

CHAPTER 278

TAXATION

HOUSE BILL 03-1073

BY REPRESENTATIVE(S) Smith, Borodkin, Fritz, Hoppe, Rippy, and Stengel;
also SENATOR(S) Entz, Isgar, Taylor, and Teck.

AN ACT**CONCERNING CLARIFICATION OF THE TYPES OF AIRCRAFT THAT ARE EXEMPT FROM THE EXCISE TAX
IMPOSED ON GASOLINE IN COLORADO.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly hereby finds and declares that the intent of this act is to clarify the types of aircraft that are exempt from the excise tax imposed on gasoline in Colorado by specifying the original intent of the general assembly in enacting the excise tax laws. The general assembly further finds and declares that this act neither creates a new exemption from the excise tax imposed on gasoline nor denies an exemption from such tax to any party who was originally intended to receive an exemption and therefore does not constitute a tax policy change as contemplated by section 20 of article X of the Colorado constitution.

SECTION 2. 39-27-101, Colorado Revised Statutes, is amended to read:

39-27-101. Definitions - construction. As used in this part 1, unless the context otherwise requires:

(1) "AIR CARRIER" MEANS ANY DOMESTIC OR FOREIGN AIRCRAFT CARRYING PASSENGERS OR CARGO FOR HIRE.

~~(1)~~ (2) "Blended gasoline" means any mixture of taxable or tax-exempt gasoline with any other liquid on which the excise tax has not been imposed pursuant to this section.

~~(1-1)~~ (3) "Blended special fuel" means any mixture of taxable or tax-exempt special fuel with any other liquid on which the excise tax has not been imposed pursuant to this section, other than special fuel that has been dyed in accordance with

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

federal regulations.

~~(1.2)~~ (4) "Blender" means a person who produces blended gasoline or blended special fuel outside of the gasoline or special fuel distribution system consisting of refineries, pipelines, vessels, and terminals. For purposes of this ~~subsection (1.2)~~ SUBSECTION (4), gasoline in a refinery, pipeline, vessel, or terminal is in the gasoline distribution system, and special fuel in a refinery, pipeline, vessel, or terminal is in the special fuel distribution system. Gasoline or special fuel in the tank of any vehicle or in any railcar, trailer, truck, or other equipment suitable for ground transportation is not in the gasoline or special fuel distribution system, respectively.

~~(1.4)~~ (5) "Common carrier" or "carrier" means a person, including a railroad operator, who transports gasoline or special fuel from a terminal located in this state or transports gasoline or special fuel imported into this state and who does not own the gasoline or special fuel.

(6) "DIRECT AIR CARRIER" MEANS A PERSON WHO PROVIDES OR OFFERS TO PROVIDE AIR TRANSPORTATION AND WHO HAS CONTROL OVER THE OPERATIONAL FUNCTIONS PERFORMED IN PROVIDING THAT TRANSPORTATION. A DIRECT AIR CARRIER THAT PROVIDES AIR TRANSPORTATION SERVICES TO A PUBLIC CHARTER OPERATOR AS DEFINED IN SUBSECTION (24) OF THIS SECTION HAVE A BINDING COMMITMENT TO FURNISH AIR TRANSPORTATION TO THE PUBLIC CHARTER OPERATOR VIA A CHARTER CONTRACT PURSUANT TO 14 CAR 380.29 AND SHALL ACTIVELY PROVIDE SUCH AIR TRANSPORTATION SERVICES TO THE PUBLIC CHARTER OPERATOR.

~~(1.5)~~ (7) (a) "Distributor" means:

(I) A gasoline or special fuel broker and any person who sells special fuel to another distributor, broker, or vendor, and any vendor of liquified petroleum gases;

(II) Any person who acquires gasoline or special fuel from a supplier, importer, blender, or another distributor for the subsequent sale and distribution by tank cars, tank trucks, or both; or

(III) Any person who refines, manufactures, produces, compounds, blends, or imports special fuel or gasoline.

(b) "Distributor" includes every person importing gasoline or special fuel by means of a pipeline or in any other manner but does not include persons importing gasoline or special fuel contained only in the fuel tank of a motor vehicle.

~~(1.6)~~ (8) "Dyed diesel" means diesel fuel that is dyed under the rules of the United States environmental protection agency or the internal revenue service for high sulphur diesel fuel or low sulphur diesel fuel or under any other requirements subsequently set by such agencies for special fuel sold for nontaxable uses.

~~(1.7)~~ (9) "Exporter" means a person who acquires gasoline or special fuel in this state exclusively for delivery to another state in which he or she is licensed.

~~(1.8)~~ (10) "Fuel tank" means any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle, exclusive of a cargo tank, and includes

any separate compartment of a cargo tank used as a fuel tank and any auxiliary tank or receptacle of any kind from which fuel is supplied for the propulsion of the vehicle, whether or not such tank or receptacle is directly connected to the fuel supply line of the vehicle.

~~(1.9)~~ (11) "Gallons" means gallons as measured on a gross gallons basis, as defined in section 8-20-201 (3), C.R.S.

~~(2)(a) Repealed.~~

~~(b) Effective January 1, 1989;~~ (12) "Gasoline" means any flammable liquid used primarily as a fuel for the propulsion of motor vehicles, motor boats, or aircraft. "Gasoline" does not include diesel engine fuel, kerosene, liquefied petroleum gas, natural gas, and products, including kerosene, specially prepared, sold, and used in aircraft operated by scheduled air carriers or commuter airline operators exempt from the federal aviation fuels tax; except that "gasoline" does include products, including kerosene, specially prepared, sold, and used in any other aircraft. Except as otherwise provided in this paragraph ~~(b)~~ SUBSECTION (12), any product blended with gasoline shall be considered gasoline for purposes of the excise tax imposed pursuant to this part 1.

~~(2.1)~~ (13) "Highway" means any way or place in this state of whatever nature, open to the use of the public, for purposes of traffic, including highways under construction.

~~(2.2)~~ (14) "Importer" means a person who imports gasoline or special fuel in bulk or by transport load into this state from another state by truck, rail, or pipeline.

~~(2.3)~~ (15) "In this state" means within the exterior limits of the state of Colorado and includes all territories within these limits owned by or ceded to the United States of America.

(16) "INDIRECT AIR CARRIER" MEANS ANY PERSON WHO ENGAGES DIRECTLY IN AIR TRANSPORTATION OPERATIONS AND WHO USES THE SERVICES OF A DIRECT AIR CARRIER FOR SUCH TRANSPORTATION SERVICES.

~~(2.4)~~ (17) "Licensee" means any person holding a valid license issued by the department of revenue pursuant to section 39-27-104, to act as a supplier, importer, exporter, distributor, carrier, or blender.

~~(2.5)~~ (18) "Motor vehicle" means any self-propelled vehicle required to be licensed or subject to licensing for operation upon the highways of this state.

(19) "PART 121 AIR CARRIER" MEANS AN AIRCRAFT OPERATOR THAT CONDUCTS OPERATIONS PURSUANT TO 14 CAR 121 BETWEEN ANY TWO POINTS WITHIN THE FORTY-EIGHT CONTIGUOUS STATES OF THE UNITED STATES OR WITHIN THE UNITED STATES AND A SPECIFICALLY AUTHORIZED POINT LOCATED OUTSIDE THE UNITED STATES, OPERATING ANY OF THE FOLLOWING:

(a) A TURBOJET-POWERED AIRPLANE;

(b) AN AIRPLANE HAVING A PASSENGER-SEAT CONFIGURATION OF MORE THAN NINE PASSENGER SEATS, EXCLUDING EACH CREWMEMBER SEAT; OR

(c) AN AIRPLANE HAVING A PAYLOAD CAPACITY OF MORE THAN SEVEN THOUSAND FIVE HUNDRED POUNDS.

(20) "PART 135 COMMUTER AIR CARRIER" MEANS AN AIRCRAFT OPERATOR THAT CONDUCTS OPERATIONS PURSUANT TO 14 CAR 135, OPERATING A MINIMUM OF FIVE ROUND TRIPS PER WEEK ON AT LEAST ONE ROUTE BETWEEN TWO OR MORE POINTS ACCORDING TO THE PUBLISHED FLIGHT SCHEDULES, OPERATING EITHER OF THE FOLLOWING:

(a) ANY AIRPLANE, OTHER THAN A TURBOJET-POWERED AIRPLANE, THAT HAS A MAXIMUM PASSENGER-SEAT CONFIGURATION OF NINE SEATS OR FEWER AND A PAYLOAD CAPACITY OF SEVEN THOUSAND FIVE HUNDRED POUNDS OR FEWER; OR

(b) A ROTORCRAFT.

(21) "PART 135 ON-DEMAND OPERATOR" MEANS AN AIRCRAFT OPERATOR THAT CONDUCTS OPERATIONS FOR HIRE OR COMPENSATION PURSUANT TO 14 CAR 135 IN AN AIRCRAFT WITH NINE OR FEWER PASSENGER SEATS AND A PAYLOAD CAPACITY OF SEVEN THOUSAND FIVE HUNDRED POUNDS OR FEWER. A PART 135 ON-DEMAND OPERATOR OPERATES ON AN ON-DEMAND BASIS AND DOES NOT MEET THE FLIGHT SCHEDULED QUALIFICATIONS OF A PART 135 COMMUTER AIR CARRIER.

(22) (a) "Person" means every individual, firm, association, joint stock company, syndicate, limited liability company, partnership, joint venture, corporation, estate, trust, or any group or combination thereof acting as a unit, this state, any county, city and county, municipality, special district, or other political subdivision of this state, or any group or combination of such governmental entities acting as a unit.

(b) Whenever used in any clause in this part 1 prescribing or imposing a fine, imprisonment, or both, "person":

(I) As applied to a firm, association, limited liability company, partnership, joint venture, joint stock company, receiver, or syndicate, means the partners or members thereof;

(II) As applied to a corporation, means the officers or resident managing agent thereof; and

(III) As applied to an estate, trust, or business trust, means the administrator or trustee thereof.

~~(4) (Deleted by amendment, L. 95, p. 981, 1, effective July 1, 1995.)~~

(23) "PUBLIC CHARTER" MEANS A ONE WAY OR ROUND TRIP CHARTER FLIGHT PERFORMED BY ONE OR MORE DIRECT AIR CARRIERS AS DEFINED PURSUANT TO SUBSECTION (6) OF THIS SECTION AND THAT IS ARRANGED AND SPONSORED BY A PUBLIC CHARTER OPERATOR PURSUANT TO 14 CAR 380.

(24) "PUBLIC CHARTER OPERATOR" MEANS A UNITED STATES OR FOREIGN INDIRECT AIR CARRIER AS DEFINED IN SUBSECTION (16) OF THIS SECTION THAT IS AUTHORIZED TO ENGAGE IN THE FORMATION OF GROUPS FOR TRANSPORTATION ON PUBLIC CHARTERS IN ACCORDANCE WITH 14 CAR 380.

~~(5)~~ (25) "Refiner" means a person who processes crude oil or who produces, refines, prepares, distills, or manufactures gasoline or special fuel in this state.

~~(6)~~ (26) "Refinery" means any place where gasoline, special fuel, or crude oil is produced, refined, compounded, blended, or manufactured.

(27) "RETAILER" MEANS EVERY PERSON SELLING GASOLINE IN THIS STATE AT THE RETAIL LEVEL OF TRADE.

~~(6.1)~~ (28) "Sell" means to transfer title or possession, exchange, or barter in any manner or by any means whatsoever.

~~(6.3)~~ (29) "Special fuel" means diesel engine fuel, kerosene, liquefied petroleum gas, and natural gas used for the generation of power to propel a motor vehicle on the highways of this state. "Special fuel" does not include gasoline as defined in ~~section 39-27-101~~ (2) SUBSECTION (12) OF THIS SECTION.

~~(6.6)~~ (30) "Supplier" means a person who owns and stores gasoline or special fuel in a pipeline terminal, terminal, or refinery in or outside of this state for sale or use within or outside the boundaries of this state.

~~(7) Repealed.~~

~~(8)~~ (31) "Tank farm" means any collection of tanks for storage of gasoline or special fuel located at or appurtenant to any refinery or pipeline terminal for storage of gasoline or special fuel before the sale thereof in this state.

~~(9)~~ (32) "Terminal" means a gasoline or special fuel storage and distribution facility that is supplied by a pipeline, vessel, or refinery or a tank farm from which gasoline or special fuel may be removed for distribution.

~~(10)~~ (33) "Terminal operator" means the person who by ownership or contractual agreement controls the operation of a terminal.

~~(11)~~ (34) "Use" or "uses" means the placing of special fuel into any fuel tank, unless it is established to the satisfaction of the executive director of the department of revenue that the fuel was consumed for a purpose other than to propel a motor vehicle on the highways of this state. With respect to fuel brought into this state in a fuel tank, "use" means the consumption of the fuel in this state. A vendor placing special fuel into a fuel tank of a motor vehicle not owned by the vendor is not deemed to have used the fuel.

~~(12)~~ (35) "User" means any person who uses special fuel.

~~(13)~~ (36) "Vendor" means any person who sells special fuel in this state and places the fuel, or causes the fuel to be placed, into any fuel tank or receptacle from which

a fuel tank is supplied; including service station dealers, brokers, and users who sell special fuel to others and distributors who sell special fuel to users. For the purposes of this part 1, a vendor of liquefied petroleum gases shall be deemed a distributor and shall comply with all of the requirements imposed upon distributors in this part 1.

SECTION 3. 39-27-102 (1) (a) (IV) (B) and (1) (b), Colorado Revised Statutes, are amended to read:

39-27-102. Tax imposed on gasoline - deposits - penalties.

(1) (a) (IV) (B) ~~The provisions of this subparagraph (IV) shall not apply to air carriers engaged in interstate, intrastate, and foreign air transportation as those terms are defined in section 101 of the federal "Aviation Act of 1958", as amended, 49 U.S.C. sec. 1301~~ DOMESTIC OR FOREIGN PART 121 AIR CARRIERS AS DEFINED IN SECTION 39-27-101 (19) OR PART 135 COMMUTER AIR CARRIERS AS DEFINED IN SECTION 39-27-101 (20) AUTHORIZED TO PROVIDE PASSENGER AND CARGO AIR TRANSPORTATION SERVICES PURSUANT TO THE REGULATIONS OF THE OFFICE OF THE SECRETARY OF TRANSPORTATION AND FEDERAL AVIATION ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION. THE PROVISIONS OF THIS SUBPARAGRAPH (IV) ALSO SHALL NOT APPLY TO DIRECT AIR CARRIERS AS DEFINED IN SECTION 39-27-101 (6), PROVIDING AIR TRANSPORTATION TO AUTHORIZED PUBLIC CHARTER OPERATORS PURSUANT TO 14 CAR 380. FOR THOSE AIR CARRIERS THAT ARE CERTIFICATED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION FOR BOTH PART 121 AIR CARRIER OPERATIONS AND PART 135 ON-DEMAND OPERATIONS, THE PROVISIONS OF THIS SUB-SUBPARAGRAPH (B) SHALL NOT APPLY TO THE AIR CARRIER'S PART 135 ON-DEMAND OPERATIONS.

(b) In the case of gasoline shipped to a distributor from a terminal, the amount of gasoline acquired shall be deemed to be the amount shipped from the terminal, as shown by the terminal manifest; except that an allowance of two percent of the total amount of gasoline acquired during any calendar month, as shown by terminal manifests, shall be deducted by the licensed distributor to cover losses in transit and in unloading the gasoline and costs of collection and payment to the state of the tax imposed by this section, out of which allowance the distributor shall make to each retailer ~~"retailer" being defined as every person selling gasoline in this state at the retail level of trade,~~ an allowance of one percent of the amount of gasoline delivered during each calendar month by the distributor to the retailer, as shown by delivery invoices signed by the retailer. The tax imposed by this section shall be exempted on each recorded and reported sale by a distributor to the United States, or any of its agencies, and to any town, city, county, city and county, special district, or school district when the sale involves a single delivery and the gasoline is used exclusively by the governmental entity in performing its governmental functions and activities. THE EXEMPTION SHALL APPLY SOLELY TO MACHINES OWNED OR OPERATED BY THE UNITED STATES OR ANY OF ITS AGENCIES, BY THE STATE, OR BY ANY TOWN, CITY, COUNTY, CITY AND COUNTY, SCHOOL DISTRICT, OR OTHER POLITICAL DIVISION OF THE STATE. EXEMPTIONS FOR PERSONS CONDUCTING BUSINESS FOR SUCH GOVERNMENTAL ENTITIES ON A CONTRACT BASIS USING AN AIRCRAFT SHALL BE BASED SOLELY ON THE APPLICABLE OPERATING CERTIFICATE OF THE AIRCRAFT OPERATOR PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (1). Any governmental entity referred to in this paragraph (b) may obtain an exemption certificate from the executive director of the department of revenue. Upon receipt of an exemption certificate, such governmental entity may purchase

gasoline from a distributor without payment of the excise tax imposed pursuant to this part 1 if the gasoline is used exclusively by the governmental entity in performing its governmental functions and activities.

SECTION 4. 39-27-103 (3) (a) (I) (F) and (3) (a) (I) (H), Colorado Revised Statutes, are amended to read:

39-27-103. Refunds - penalties - checkoff. (3) (a) (I) Any person who purchases gasoline or special fuel and pays the tax thereon at the time of such purchase shall be entitled to a refund by the controller, upon voucher certified by the department of revenue of the amount of such tax paid by him or her upon complying with the applicable conditions and provisions of this section, if the gasoline or special fuel is used for the purpose of:

(F) Operating an aircraft by a ~~scheduled~~ PART 121 air carrier ~~or~~ AS DEFINED IN SECTION 39-27-101 (19), A PART 135 commuter ~~airline operator~~ AIR CARRIER AS DEFINED IN SECTION 39-27-101 (20), OR A DIRECT AIR CARRIER AS DEFINED IN SECTION 39-27-101 (6) PROVIDING TRANSPORTATION TO AN AUTHORIZED PUBLIC CHARTER OPERATOR PURSUANT TO 14 CAR 380;

(H) Any commercial use other than the operation of a motor vehicle upon the highways of this state AND THE OPERATION OF ANY AIRCRAFT OTHER THAN THE OPERATION OF AIRCRAFT SPECIFIED IN SUB-SUBPARAGRAPHS (D) AND (F) OF THIS SUBPARAGRAPH (I); or

SECTION 5. 8-20-235, Colorado Revised Statutes, is amended to read:

8-20-235. Measuring gasoline and special fuel for sale to distributors. Notwithstanding any other provision of this part 2, the method of determining gallonage of gasoline or special fuel sold to distributors, as defined in ~~section 39-27-101 (1.5)~~ SECTION 39-27-101 (7), C.R.S., shall be on a gross or net gallons basis at the option of the distributor. Such election shall be for a twelve-month period.

SECTION 6. 39-26-114 (1) (a) (XV), Colorado Revised Statutes, is amended to read:

39-26-114. Exemptions - disputes - credits or refunds - definitions - creation of fund. (1) (a) There shall be exempt from taxation under the provisions of this part 1 the following:

(XV) The sale of special fuel, as defined in ~~section 39-27-101 (6.3)~~ SECTION 39-27-101 (29), used for the operation of farm vehicles when such vehicles are being used on farms and ranches;

SECTION 7. 39-26-203 (1) (c) (I), Colorado Revised Statutes, is amended to read:

39-26-203. Exemptions - definitions. (1) This part 2 is declared to be supplementary to the "Emergency Retail Sales Tax Act of 1935", part 1 of this article, and shall not apply:

(c) (I) To the storage, use, or consumption of gasoline ~~which~~ THAT is taxed under the provisions of part 1 of article 27 of this title and to all gasoline ~~which~~ THAT is taxed under said provisions and the tax on which is refunded and to special fuel, as defined in ~~section 39-27-101 (6.3)~~ SECTION 39-27-101 (29), used for the operation of farm vehicles when the same are being used on farms or ranches; except that aviation fuel used in turbo-propeller or jet engine aircraft and upon which a tax was collected pursuant to the provisions of this part 2 prior to January 1, 1989, shall not be exempt.

SECTION 8. 43-10-110 (2) (a) (I), Colorado Revised Statutes, is amended to read:

43-10-110. Revenues in aviation fund - disbursements - repeal. (2) (a) (I) The board shall transfer from the fund, on a monthly basis, to the airport operating fund of the governmental entity operating the public-accessible airport an amount equal to four cents per gallon of gasoline, as defined in ~~section 39-27-101 (2) (b)~~ SECTION 39-27-101 (12), C.R.S., sold at such airport and an amount equal to sixty-five percent of any sales and use taxes collected by the state on aviation fuel sold for use at such airport by turbo-propeller or jet engine aircraft and credited to the fund pursuant to section 43-10-109 (2).

SECTION 9. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 21, 2003