

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.321 Fuel Used by Air Common Carriers in Flights Engaged in Foreign Trade or Engaged in Trade Between the United States and any of its Possessions
--

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 130
RETAILERS' OCCUPATION TAX**

Section 130.321 Fuel Used by Air Common Carriers in Flights Engaged in Foreign Trade or Engaged in Trade Between the United States and any of its Possessions

- a) Until June 30, 2013, notwithstanding the fact that sales may be at retail, *fuel and petroleum products sold to or used by an air common carrier, certified by the carrier to be used for consumption, shipment or storage in the conduct of its business as an air common carrier, for a flight destined for or returning from a location or locations outside the United States without regard to previous or subsequent domestic stopovers* is exempt from tax. (Section 2-5 of the Act).

- b) Exemptions Beginning July 1, 2013
 - 1) *Beginning July 1, 2013, notwithstanding the fact that sales may be at retail, tax does not apply to fuel and petroleum products sold to or used by an air carrier, certified by the carrier to be used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight that:*
 - A) *is engaged in foreign trade or is engaged in trade between the United States and any of its possessions; and*
 - B) *transports at least one individual or package for hire from the city of origination to the city of final destination on the same aircraft, without regard to a change in the flight number of that aircraft [35 ILCS 120/2-5].*
 - 2) This exemption existed prior to the enactment of Section 2-70 of the Retailers' Occupation Tax Act and will not sunset.

- c) Until July 1, 2013, flights destined for a destination outside the United States include flights which originate in Illinois or have a stopover in Illinois and which may have intermediate stops at other locations in the United States prior to arriving at the destination outside the United States. Beginning July 1, 2013, subject to the provisions in subsection (b), all fuel loaded for such flights shall be considered to be exempt, notwithstanding the fact that a portion of the fuel will be consumed within the United States or any of its possessions. If a flight is loaded with exempt fuel for a flight engaged in foreign trade or trade between the United States and any of its possessions, but for some reason does not meet the provisions of subsection (b), the fuel will be taxable.

- d) In general, exempt international fuel shall be treated in the same manner as bonded fuel with respect to the sale, accountability and eligibility of tax exemption.
- e) Aviation fuel used as provided in this Section may be commingled with other jet fuel within the hydrant systems at qualifying airports. However, accurate records must be maintained with respect to the purchaser, gallonage of fuel loaded, flight number, aircraft tail number, ultimate foreign destination and intermediate stops. Beginning July 1, 2013, records must also contain information that indicates that the flight was engaged in foreign trade or trade between the United States or any of its possessions and transported at least one individual or package for hire from the city of origination to the city of final destination on the same aircraft, without regard to a change in flight number of that aircraft.
- f) **EXAMPLES:**
Aircraft A, Aircraft B, and Aircraft C are operated by an air common carrier.

- 1) **Situation 1.** A flight originates in the United States and its final destination is outside the United States. Aircraft A fuels up in Chicago, Illinois for a flight bound for Vancouver, Canada. En route to Vancouver, Aircraft A stops in Seattle, Washington. The flight from Chicago to Seattle is designated Flight No. 111 and the flight from Seattle to Vancouver is designated Flight No. 333. Although the flight numbers change, the aircraft does not change. Aircraft A transports at least one person or package for hire from Chicago to Vancouver.

Determination 1. Aircraft A is engaged in foreign trade within the meaning of Section 2-5 of the Act. Aircraft A's flight originates within the United States (Chicago) bound for a destination outside the United States (Vancouver), and Aircraft A transports for hire at least one person or package from Chicago to Vancouver. The intermediate stop in Seattle, en route to Vancouver, does not negate the exemption. Thus, the fuel loaded into the aircraft in Chicago is exempt from tax. The change in the flight number does not affect the determination of whether the aircraft is engaged in foreign trade as long as the aircraft remains the same and at least one person or package was transported for hire from Chicago to Vancouver.

- 2) **Situation 2.** A flight originates outside the United States and its final destination is inside the United States. Aircraft B flies from Cancun, Mexico to New York City, New York. En route to New York City, Aircraft B stops in Chicago, Illinois to refuel. The flight from Cancun to Chicago is designated Flight No. 555 and the flight from Chicago to New York City is designated Flight No. 777. Although the flight numbers change, the aircraft does not change. Aircraft B transports at least one person or package for hire from Cancun to New York City.

Determination 2. Aircraft B is engaged in foreign trade within the meaning of Section 2-5 of the Act. Aircraft B's flight originates outside of the United States (Cancun) bound for a destination within the United States (New York City), and Aircraft B transports for hire at least one person or package from Cancun to New York City. The stop in Chicago is an intermediate stop in the United States, en route to New York City. Thus, the fuel loaded into the aircraft in Chicago is exempt from tax. The change in the flight numbers does not affect the determination of whether the aircraft is engaged in foreign trade as long as the

aircraft remains the same and at least one person or package is transported for hire from Cancun to New York City.

- 3) Situation 3. A flight originates within the United States and its final destination is within the United States. Aircraft C fuels up in Chicago, Illinois for a flight destined for Dallas, Texas. Aircraft C transports persons for hire from Chicago to Dallas, some of whom will transfer to Aircraft A for a flight from Dallas to Acapulco, Mexico.

Determination 3. Aircraft C is not engaged in foreign trade or in trade between the United States and any of its possessions within the meaning of Section 2-5 of the Act. Aircraft C did not transport at least one person or package for hire from a city of origination within the United States bound for a city of final destination outside the United States or any of its possessions, even though some of the passengers' final destinations were outside the United States. Aircraft C's flight is only between two cities within the United States (Chicago to Dallas). Thus, the fuel loaded into the aircraft in Chicago is not exempt from tax.

- 4) Situation 4. A flight originates in the United States and its destination is a city in a possession of the United States. Aircraft B fuels up in Chicago, Illinois for a flight to San Juan, Puerto Rico. En route to San Juan, Aircraft B makes a stop in Savannah, Georgia. The flight from Chicago to Savannah is designated Flight No. 1122 and the flight from Savannah to San Juan is designated Flight No. 708. Although the flight number changes, the aircraft does not. Aircraft B transports two persons from Chicago to San Juan on the same plane.

Determination 4. Aircraft B is engaged in foreign trade between the United States and one of its possessions within the meaning of Section 2-5 of the Act. Aircraft B's flight originates in Chicago bound for San Juan, and Aircraft B transports for hire at least one person or package from Chicago to San Juan. The stop in Savannah is an intermediate stop within the United States during a flight to San Juan. The change in the flight number does not affect the determination of whether the flight is engaged in foreign trade as long as the aircraft remains the same. Thus, the fuel loaded into the aircraft in Chicago is exempt from tax.

(Source: Amended at 43 Ill. Reg. 4201, effective March 20, 2019)