



TaxNewsFlash

United States



No. 2020-319
May 15, 2020

IRS provides FAQs on aviation excise tax holiday under CARES Act (COVID-19)

The IRS has provided a set of “frequently asked questions” (FAQs) that address issues related to the aviation excise tax holiday pursuant to relief provided by the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) (Pub. L. No. 116-136).

The “excise tax holiday” provided by the CARES Act suspends certain aviation excise taxes, beginning March 28, 2020 and ending December 31, 2020. During the excise tax holiday, no tax is imposed on “jet fuel” kerosene used in commercial aviation (that is, the excise tax imposed pursuant to section 4041(c) or 4081). The CARES Act relief applies only to kerosene used in commercial aviation during the excise tax holiday, and not the sale or removal of kerosene during the excise tax holiday.

The excise tax holiday also applies to the “ticket taxes” normally imposed on amounts paid for the transportation of persons and property by air under sections 4261 and 4271.

Read the [FAQs](#) (May 12, 2020) (text of FAQs provided below).

KPMG observation

The FAQs provide information for claiming taxes paid for jet fuel used in commercial aviation during the excise tax holiday and indicate that the IRS intends to update form instructions for filing such claims. Vendors and purchasers of jet fuel need to evaluate whether a claim for refund is available.

For more information, contact a tax professional with KPMG’s Excise Tax Practice group:

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Text of the FAQs (updated May 12, 2020)

Fuel Tax

Which types of fuel are affected by the excise tax holiday?

The excise tax holiday applies to kerosene used in commercial aviation between March 28, 2020, and December 31, 2020.

What is "commercial aviation?"

"Commercial aviation" is, generally speaking, any use of an aircraft in the business of transporting persons or property by air for compensation or hire.

When is kerosene used in commercial aviation?

Kerosene is treated as used when such fuel is removed into the fuel tank of an aircraft.

Does the excise tax holiday apply to other fuels, such as aviation gasoline, or to kerosene used in noncommercial aviation?

No. The excise tax holiday applies only to kerosene used in commercial aviation.

Does the excise tax holiday apply to the Leaking Underground Storage Tank Trust Fund (LUST) tax?

No. The excise tax holiday does not apply to the LUST tax.

When can I remove kerosene at the LUST-only tax rate during the excise tax holiday?

If you are the aircraft operator (Y registrant), the LUST-only tax rate applies when you remove kerosene directly into the fuel tank of your aircraft for use in commercial aviation during the excise tax holiday. In addition, the LUST-only tax rate applies when you remove kerosene into your aircraft, during the excise tax holiday, from a qualified refueler truck, tanker, or tank wagon that is loaded at a terminal located in a secured area of an airport. The aircraft operator must provide the position holder with a certificate similar to Model Certificate K in IRS Publication 510. Aircraft operators may report LUST-only removals on Form 720, "Quarterly Federal Excise Tax Return," on IRS No. 111.

Which terminals are located in the secure area of an airport?

The IRS maintains a list of [terminals](#). The secured airport terminals are indicated on this list.

Can kerosene be removed at the LUST-only rate other than described above?

No. The CARES Act does not change the tax rate for kerosene that is removed other than as described above. Instead, the CARES Act provides a mechanism to claim the difference between kerosene that was removed at a higher rate but is used in commercial aviation during the excise tax holiday.

How can I make a claim for taxes paid for kerosene used in commercial aviation during the excise tax holiday?

You may make a claim for taxes paid on kerosene, which is used in commercial aviation during the excise tax holiday, if you are the ultimate purchaser of the kerosene (typically the aircraft operator) or if you are the registered ultimate vendor of the kerosene. Claims for previously-taxed kerosene will be treated as a nontaxable use claim during the excise tax holiday.

You may make a claim for a payment of these taxes by claiming a nontaxable use, specifically use No. 15, "In an aircraft or vehicle owned by an aircraft museum." You must also attach a statement to your return explaining that the claim is for the relief granted for the excise tax holiday period. Specific instructions for ultimate purchasers and registered ultimate vendors follow.

The IRS intends to update the form instructions to reflect the above process.

Ultimate Purchaser: The ultimate purchaser of the kerosene is eligible to make a claim if the ultimate purchaser certifies that the right to make the claim hasn't been waived. The ultimate purchaser may make a claim on Form 4136, "Credit for Federal Tax Paid on Fuels," Schedule 1

(Form 8849), "Nontaxable Use of Fuels," or Schedule C (Form 720), "Quarterly Federal Excise Tax Return," if reporting excise tax liability on that return. The ultimate purchaser may use Line 5(c) or 5(d), type of use No. 15, depending upon the tax rate paid, to make a claim.

Ultimate Vendor: The registered ultimate vendor of kerosene used in commercial aviation (UA registrant) may make this claim if the ultimate purchaser waives its right to the payment by providing the registered ultimate vendor with a waiver. A sample waiver is included as Model Waiver L in IRS Publication 510. The registered ultimate vendor must have the waiver at the time the payment is claimed.

To make a claim on Form 4136, the ultimate vendor may use Line 8(d) or 8(e), type of use No. 15, depending upon the tax rate paid. To make a claim on Schedule 2 (Form 8849), the ultimate vendor may use Line 3(d) or 3(e), type of use No. 15, depending upon the tax rate paid. To make a claim on Schedule C, Form 720, the ultimate vendor may use Line 9(d) or 9(e), type of use No. 15, depending upon the tax rate paid.

Are there any other restrictions on claims?

Yes. The CARES Act provides an excise tax holiday for kerosene that is actually used in commercial aviation from March 28, 2020, through December 31, 2020. Therefore, a claim may not be made with respect to kerosene purchased during the excise tax holiday that is not put into the fuel tank of an aircraft during the excise tax holiday. Additionally, a claim may not be made with respect to kerosene used in non-commercial aviation.

Am I required to continue making semimonthly deposits of tax for 2020?

Yes. The normal deposit rules apply to the taxes affected by the excise tax holiday. Deposits for a semimonthly period generally must be at least 95% of the net tax liability for that period unless the safe harbor rule applies. For more information see IRS Publication 510 for the deposit rules and IRS Publication 509 for the 2020 tax calendar for excise tax.

What is a semimonthly period for deposit purposes?

A semimonthly period is the first 15 days of a calendar month (the first semimonthly period) or the 16th through the last day of a month (the second semimonthly period).

What happens if I miss a semimonthly deposit?

I.R.C. § 6656 imposes a penalty on any failure to deposit. The penalty does not apply if the failure is due to reasonable cause and not due to willful neglect.

Air Transportation Excise Tax

Which air transportation excise taxes are affected by the excise tax holiday?

The excise tax holiday applies to the taxes normally imposed on amounts paid for the transportation of persons and property by air under I.R.C. §§ 4261 and 4271. That includes:

- The 7.5% tax on amounts paid for transportation of persons by air.
- The domestic segment tax.
- The international travel facilities tax.
- Amounts paid for the right to award free or reduced rate air transportation (mileage awards).
- The 6.25% tax on amounts paid for transportation of property by air.

Therefore, the taxes listed above will not be imposed on amounts paid for air transportation of persons or property between March 28, 2020, and December 31, 2020.

If I purchased an airline ticket before the excise tax holiday for travel during or after the excise tax holiday, can I receive a refund of the taxes imposed on the ticket?

No. The excise tax holiday applies only to tickets purchased between March 28, 2020, and December 31, 2020.

If I purchase an airline ticket during the excise tax holiday for travel after the excise tax holiday, is tax imposed on the purchase?

No. No tax is imposed on the purchase of the ticket because the purchase occurred during the excise tax holiday.

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