier or user-seller of aircraft (jet) fuel in Massachusetts. *See* M.G.L. c. 64J, § 2. Violators of M.G.L. c. 64J shall be subject to a fine of not more than \$1,000 or by imprisonment for one year, or both. *See* M.G.L. c. 64J, § 7. These penalties are in addition to any other penalties established by law.

(j) Assignability of License. Aircraft (jet) fuel supplier and user-seller licenses are not assignable. *See* M.G.L. c. 62c, § 67.

(k) Discontinuance, Sale or Transfer. When a business for which a supplier or user-seller license was granted is discontinued, sold or transferred, the licensee must give written notice to the Commissioner of discontinuance, sale or transfer. Taxes become due and payable concurrently with such discontinuance, sale or transfer. If notice is not given, the purchaser or transferee in addition to the licensee will be liable for taxes due. For specific rules relative to discontinuance, sale or transfer *see* Discontinuance, Sale or Transfer, 830 CMR 64J.4.1(9).

(4) Bond Requirement.

(a) Supplier Bond Requirement. Every applicant for a license as a supplier of aircraft (jet) fuel under M.G.L. c. 64J must furnish a bond before such a license will be granted. Such a bond must be with a surety company authorized to transact business in Massachusetts as a surety, and must secure the payment of tax, including any interest or penalty thereon, due or which may become due from such applicant under M.G.L. c. 64J. The bond required is in an amount equal to three times the licensee's average monthly tax liability but the amount of the bond will not be less than \$10,000.

(b) Supplier Initial Bond. An applicant for license as a supplier must first calculate an average monthly tax liability based on the liability that would have existed during the most current three month period for which the applicant has adequate data prior to the date the applicant is required to be licensed, had the provisions of M.G.L. c. 64J been effective as to such applicant. The applicant then multiplies the average monthly tax liability by three to determine the amount of the initial bond.

Example 1: A person acting as a supplier of aircraft (jet) fuel in Boston files an application for August 1, 1985 licensing. The applicant has complete and adequate data concerning its sales for the months of April, May and June of 1985. Therefore such applicant determines the amount that would have been his tax liability for the months of April, May and June of 1985 had M.G.L. c. 64J been in effect at that time. (Taxable sales times \$.05). The applicant then determines an average tax liability for such months (total liability divided by three) and multiplies such average by three to determine the initial bond requirement.

Total				Total			
Taxable		Tax		Tax		Bond Re-	
Sales		Rate		Liability		quirement	
1,200,000	X	\$.05	=	\$60,000	- 3 X 3	=	\$60,000

Note: Total tax liability for the three month period equals the bond requirement.

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(c) User-seller Bond Requirement. An applicant for a license as a user-seller of aircraft (jet) fuel under M.G.L. c. 64J is required to furnish a bond as described in 830 CMR 64J.4.1(4)(a) if aircraft (jet) fuel tax liability would have existed during the most current three month period for which the applicant has adequate data prior to the date the applicant is required to be licensed, had the provisions of M.G.L. c. 64J been in effect as to such applicant or if the applicant reasonably expects to collect and pay over aircraft (jet) fuel tax during the period for which the license is to be issued. If no aircraft (jet) fuel tax liability would have existed and no tax liability is reasonably expected to exist during the period for which the license is to be issued then no bond is required. Note: User-sellers are not generally required to be bonded.

(d) User-seller Initial Bond. If aircraft (jet) fuel tax liability would have existed during the most current three month period for which the applicant has adequate data prior to the date the applicant is required to be licensed, had the provisions of M.G.L. c. 64J been in effect as to such applicant, the applicant determines the amount of the initial bond in the manner described in 830 CMR 64J.4.1(4)(b). If no aircraft (jet) fuel tax liability would have existed but the applicant reasonably expects to collect and pay over tax during the period for which the license is to be issued the applicant must estimate an average monthly tax liability and multiply such average by three to determine the amount of the initial bond.

(5) Taxation.

(a) Taxable Event. The aircraft (jet) fuel tax is imposed on the sale or use of aircraft (jet) fuel in any city or town that has accepted the provisions of M.G.L. c. 64J. The term sale is defined to include, in addition to its usual meaning, the transfer of aircraft (jet) fuel by a supplier into an aircraft or into a receptacle from which aircraft (jet) fuel is supplied by the supplier to the supplier's own or other aircraft. The term use is defined to include, in addition to its usual meaning, the receipt of aircraft (jet) fuel by any person into a fuel supply tank of an aircraft or into a receptacle from which aircraft (jet) fuel is supplied by any person to such person's own or other aircraft. All sales and uses are deemed to occur at the place in Massachusetts where the fuel is transferred into the aircraft by which it is to be used.

(b) Payment of Tax. The aircraft (jet) fuel tax is in every instance borne by the purchaser. However, a person who purchases aircraft (jet) fuel upon which the aircraft (jet) fuel tax due under M.G.L. c. 64J has previously been paid reimburses the seller for the tax paid on such fuel. Such fuel is considered tax paid fuel not subject to further aircraft (jet) fuel tax.

Example 1: ACME Oil Company (licensed supplier) sells aircraft (jet) fuel to Fly Wright (licensed user-seller), separately stating the amount of tax due on the invoice or bill to Fly Wright. Fly Wright pays the aircraft (jet) fuel tax; ACME collects and pays over the tax. Fly Wright then resells the fuel to DBA for use in aircraft separately stating the amount of tax paid on the invoice or bill to DBA. DBA reimburses Fly Wright the amount of tax paid on the fuel purchased. Fly Wright is not required to pay over such amount to the Commissioner because the aircraft (jet) fuel tax due to the Commissioner has been paid on such fuel.

Example 2: ACME Oil Company (licensed supplier) sells aircraft (jet) fuel to Fly Wright (licensed user-seller). Fly Wright then resells the fuel to ACME who later resells the fuel to DBA for use in aircraft. Fly Wright must pay the aircraft (jet) fuel tax upon the initial purchase; ACME must collect and pay over the tax. Upon resale to ACME, Fly Wright should include the price of tax previously paid (separately stated) in the price of the aircraft (jet) fuel. When ACME resells the fuel to DBA it should include the price of tax paid in the price of the aircraft (jet) fuel. The aircraft (jet) fuel tax is ultimately borne by DBA.

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(c) Invoice. Any person who sells or resells aircraft (jet) fuel in a city or town which has accepted the provisions of M.G.L. c. 64J must separately state the amount of the aircraft (jet) fuel tax due or paid on the invoice or bill to the purchaser of such fuel. If no tax is due the reason for exemption should be stated on the bill or invoice.

Example 1: ACME Oil Company (licensed supplier) sells aircraft (jet) fuel to Fly Wright (licensed user-seller). Fly Wright pays the aircraft (jet) fuel tax, ACME collects and pays over the tax. Fly Wright then resells the fuel to DBA. ACME must separately state the amount of tax due on the bill or invoice to Fly Wright. Fly Wright must separately state the amount of tax it paid on the fuel on the bill or invoice to DBA.

(d) Collection of Tax. Any person who sells or delivers aircraft (jet) fuel to a purchaser who is liable for tax must collect the tax from the purchaser and pay over such tax to the Commissioner. Generally it is the licensed supplier who collects and pays over the aircraft (jet) fuel tax. A user-seller who sells aircraft (jet) fuel upon which the aircraft (jet) fuel tax has previously been paid to a supplier is not responsible for collection and transmittal of the aircraft (jet) fuel tax.

Example 1: The sale of aircraft (jet) fuel from a supplier, licensed or required to be licensed under M.G.L. c. 64J, to a user-seller, licensed or required to be licensed under M.G.L. c. 64J, is taxable under the aircraft (jet) fuel tax. The user-seller as purchaser is liable for the tax, and the supplier is responsible for collecting and paying over the aircraft (jet) fuel tax to the Commissioner. If the user-seller resells fuel upon which the aircraft (jet) tax has been paid, such sale is a sale of tax paid fuel not subject to further aircraft (jet) fuel tax.

(e) Responsibility for Payment of Tax.

1. Any licensed user-seller or any person required to be licensed as a user-seller or any other person who acquires aircraft (jet) fuel in Massachusetts for the purpose of propelling aircraft owned or leased by such person upon which aircraft (jet) fuel tax due has not been paid will be liable for the aircraft (jet) fuel tax. The Commissioner may collect the tax due from either the user or the seller of such aircraft (jet) fuel.

2. Any person, whether or not licensed under M.G.L. c. 64J, who delivers aircraft (jet) fuel to any person other than a licensee under M.G.L. c. 64J upon which the aircraft (jet) fuel tax has not been paid, knowing, or who reasonably should know, that such fuel is to be used or sold for the purpose of propelling aircraft, is liable for the aircraft (jet) fuel tax.

(6) Tax Exempt Sales.

(a) Sale to the U.S. Government. The sale of aircraft (jet) fuel directly to the United States Government, or any agency or instrumentality of the United States Government is exempt from the aircraft (jet) fuel tax imposed by M.G.L. c. 64J. A supplier or user-seller may sell aircraft (jet) fuel to the U.S. Government free of the aircraft (jet) fuel tax if he receives a properly completed Certificate of Exemption (Form JFT-8) from the U.S. Government.

(b) Bonded Fuel.

1. Aircraft (jet) fuel bonded in accordance with the law governing custom bonded warehouses (19 U.S.C. § 1202 *et seq.* and regulations issued thereunder) may be sold by a supplier or user-seller free of aircraft (jet) fuel tax only under the following conditions:

- a. such fuel must be delivered to the purchaser in a manner consistent with the continuation of the bonded status,
- b. such fuel must be placed in a tank bonded in accordance with the law governing custom bonded warehouses; and

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- c. the supplier or user-seller must receive a properly completed Certificate of Exemption (Form JFT-8) from the purchaser. The purchaser must certify that the aircraft (jet) fuel purchased is bonded in accordance with the U.S. Code and regulations issued thereunder, will be transported in a manner consistent with its bonded status, and is intended for use or resale in a manner consistent with its bonded status.
2. Aircraft (jet) fuel bonded in accordance with the law governing custom bonded warehouses may be used free of aircraft (jet) fuel tax if such fuel is delivered to the user in a manner consistent with the continuation of the bonded status and is laden as supplies for aircraft engaged in foreign commerce. If a user-seller or user purchases bonded fuel free of aircraft (jet) fuel tax and uses such fuel in a manner inconsistent with its bonded status such use of the fuel will be subject to the aircraft (jet) fuel tax.
- (c) Non-Taxable Location. The sale or use of aircraft (jet) fuel in a city or town which has not accepted the provisions of M.G.L. c. 64J is not subject to the aircraft (jet) fuel tax. The sale and use of aircraft (jet) fuel is deemed to occur at the location in Massachusetts where the fuel is transferred into the aircraft by which it is to be used. M.G.L. c. 64J, §§ 1(g), 1(j). If a person actually purchases aircraft (jet) fuel in a city or town which has accepted the provisions of M.G.L. c. 64J and the fuel is immediately removed from such city or town and transferred into an aircraft in a city or town which has not accepted the provisions of M.G.L. c. 64J, the sale and use are deemed to have occurred in the city or town where the fuel is transferred into the aircraft. Therefore, the sale and use of such fuel are not subject to the aircraft (jet) fuel tax. Such fuel may be purchased free of aircraft (jet) fuel tax if the purchaser submits to the supplier a properly completed Certificate of Exemption (Form JFT-8) certifying that immediately after purchase the fuel will be removed from the city or town of purchase for use in a city or town which has not accepted the provisions of M.G.L. c. 64J.
- (d) Resale to a Non-Taxable Location. Aircraft (jet) fuel sold in a city or town accepting the provisions of M.G.L. c. 64J which is immediately removed from such city or town and sold in a city or town which has not accepted the provisions of M.G.L. c. 64J is not subject to aircraft (jet) fuel tax. Such fuel may be purchased free of aircraft (jet) fuel tax if the purchaser submits to the supplier a properly completed Certificate of Exemption (Form JFT-8) certifying that the fuel is purchased for resale in a city or town which has not accepted the provisions of M.G.L. c. 64J, that such fuel will be removed from the city or town of purchase immediately and that such fuel is not intended for use in a city or town which has accepted the provisions of M.G.L. c. 64J.
- (e) Sale to Licensed Supplier. Generally, the sale of aircraft (jet) fuel in any city or town in Massachusetts to a licensed supplier is not subject to the aircraft (jet) fuel tax. Such fuel may be purchased free of aircraft (jet) fuel tax if the purchaser submits to the supplier a properly completed Certificate of Exemption JFT-8 certifying that the purchaser is a licensed supplier of aircraft (jet) fuel and does not intend to use such fuel in the operation of aircraft owned or operated by him. The sale of aircraft (jet) fuel to a supplier is subject to the tax if such supplier uses the aircraft (jet) fuel to fuel aircraft owned or operated by such supplier in a city or town which has accepted the provisions of M.G.L. c. 64J.
- (f) Aircraft (Jet) Fuel Used Other than in the Operation of Aircraft.
1. The sale of aircraft (jet) fuel used other than in the operation of aircraft is exempt from the aircraft (jet) fuel tax. M.G.L. c. 64J, § 5. Aircraft (jet) fuel used to fuel ground support equipment including jet starters and "sump fuel," fuel discarded during tank cleaning and maintenance, are examples of aircraft (jet) fuel used other than in the operation of aircraft.
  2. The aircraft (jet) fuel tax is imposed on the actual number of gallons sold as determined at the time of sale. Fuel lost or gained through expansion or contraction caused by changes in tank pressure or temperature is not considered fuel consumed other than in the operation of aircraft. No refund will be granted nor additional tax assessed because of these fluctuations. However, these changes in inventory must be accounted for in the aircraft (jet) fuel tax return (Form JFT-4).

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3. The purchaser of aircraft (jet) fuel only for use other than in the operation of aircraft may give the supplier or user-seller a properly completed "Blanket" Certificate of Exemption, (Form JFT-8), in lieu of paying tax upon these purchases of aircraft (jet) fuel. If a person purchases aircraft (jet) fuel both for the operation of aircraft and for uses other than the operation of aircraft, the purchaser may not use a Certificate of Exemption. In this situation the purchaser must pay tax on all aircraft (jet) fuel purchased and file for refund under M.G.L. c. 64J, § 5 for tax paid on fuel actually used other than in the operation of aircraft as determined and documented by the records of the purchaser.

(g) Stored Fuel.

1. User-seller. If a user-seller of aircraft (jet) fuel takes title to and possession of fuel in a city or town accepting the provisions of M.G.L. c. 64J before the effective date of such acceptance and places such fuel in storage facilities within airport property, neither the sale nor subsequent use is subject to the aircraft (jet) fuel tax. If the user-seller resells such fuel neither such resale nor the subsequent use is subject to the aircraft (jet) fuel tax. Upon resale the user-seller must indicate clearly on the invoice or bill to the purchaser that the fuel is "Pre-Tax Stored Fuel." In this situation the supplier may sell or the user-seller may resell the aircraft (jet) fuel free of aircraft (jet) fuel tax without receiving a Certificate of Exemption from the purchaser.

2. Suppliers. Suppliers are not entitled to this or any similar exemption for aircraft (jet) fuel purchased before the effective date of M.G.L. c. 64J.

(7) Certificate of Exemption.

(a) General. An Aircraft (Jet) Fuel Certificate of Exemption (Form JFT-8) may be used either as a "Blanket" Certificate to cover all aircraft (jet) fuel purchased by a particular purchaser or as a "Single Purchase" Certificate to cover only the fuel mentioned in the Certificate. The purchaser must complete the Certificate and make one copy. The purchaser keeps the copy and gives the original Certificate to the selling supplier or selling user-seller. The purchaser and selling supplier or selling user-seller must retain the Form JFT-8 as other tax records are retained, in accordance with the State Tax Administration Regulation ("Record Retention") 830 CMR 62C.25.1.

(b) Supplier Sales. A supplier may sell aircraft (jet) fuel free of aircraft (jet) fuel tax if he receives a properly completed Certificate of Exemption (Form JFT-8) from a purchaser certifying that the fuel purchased will be used or resold in the exempt manner claimed.

(c) User-Seller Purchases and Sales.

1. Initial Purchase Made Free of the Aircraft (Jet) Fuel Tax. When a user-seller purchases aircraft (jet) fuel from a supplier for resale, the user-seller generally pays the aircraft (jet) fuel tax unless the user-seller is entitled to use a Certificate of Exemption (Form JFT-8) and purchase free of the aircraft (jet) fuel tax. When a user-seller has purchased for resale fuel free of the aircraft (jet) fuel tax the user-seller must, upon resale, indicate clearly on the invoice or bill to the user that the fuel was purchased free of the aircraft (jet) fuel tax. A user who is entitled to purchase the fuel free of aircraft (jet) fuel tax must submit to the user-seller a Certificate of Exemption (Form JFT-8). If the user-seller receives a properly completed Certificate of Exemption (Form JFT-8) from the user, the user-seller may sell aircraft (jet) fuel to the user free of aircraft (jet) fuel tax.

2. Initial Purchase Subject to Tax. When a user-seller buys aircraft (jet) fuel which is subject to the tax and later resells the fuel to an exempt user or person who will use it in an exempt manner the user, if entitled to do so, may submit to the user-seller a Certificate of Exemption (Form JFT-8) and purchase the fuel free of the aircraft (jet) fuel tax. The invoice or bill to the user should clearly indicate that the aircraft (jet) fuel tax has previously been paid on such fuel. The user-seller is then entitled to file with the Commissioner for refund of tax paid. When filing for refund in this situation the user-seller must attach to the Aircraft (Jet) Fuel Refund Application (Form JFT-9) a copy of each Certificate of Exemption (Form JFT-8) received from a user upon which the user-seller bases the claim for refund.



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(d) Presumption of Taxability/Effect of Certificate of Exemption. It is presumed that all sales and uses of aircraft (jet) fuel in a city or town accepting the provisions of M.G.L. c. 64J are subject to the aircraft (jet) fuel tax until the contrary is established. The burden of proving that a sale of aircraft (jet) fuel is not subject to aircraft (jet) fuel tax is upon the seller unless the seller takes from the purchaser a properly completed Certificate of Exemption. The Certificate will relieve the seller from the burden of proof only if in taking such Certificate the seller acts reasonably based upon information available to the seller and accepts the Certificate in good faith. The seller must verify the validity of the certificate presented him by checking information contained therein against the seller's own records as to sales, deliveries, dates and the name of the purchaser.

(e) Liability of Purchaser. If a purchaser gives a Certificate of Exemption (Form JFT-8) to a supplier or user-seller in lieu of paying aircraft (jet) fuel tax upon the purchase of fuel and later uses the fuel in a manner which subjects it to the tax, such purchaser must pay the aircraft (jet) fuel tax due directly to the Commissioner.

(f) Penalties for Intentional Misuse of a Certificate of Exemption. If a supplier, user-seller, user, or any other person intentionally misuses a Certificate of Exemption to avoid payment of aircraft (jet) fuel tax due, such supplier, user-seller, user or any other such person is liable for any tax due, is subject to the suspension of the supplier or user-seller license if so licensed, is subject to penalties provided for evasion of the aircraft (jet) fuel tax, and is subject to any other penalties established by law.

(8) Returns.

(a) Filing Returns. Every person licensed or required to be licensed under M.G.L. c. 64J as a supplier or user-seller must file a complete aircraft (jet) fuel tax return (Form JFT-4) with the Commissioner, whether or not an aircraft (jet) fuel tax is due, and must make any aircraft (jet) fuel tax payments due to the Commissioner. The aircraft (jet) fuel tax return must be signed by the treasurer or assistant treasurer, or in their absence or incapacity by any other principal officer, of the corporation, company, organization or association making the return. The president, vice president, secretary and treasurer are regarded as principal officers.

(b) Due Date of Returns. Every person licensed or required to be licensed under M.G.L. c. 64J must complete and file an aircraft (jet) fuel tax return (Form JFT-4) and make any tax payment due on or before the 20th day of each month, stating the number of gallons of aircraft (jet) fuel sold or used by such person in Massachusetts during the preceding calendar month. The return (Form JFT-4) is not sufficient unless it includes all information relative to the cost and gross receipts from the purchase and sale of such fuel and such other information as the Commissioner may reasonably require.

(9) Discontinuance, Sale or Transfer.

(a) Whenever any licensee ceases to be a supplier or user-seller within Massachusetts by reason of the discontinuance, sale or transfer of the business for which such license was granted, the licensee must give notice thereof in writing to the Commissioner. Such notice shall contain the date of discontinuance, and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee.

(b) All taxes, penalties and interest whether or not currently due and payable under M.G.L. c. 64J, shall, notwithstanding such provisions, become due and payable concurrently with such discontinuance, sale or transfer; and any such licensee must make a return and pay all such taxes, interest and penalties, and must surrender such license to the Commissioner.

(c) Unless such notice is given to the Commissioner, the purchaser or transferee, in addition to the licensee, is liable for the amount of all taxes, penalties and interest accrued under M.G.L. c. 64J on the date of such sale or transfer against any such licensee, but only to the extent of the value of the property thereby acquired from such licensee.

64J.4.1: continued

(10) Penalties.

(a) Late Filing, Late Payment. In addition to any other penalties established by law, the penalties for late filing of a return and late payment of tax due are provided in M.G.L. c. 62C.

(b) Sale Separate From Tax. Any person required to collect aircraft (jet) fuel tax who sells, advertises or offers aircraft (jet) fuel separate from the tax imposed under M.G.L. c. 64J in a city or town accepting the provisions of M.G.L. c. 64J, is subject to the suspension of the license to keep and sell petroleum or any of its products for such time as the Commissioner deems proper. The foregoing is in addition to any other penalties established by law.

(c) Criminal Penalties for Evasion of Tax. In addition to any other penalties established by law, the criminal penalties for evasion of the aircraft (jet) fuel tax are provided in M.G.L. c. 62C; any person who violates any provision of M.G.L. c. 64J for which a penalty is not otherwise provided shall be punished by a fine of not more than \$1,000 or by imprisonment for one year, or both. See M.G.L. c. 64J, § 7.

(11) Tax Rate.

(a) Rate Determination. The aircraft (jet) fuel tax will equal five percent of the average price of aircraft (jet) fuel computed to the nearest tenth of a cent per gallon determined by the Commissioner on a quarterly basis. Average price means the weighted average selling price per gallon of aircraft (jet) fuel sold by licensees exclusive of any federal or state fuel taxes imposed. The average price will be determined by the Commissioner before the start of each calendar quarter. In general, the average price of aircraft (jet) fuel for an upcoming calendar quarter will be equal to the average price of aircraft (jet) fuel sold or used by licensed suppliers or user-sellers during the most current three month period for which information from monthly returns of such licensees is available. However, if this average does not accurately reflect the anticipated average price of aircraft (jet) fuel for the upcoming quarter or if the monthly price of aircraft (jet) fuel, during the most current three month period for which information from monthly returns of licensed suppliers and user-sellers is available deviates between any two particular months greater than five percent, the Commissioner may use the most current available price as determined above or may use other statistical data to determine the average price of aircraft (jet) fuel for the upcoming calendar quarter. The Commissioner will announce before the start of each calendar quarter the tax rates to be charged for the quarter. The tax will at no time be less than five cents per gallon.

Example 1: Determining the average price per gallon of aircraft (jet) fuel for the third quarter of 1987:

The three most current months for which data is available are February, March and April. The average price per gallon is computed as follows:

Months	February	March	April
Average price per gallon	\$ .87	\$ .93	\$1.05
Three month average price per gallon	\$ .95		
Monthly deviation	\$1.05	\$ .93	= \$ .12 deviation in price
	\$ .12	\$ .93	= 12.9% 5% deviation

## 64J.4.1: continued

Since the monthly deviation between any two months exceeds five percent, the Commissioner may determine \$1.05 (the most current available average monthly price) as the average price per gallon of aircraft (jet) fuel, but may also determine a different average price per gallon from other statistical data if he determines \$1.05 not to reasonably reflect the anticipated average price of aircraft (jet) fuel for the forthcoming quarter. In this example because there is a discernable upward trend in the price of aircraft (jet) fuel the Commissioner may use other statistical data to determine an average price per gallon for the forthcoming quarter in excess of \$1.05 per gallon.

(b) Tax Rate. August-December 1985. The aircraft (jet) fuel tax rate for August and September of 1985 has been set at the minimum tax rate, five cents per gallon. The rate for October, November and December of 1985 has been set at five cents per gallon.

(12) Refund.(a) General.

1. A person purchasing aircraft (jet) fuel which is exempt from the aircraft (jet) fuel tax should submit to the seller a Certificate of Exemption (Form JFT-8) and purchase such fuel free of aircraft (jet) fuel tax if entitled to do so pursuant to the rules provided in 830 CMR 64J.4.1. A person purchasing aircraft (jet) fuel which is exempt from the aircraft (jet) fuel tax under circumstances which do not entitle such person to use a Certificate of Exemption (Form JFT-8) must pay the aircraft (jet) fuel tax upon the purchase of such fuel and file with the Commissioner an Aircraft (Jet) Fuel Refund Application (Form JFT-9) for refund of tax paid.
2. When a user-seller sells aircraft (jet) fuel upon which the user-seller previously paid tax to a user who is entitled to purchase free of the aircraft (jet) fuel tax (with a Certificate of Exemption), the sale is free of the aircraft (jet) fuel tax to the user. The invoice or bill to the user should clearly indicate that fuel tax has been paid on such fuel. The user-seller is then entitled to file with the Commissioner an Aircraft (Jet) Fuel Refund Application (Form JFT-9) for refund of tax paid. When filing, the user-seller must attach to the Refund Application (Form JFT-9) a copy of each Certificate of Exemption (Form JFT-8) received from a user upon which the user-seller bases the claim for refund.
3. All claims for refund of aircraft (jet) fuel tax paid must be for one dollar or more, and must be made by affidavit in the form and containing such information as the Commissioner may require on the Refund Application (Form JFT-9) accompanied by original invoices or sales receipts of aircraft (jet) fuel indicating payment of tax, and a copy of any Certificate of Exemption received upon which a claim for refund is based.

Example 1: ACME Oil Company a licensed aircraft (jet) fuel supplier sells aircraft (jet) fuel to Fly Wright who is a licensed aircraft (jet) fuel user-seller. Fly Wright pays the aircraft (jet) fuel tax, ACME collects and pays over the tax. If Fly Wright then uses a portion of the fuel in jet starters Fly Wright may file for refund of aircraft (jet) fuel tax paid which is attributable to such fuel.

Example 2: ACME Oil Company (licensed supplier) sells aircraft (jet) fuel to Fly Wright (licensed user-seller). Fly Wright pays the aircraft (jet) fuel tax, ACME collects and pays over the tax. Fly Wright then resells the fuel to DBA (a user) who reimburses Fly Wright for the aircraft (jet) fuel tax paid. DBA then uses the fuel to fuel jet starters. DBA may file for refund of the tax paid.

Example 3: ACME Oil Company (licensed supplier) sells aircraft (jet) fuel to Ellipso Co. which purchases aircraft (jet) fuel only for use other than in the operation of aircraft. Ellipso is entitled to buy aircraft (jet) fuel free of aircraft (jet) fuel tax from a supplier if it submits to the supplier a properly completed Certificate of Exemption (Form JFT-8). If Ellipso pays aircraft (jet) fuel tax on such purchase it is entitled to file with the Commissioner for refund of tax paid.

64J.4.1: continued

Example 4: ACME Oil Company (licensed supplier) sells aircraft (jet) fuel to Fly Wright (licensed user-seller). Fly Wright pays the aircraft (jet) fuel tax, ACME collects and pays over the tax. Fly Wright then resells the fuel to the United States government to fuel an Army jet. The Army submits to Fly Wright a properly completed Certificate of Exemption (Form JFT-8) and purchases such fuel free of aircraft (jet) fuel tax. Fly Wright then files with the Commissioner a Refund Application (Form JFT-9) for refund of tax paid on fuel resold to the Army tax free. Fly Wright must attach a copy of the Form JFT-8 submitted by the Army to it, to its Application for Refund.

(b) Time Limit. All claims for refund of aircraft (jet) fuel tax paid must be made within two years from the date of purchase or invoice of aircraft (jet) fuel upon which such refund is claimed.

(13) Record Keeping.

(a) Each licensee or person required to be licensed under M.G.L. c. 64J must keep a complete and accurate record of all purchases, sales and uses of aircraft fuel. Such records must include the name and address of the person accepting delivery of aircraft (jet) fuel to be used in an aircraft in Massachusetts, the location of the delivery, storage or use of such fuel, the gross sale price or cost, and number of gallons of aircraft (jet) fuel purchased, sold or used.

(b) Each licensee or person required to be licensed under M.G.L. c. 64J is required to keep a complete and accurate record of the number of gallons of aircraft (jet) fuel imported, produced, refined, manufactured or compounded and the date of such activities.

(c) Every licensee or person required to be licensed under M.G.L. c. 64J must present with every consignment of aircraft (jet) fuel or delivery of the same to any person other than himself a written statement containing the date of the sale or use within Massachusetts, the date of delivery, the name of the person making the delivery and the name of the person receiving the same, the gross sales price and the number of gallons of aircraft (jet) fuel delivered and shall retain a duplicate of each such statement.

(d) In the case of use of aircraft (jet) fuel by the licensee, the licensee must keep an accurate record of all the deliveries received by such licensee and the names and addresses of the persons from whom the licensee received the same, giving the dates of deliveries, the cost of the aircraft (jet) fuel delivered and the number of gallons of such fuel involved in each delivery. Detailed records, including meter readings, are required to substantiate claims for refund based upon exempt uses.

(e) Copies of returns, forms, records, written statements or other documents required by M.G.L. c. 64J or 830 CMR 64J.4.1 must be retained by licensees or persons required to be licensed under M.G.L. c. 64J as other tax records are retained, in accordance with the State Tax Administration Regulation (Record Retention) 830 CMR 62C.25.1.

(f) The requirements of 830 CMR 64J.4.1(13) are in addition to any other record-keeping requirements established by law or by the Commissioner.

REGULATORY AUTHORITY

830 CMR 64J.00: M.G.L. c. 64J; c. 14, § 6(1); c. 62C, § 3.