

AGRICULTURAL APPLICATOR AIRCRAFT FUEL TAX EXEMPTION

EVALUATION SUMMARY



JULY 2019
2019-TE15

THIS EVALUATION WILL BE INCLUDED IN COMPILATION REPORT SEPTEMBER 2019

YEAR ENACTED	1988
REPEAL/EXPIRATION DATE	None
REVENUE IMPACT	Could not determine
NUMBER OF TAXPAYERS	Could not determine
AVERAGE TAXPAYER BENEFIT	Could not determine
IS IT MEETING ITS PURPOSE?	Yes, to some extent

WHAT DOES THIS TAX EXPENDITURE DO?

The Agricultural Applicator Aircraft Fuel Tax Exemption (Agricultural Aircraft Exemption) allows agricultural applicator aircraft operators that use private landing facilities that are used solely and exclusively for agricultural applications to dispense pesticides, fertilizers, and seeds over farmland and ranchland to apply for a 50 percent refund for any fuel excise taxes paid on the purchase of aviation fuel that is used for this purpose.

WHAT DID THE EVALUATION FIND?

We found that the Agricultural Aircraft Exemption is meeting its purpose, at least to some extent, because agricultural applicator operators appear to be claiming the refund and, according to stakeholders, passing the savings on to agricultural producers.

WHAT IS THE PURPOSE OF THIS TAX EXPENDITURE?

Statute does not explicitly state a purpose for this tax expenditure. Based on our review of statute and stakeholder input, we inferred that the purpose is to reduce the cost of aerial application services for agricultural applicator operators and agricultural producers. Specifically, because agricultural applicator operators that qualify for the exemption do not use public airports, they do not fully benefit from services provided using aviation fuel tax revenue, the majority of which goes to public airports.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

We did not identify any policy considerations related to this expenditure.

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EVALUATION RESULTS

WHAT IS THE TAX EXPENDITURE?

Agricultural applicator aircraft dispense pesticides, fertilizers, and seeds over farmland and ranchland. This process is commonly referred to as “crop dusting.” The Agricultural Applicator Aircraft Fuel Tax Exemption (Agricultural Aircraft Exemption) allows these aircraft operators to apply for a 50 percent refund for any fuel excise taxes paid on the purchase of aviation fuel that is used for this purpose. Aviation gasoline is taxed at a rate of \$0.06 per gallon and jet fuel, which can sometimes be used by agricultural applicator aircraft, is taxed at a rate of \$0.04 per gallon. According to statute [Section 39-27-103(3)(a)(I)(D), C.R.S.], to qualify for the refund, the fuel must be used for the purpose of “operating a state-licensed agricultural applicator aircraft from a private landing facility used solely and exclusively for agricultural applications...” This expenditure was enacted in 1988, at the same time the current aviation fuel tax structure was enacted, and has remained substantially the same since that time.

To claim the refund, agricultural applicator aircraft operators submit the Department of Revenue’s Fuel Tax Refund Claim Form (Form DR 7118) to apply for the 50 percent refund within 12 months of the fuel purchase.

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

Statute does not explicitly identify the intended beneficiaries of the Agricultural Aircraft Exemption. Based on our review of statute and interviews with stakeholders, we inferred that the direct beneficiaries of the expenditure are the agricultural aircraft operators who operate

state-licensed aircraft from private landing facilities used solely for agricultural applications. The Colorado Agricultural Aviation Association reported that there are approximately 42 agricultural application businesses that serve farms in Colorado. Some of these companies are located in surrounding states, but they can also claim the refund if they purchase and use the fuel in Colorado for agricultural purposes. We also inferred that agricultural producers are the indirect beneficiaries since, according to the association, agricultural applicator operators pass the tax savings on to the farmers and ranchers they serve.

Aerial application of pesticides, fertilizer, and seeds is a common practice in the agricultural industry. Although they can be dispensed using ground application methods, this is not always a viable option for farmers. For example, if a field is muddy, the farmer may have to wait until the ground dries out to use a ground applicator because of the risk that the ground applicator may get stuck. One stakeholder reported, “Pests and disease do not wait for the field to dry out, so the farmer is suffering crop damage and losing money every hour that they have to wait for product application.” Additionally, stakeholders reported that aerial applicators are often a better option because using ground-based applicators can result in damaged crops, which decreases the overall yield.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

Statute does not explicitly state a purpose for this tax expenditure. Based on our review of statute and stakeholder input, we inferred that the purpose is to reduce the cost of aerial application services for agricultural applicator operators and agricultural producers. Specifically, the expenditure allows agricultural applicator operators to reclaim some of the tax money paid for benefits not provided to them. According to the Colorado Constitution, revenue collected from aviation fuel taxes must be used for “aviation purposes” [Colorado Const., Art. X, Sec. 18]. The Division of Aeronautics within the Colorado Department of Transportation reports that a majority of this funding is returned to public airports to be used for construction, repairs, and other improvements. To qualify for the refund, the agricultural applicator operator must use a private landing facility that

is used solely and exclusively for agricultural applications, which means that they are not using public airports. As a result, if these agricultural applicator operators pay the full tax, they are contributing funding to services and facilities from which they are not benefiting. The 50 percent refund allows these agricultural applicator operators to recoup some of the taxes paid for services they do not use. This expenditure is also consistent with the State's treatment of agricultural inputs, such as pesticides, fertilizers, and seeds, that are applied by aerial applicators and which are generally not subject to sales taxes when used for agricultural production.

IS THE TAX EXPENDITURE MEETING ITS PURPOSE AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We found that the Agricultural Aircraft Exemption is meeting its purpose, at least to some extent, because agricultural applicator operators appear to be claiming the refund and, according to stakeholders, passing the savings on to agricultural producers.

Statute does not provide quantifiable performance measures for this expenditure. Therefore, we created and applied the following performance measure to determine the extent to which the Agricultural Aircraft Exemption is meeting its inferred purpose:

PERFORMANCE MEASURE: *To what extent are agricultural applicator operators claiming the Agricultural Aircraft Exemption and passing the tax savings on to farmers and ranchers?*

RESULT: Although we were not able to determine how often agricultural applicator operators are claiming the refund or how much they have claimed, representatives from the Colorado Agricultural Aviation Association reported that operators are generally aware that the refund is available and a majority of them claim it. However, because the refund is limited to 50 percent of the fuel excise taxes paid that meet eligibility requirements, the amount of savings is likely small. The two agricultural applicator operators responding to our request for

information indicated that they have both claimed the refund. Based on information provided by the operators, in Tax Year 2018 one received a refund of \$1,400 and the other received a refund of \$660.

WHAT ARE THE ECONOMIC COSTS AND BENEFITS OF THE TAX EXPENDITURE?

The Department of Revenue was not able to provide information on the amount claimed by agricultural applicator operators for the Agricultural Aircraft Exemption. However, according to the Division of Aeronautics, the revenue forgone by the State from this expenditure is likely minimal, due to the relatively small amount of fuel used by agricultural applicator operators and therefore, the small amount of fuel excise taxes paid. Furthermore, the expenditure limits the refund to 50 percent of the excise tax paid and has strict limitations on when the refund can be claimed. Our discussions with stakeholders were also consistent with the exemption having a small revenue impact. Specifically, the two operators we contacted who shared with us the amount they claimed, reported claiming an average of \$1,030 in refunds for the exemption in Tax Year 2018. If all 42 operators serving Colorado claimed similar amounts, the total amount claimed for the year would be around \$43,260. We lacked information to determine whether the operators we spoke with were representative of all operators in the state in order to provide a reliable estimate. To the extent that agricultural applicator operators passed on this potential savings, then farmers and ranchers would have received a similar benefit in lower costs for aerial applicator services. For example, one agricultural applicator operator that we spoke with stated that they have used the refund to repair and maintain their own private landing facility, which helps to keep the price of aerial applicator services lower for farmers and ranchers.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

Eliminating the Agricultural Aircraft Exemption would result in higher fuel costs for agricultural applicator operators, which would likely be

passed on to agricultural producers using their services through higher prices for those services. Although the cost increase would likely be relatively small, according to the Colorado Agricultural Aviation Association, farmers and ranchers generally operate under very small profit margins, especially with the current prices of commodities, such as wheat and corn, and they may be more sensitive to even small increases in costs.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

We found that several states surrounding Colorado have a similar expenditure, including Arizona, Kansas, New Mexico, Oklahoma, and Texas. Arizona's expenditure is most similar to Colorado's because it specifically identifies aviation fuel used for agricultural purposes as eligible for a partial refund. Kansas, New Mexico, and Texas offer broader expenditures, exempting all types of aviation fuel from taxation or refunding 100 percent of the aviation fuel tax paid, regardless of the purpose it is used for. Oklahoma also exempts all types of aviation fuel, but only offer a partial refund.

Three states in the region do not exempt aviation fuel from taxation when it is used for agricultural purposes: Nebraska, Utah, and Wyoming. However, both Nebraska and Utah apply a lower tax rate to aviation fuel than to other types of motor fuel. Furthermore, while Wyoming does not currently have an expenditure that exempts aviation fuel used for agricultural purposes from taxation, it previously exempted all fuel, including aviation fuel, from taxation when that fuel was used for agricultural purposes. That expenditure was repealed in 2011.

ARE THERE OTHER TAX EXPENDITURES OR PROGRAMS WITH A SIMILAR PURPOSE AVAILABLE IN THE STATE?

We did not identify any other tax expenditures or programs related to agricultural aviation or agricultural aviation operators.

WHAT DATA CONSTRAINTS IMPACTED OUR ABILITY TO EVALUATE THE TAX EXPENDITURE?

The Department of Revenue was not able to provide information on the amount claimed by agricultural applicator operators for the Agricultural Aircraft Exemption or the number of operators that claimed it. The Department of Revenue does not capture data from the Fuel Tax Refund Claim Form (Form DR 7118) in GenTax, its tax processing and information system. Specifically, although Form DR 7118 requires agricultural applicator operators to report the number of gallons of aviation fuel purchased that is eligible for the refund, this amount may be aggregated with other types of refund claims and, if so, cannot be separated out. Since the Department of Revenue does not currently capture this data in an extractable format in GenTax, it would need to make programming changes to capture and retrieve the data going forward, as well as add a separate line to disaggregate the amount claimed for the Agricultural Aircraft Exemption (See the Tax Expenditures Overview Section of the Office of the State Auditor's *September 2018 Tax Expenditures Compilation Report* for details on the limitations of Department of Revenue data and the potential costs of addressing these limitations).

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

We did not identify any policy considerations related to the Agricultural Aircraft Exemption.