

It's a myth that international aviation fuel is not taxed.

Bill Hemmings

**All European ASAs post WWII exempt aviation fuel from taxation
But it's a complete myth that fuel used on international flights is not taxed
Nearly all Canadian provinces, some US states, African countries and some in Latin America
Have taxed international fuel including flights to Europe for years
ASAs do not explicitly interdict state or local taxes on international aviation fuel
Washington, Ottawa and ICAO acknowledge they are powerless to intervene.
Yet the EU signed US & Canada ASAs preventing tax reciprocation
And the ETD and European ASAs still prevent fuel taxation**

Two obstacles prevent EU member states taxing fuel for flights to third countries. The Energy Tax Directive Article 14(b) and Air Services Agreements of the EU or member states with third countries.

The Chicago Convention does not forbid the taxing of fuel uplifted for international flights.

Only fuel left on board an arriving aircraft.

ICAO resolutions try to ban fuel taxation. They are not mandatory and are unenforceable.

German, Sweden Norway and Switzerland have already opted out¹. All it requires is a letter to ICAO.

ASAs generally exempt international fuel from taxation. But some countries – eg in Africa, tax aviation fuel simply ignoring ASAs. Other ASAs contain loopholes with national laws allowing provinces and individual states to tax international fuel in spite of federal commitments.

Exempting international flights from fuel taxation is often a myth.

ASAs bind the EU and member states from reciprocating when international fuel is taxed

Most Canadian provinces have taxed aviation fuel uplifted for international flights for more than 20 years even though Canadian ASAs exempt it. Ottawa says Canadian law permits provincial opt-outs.

US ASAs also exempt fuel taxation but some US states went ahead taxing international fuel and the US Supreme Court upheld their right to levy state and local fuel taxes.

The EU signed ASAs with Canada and the US exempting international fuel from taxation while knowing full well that EU carriers' fuel would be taxed given these loopholes and that both the ETD and the ASAs prevented member states reciprocating.

Many African states tax international fuel seemingly irrespective of what ASAs or ICAO might say. Aviation is seen as a source of tax revenue. As IATA DG Alexandre de Juniac saw it in 2018;² "The global average profit per passenger is \$7.80. But airlines in Africa, on average, lose \$1.55 for every passenger carried. This disparity has many causes. To begin with, Africa is an expensive place for airlines to do business". Tony Tyler DG IATA in 2013 referring to Government policies towards aviation in Africa and elsewhere, said³ "authorities often tend to see aviation as an 'elite' product, rather than as a critical component of the continent's economic infrastructure. As a result, it is heavily taxed – often in violation of the International Civil Aviation Organisation's principles that prohibit the taxation of jet fuel for international operations".

¹ <https://www.cedelft.eu/en/publications/2322/taxes-in-the-field-of-aviation-and-their-impact>

² <https://web.archive.org/save/https://www.iata.org/en/pressroom/speeches/2018-11-26-01/>

³ <https://web.archive.org/web/20201008121625/https://www.thehindubusinessline.com/economy/logistics/govts-unfair-to-aviation-industry-says-global-airlines-body/article20620715.ece1>

“African aviation fuel is generally overtaxed.” “The various taxes, duties, levies and charges on fuel contravene global norms and handicap the African aviation industry. Globally, fuel accounts for about 36% of an airline’s operational cost whilst in Africa this ranges from 45% -55%. Fuel prices at some stations in Africa are over twice the world average”. The range of levies and taxes on fuel come under various creative names: Royalty fee, Airport fee, Export duty, Airfield fee, Bridge fee, Throughput fee, Airport duty, Government fund, Levy, Concession fee, Redevance fee, Hydrant fee, Railage fee, ISC fuel charge, Asecna fee, Excise duty.

Dr. Elijah Chingosho, Sec Gen AFRAA – African Airlines Association.

<https://web.archive.org/web/20201007101505/https://www.afcac.org/legacy/en/documents/conferences/october2012/afra.pdf>

“Buying aviation fuel in Africa is about 21% more expensive than the global average as a result of heavy taxes, many of which are in contravention of ICAO principles”

Tony Tyler, DG IATA, AFRAA Addis Ababa, 16 April 2013

<https://web.archive.org/web/20201007094216/https://www.iata.org/en/pressroom/pr/2013-04-16->

“Jet fuel costs are 35% higher than the rest of the world”. “Taxes and fees are among [world’s] highest”

Alexandre de Juniac, DG IATA, AFRAA Rabat, 26 November 2018

<https://web.archive.org/save/https://www.iata.org/en/pressroom/speeches/2018-11-26-01/>

Brazil, the biggest aviation market In Latin America, is another example. While Brazilian states tax fuel uplifted for domestic aviation – many at different and confusing levels - the federal government in Brazilia takes a different approach; “even though over 90% of jet fuel is produced in Brazil, it is priced as if it were imported from the Gulf of Mexico”.⁴ IATA complains that “Brazil's fuel pricing policy adds \$800 million in costs annually”⁵ “while Ecuador and Colombia suffer from the exorbitant costs charged by monopoly fuel suppliers—made all the worse in Ecuador where there also is a 5% fuel tax”. “Governments see aviation as a revenue source. What they need is a change of mindset”.

ICAO’s resolutions on fuel taxation go back to the 1960s and records online start in 1994. In the Third edition of ICAO’s SUPPLEMENT TO DOC 8632 ICAO’S POLICIES ON TAXATION IN THE FIELD OF INTERNATIONAL AIR TRANSPORT (Third Edition — 2000) ICAO makes this statement with respect to the US and Canada ASAs;

6. With respect to Resolving Clause 1 e), the term “local” relates to political subdivisions of a State such as states, provinces and municipalities, and the [ICAO] Council is aware of the difficulties which might arise in some States where such entities have the constitutional right to levy duties and taxes on their own behalf. The inclusion of this clause is intended to encourage such States to seek the necessary internal arrangements, or to take whatever steps may be appropriate or possible to ensure compliance at local level with an international commitment made by the central government. If such arrangements cannot reach complete fruition, the other State concerned can still determine whether sufficient reciprocity is available to warrant its entry into an agreement. In general terms the implementation of this Resolution as regards not only fuel but also income (in Resolving Clause 2b)) minimizes the risk of any possible retaliatory responses”.

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https://web.archive.org/web/20200713080135/https://www.icao.int/publications/Documents/8632_3ed_en.pdf

⁴ <https://web.archive.org/web/20201012103331/https://www.iata.org/en/iata-repository/pressroom/opinion-pieces/oped---an-aviation-agenda-to-propel-brazils-economic-recovery---december-2018/>

⁵ Alexandre de Juniac, DG IATA, Santiago de Chile 4 April 2018

<https://web.archive.org/save/https://www.iata.org/en/pressroom/speeches/2018-04-04-01/>

In ICAO document “Supplement to Doc 8362; Position of States to the Third Edition 2000,

Canada says;

Canada has a federal system of government. Canada’s constitution gives certain taxing powers to the provincial governments, and does not require the provinces to conform to the policies of the federal Government in exercising those powers. Municipal governments have also been given their own taxing powers by their respective provincial governments. With the exception of New Brunswick (by means of refunds) and Quebec, all provinces and territories impose aviation fuel taxes on fuel purchased for international flights. Exemptions, refunds or lower fuel tax rates are, however, available in some provinces depending on the type of air service involved or the type of fuel used.

https://web.archive.org/web/20200717050949/https://www.icao.int/publications/Documents/8632_3ed_sup_en.pdf

And the US says,

*Except for situations involving the purchase of bonded or FTZ fuel, various States of the United States collect taxes on fuel taken on board. In some of these States, the tax revenues are allocated to civil aviation use. While the United States is sympathetic with the objective of eliminating local taxes for such fuel, under the Federal structure of the U.S. Government, and in light of the decisions of the United States Supreme Court in *Wardair Canada v. Florida Dept of Revenue*, 477 U.S. 1, 106 S.Ct. 2369, 91 L. Ed. 2d 1 (1986); see also, *Intel. Containers Intern. Corp. v. Huddleston*, 113 S.Ct. 1095 (1993), the United States does not anticipate that international air transport will be exempted from these State taxes in the immediate future (with the exception of purchases of bonded or FTZ fuel)*

https://web.archive.org/web/20200717050949/https://www.icao.int/publications/Documents/8632_3ed_sup_en.pdf

Canada, or rather many of its provinces, have taxed fuel including that uplifted for international flights for many years stretching back to the 1990 Gasoline Tax act. [This report](#) prepared for the National Airlines Council of Canada in 2013 well summarizes the situation. “Ontario is one of only five provinces that continue to charge this tax on transborder flights and one of four to charge this tax on international flights. While Manitoba imposes its tax on transborder and international passenger flights, it has removed the tax on transborder and international cargo flights.”

Toronto airport maintains its fuel tax despite a joint plea in May 2020 from IATA/NACC/ATAC to suspend it due to Covid 19⁶.

Ontario accounts for almost half (47 percent) while British Columbia has 19 percent of the international air traffic volume arriving and departing from Canada⁷.

“The British Columbia Government announced in 2010 that it would eliminate the aviation fuel tax on transborder and international commercial flights by April 1, 2012 – to cut airline costs by \$20

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tps://web.archive.org/web/20200826191304/https://www.atac.ca/web/images/Documents/IATA_NACC_ATA_C-Letter_COVID_OntarioAviationFuelTax_FINAL_11May2020.pdf

⁷ Chalifour N., Besco L., 2019 Taking Flight: Federal Action to Mitigate Canada's GHG Emissions from Aviation https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3168671

million a year....while Vancouver International Airport (YVR) offered a five-year incentive program to enable air carriers to add capacity to YVR without incurring additional landing and terminal fees” ...“It’s expected that the incentive program will add the equivalent of eight to 10 new international daily flights, or approximately 1.1 million additional airline seats, over the next five years. Every new international long-haul flight into YVR generates between \$5 million and \$8 million in wages annually and contributes between \$8 million and \$15 million to B.C.’s GDP.”

USA

Well over 40 countries tax domestic aviation fuel⁸ however there are no aviation fuel taxes in the EU. The situation in the US could not be more different where there is a bewildering array of aviation fuel taxes⁹.

It is almost surely the case that the United States has the largest, most extensive and wide-ranging system of domestic aviation taxes in the world.

In the United States, the Federal government has taxed fuel uplifted for domestic commercial aviation flights at the rate of 4.3 cents per gallon for many years. This excise tax was suspended during 2020 because of Covid¹⁰. Airfreight is also subject to a special 6.25% federal excise tax (FET) on the amount paid for such air transportation services¹¹.

In addition the federal government levies a 0.1 cents per gallon LUST fuel tax to address Leaking Underground Storage Tanks for aviation fuel.

All US states and some territories levy domestic taxes on commercial aviation fuel – whether an excise duty, a sales tax or various environmental taxes. The Federal 1982 Airport and Airway Improvement Act was enacted to ensure that taxes levied on airline fuel were to be spent to upgrade airports, help build runways and improve facilities for air travellers. The FAA issued a [rule](#) in 2014 to tighten this provision¹².

On the other hand, the United States has, since before WWII, pursued a policy of exempting fuel uplifted for international flights from taxation, a policy conceived initially to facilitate Pan Am’s global expansion. European aviation, on its knees after the world war, followed the American lead in incorporating fuel tax exemptions in ASAs which now number in their thousands covering global aviation. In Europe, the EU eschewed the US approach of taxing aviation locally, opting instead for airport charges which are regulated through both the EU Airport Charges Directive and the Chicago Convention (Article 15). See Taxflight.

In various instances, US states extend domestic fuel taxes to fuel uplifted for international flights.

On 18 June 1986 the US Supreme Court in an eight to one decision upheld the right of the state of Florida to levy a sales tax on fuel uplifted for international flights. The majority opinion written by Justice William J Brennan Jr in *Wardair Canada, Inc. v. Florida Dep’t of Revenue*, 106 S. Ct. 2369 (1986) noted that in relation to the 70 or more bilateral ASAs concluded by the USA at that time

⁸ See

⁹ See <https://www.eia.gov/petroleum/marketing/monthly/xls/fueltaxes.xls>

<https://www.airlines.org/dataset/government-imposed-taxes-on-air-transportation/#>

¹⁰ <https://www.irs.gov/newsroom/faqs-aviation-excise-tax-holiday-under-the-cares-act>

¹¹ <https://www.irs.gov/newsroom/faqs-aviation-excise-tax-holiday-under-the-cares-act>

¹² <https://www.irs.gov/newsroom/faqs-aviation-excise-tax-holiday-under-the-cares-act>

“most of these agreements explicitly commit the United States to refrain from imposing *national* taxes on aviation fuel used by airlines of the other contracting party...but as the United States concedes “none of our bilateral aviation agreements explicitly interdicts [S]tate or local taxes on aviation fuel used by foreign airlines in international traffic” [Emphasis by the Court]¹³

Journal of Air Law and Commerce, Volume 52 Issue 4, 1987
<https://scholar.smu.edu/cgi/viewcontent.cgi?article=1806&context=jalc>

CONSTITUTIONAL LAW - THE PREEMPTION DOCTRINE - A Florida sales tax on aviation fuel purchased by foreign airlines for use exclusively in international traffic does not unconstitutionally impair the power of the federal government to regulate foreign commerce. Wardair Canada Inc. v. Florida Dep't of Revenue, 106 S. Ct. 2369 (1986).

the current law allows taxation of the sale of fuel by political subdivisions of countries. 'The Court relied on the express language of Article 24(a) of the Chicago Convention. Article 24(a) prohibits taxes on fuel when the fuel is on board the aircraft upon arrival and retained on board when leaving a foreign country, but does not prohibit taxation of fuel purchased within that country. The Court concluded that the parties of the Chicago Convention were aware of the negative implications of state and local taxation, and addressed the problem by curtailing some aspects of the localities' power to tax while implicitly preserving other aspects of that authority.' The Court discarded the ICAO Resolution's endorsement of tax exemptions on fuel because the Resolution had not been specifically endorsed, approved, or passed by either the executive or legislative branch of the federal government. The Court characterized the ICAO Resolution as a policy of an organization of which the United States is one of many members, rather than as a policy of the United States.' After reviewing more than seventy bilateral agreements between the United States and foreign countries, the Court found that none of the documents deny the individual states the power to tax.' ... In reviewing the Conventions and international agreements, the Court found that while there appeared to be an international aspiration to eliminate all impediments to foreign air travel, the law acquiesced in taxation of the sale of fuel. Rather, most of the agreements prohibit the imposition of national taxes. Similarly, the United States/Canada Nonscheduled Air Services Agreement limits the tax exemptions afforded to the other nation's carriers to national duties and charges, but does not mention whether taxation by political subdivisions is exempt. The Court interpreted this omission as a policy choice to allow state taxation. The Court also noted the Canadian policy of provincial taxation of fuel.' Although it did not consider this course of conduct dispositive, the Court interpreted it as evidence of an understanding among all parties to permit taxation by political subdivisions.

Florida.

International Fuel subject to sales tax

Colorado.

International jet fuel is subject to a 2.9% sales tax

New Jersey

International “burnout” fuel subject to 4 cents/gallon petroleum products gross receipts tax.

¹³ See pp 2250-2255. Cumulative Digest of United States Practice in International Law: 1981-1988, Book 2 Office of the Legal Adviser, Department of State, 1995
<https://2009-2017.state.gov/s/l/c8183.htm>



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Belgium

To Transport and Environment:

The Department is in receipt of your correspondence dated January 24th, 2020.

Your correspondence states, "I am writing to you from Transport and Environment in Brussels, Belgium. We are Europe's largest non-governmental organization focusing on sustainable transport.

Further to our telephone conversation today regarding the attached letter (also repeated below) ref GIL-14-003 dated 23 January 2014 and signed by Mr. Neil L. Tillquist Colorado Department of Revenue concerning Jet fuel used in international aviation.

The letter states at the beginning of the Discussion section on page 2 that 'Fuel used in commercial aviation is exempt from Colorado excise tax. Fuel that is exempt from excise tax is subject to sales tax. In general, Colorado has authority to levy sales tax on sales that occur in Colorado.'

I would be grateful if you could confirm - for our research purposes - whether this situation continues to apply today in 2020 - that commercial aviation is exempt from excise duty while fuel that is exempt from excise duty is nevertheless subject to sales tax in Colorado.

We would be grateful if you could confirm what that sales tax rate is in this case and whether the situation remains today, as that stated in the referenced letter, that there is no bonded fuel available at Denver International Airport and therefore as the letter states at the end, that 'Colorado sales tax applies to fuel sold in Colorado to commercial airlines even if the fuel is later used for international flights.' i.e. there are no exemptions or rebates applicable to international aviation as regards sales tax."

After further review, it remains true in Colorado that when jet fuel is exempt from excise tax that the fuel would afterward be subject to a sales tax. This sales tax on jet fuel is still routinely collected by the state.

The state sales tax rate of 2.9% is very easy to state; however, there are several cities, counties, and special districts that may be collected at the same time that would cause the overall amount to be collected vary by location. Our publication for Colorado Sales/Use Tax

CDR 40300A (09/01/19)

Rates (Form DR1002) can be found online to reference a multitude of rates collected and not collected by the state.

At this time, the Department has not received any official correspondence stating that bonded or Foreign Trade Zone (FTZ) fuel has been re-established at Denver International Airport.

If you have any questions, the Fuel Tax Unit is available at 303-295-8205, Option 2.

Respectfully,

Fuel Tax Unit
Colorado Department of Revenue

New Jersey

From: Taxation Regulatory Services <Taxation.RegulatoryServices@treas.nj.gov>

Sent: 28 February 2020 20:10

To: bill.hemmings@transportenvironment.org

Subject: FW: [EXTERNAL] Enquiry TandE re Aviation Fuel Excise and Sales Taxes

February 28, 2020

To: bill.hemmings@transportenvironment.org

FROM: Eric Friedmann

Regulatory Services Branch

RE: Aviation Fuel Motor Fuel Tax & Petroleum Products Gross Receipts Tax

This email is in reply to your email sent on January 24, 2020 regarding aviation fuel and whether it is subject to the New Jersey Motor Fuel Tax at N.J.S.A. 54:39-101 et seq. and the New Jersey Petroleum Products Gross Receipts Tax at N.J.S.A. 54:15B-1 et seq.

You made the following inquiry:

On your website page <https://www.state.nj.us/treasury/taxation/evcs/evtaxrate.shtml>

It states that

Motor Fuels Tax

- Gasoline - per gallon - \$0.105
- Diesel - per gallon - \$0.135
- Aviation fuel - per gallon - \$0.02
- Petroleum Products Gross Receipts Tax
- Gasoline & LPG - per gallon - \$0.309
- Diesel - per gallon - \$0.35
- Fuel Oil - per gallon - \$0.124
- Aviation Fuel - per gallon - \$0.04
- Other - Gross Receipts - 7%

• Historical Tax Rates

We write to seek your written advice please whether the aviation fuel tax of \$0.02 cents per gallon or the Aviation Fuel - per gallon - \$0.04 applies to say international flights leaving Newark airport and flying to a foreign country say in Europe. Or do such international airlines enjoy a full exemption or a partial rebate from these two taxes in NJ law? In your reply we would be grateful if you could cite any specific state legislation covering this issue. In addition, could you let us know if there are any environmental taxes covering fuel uplifted on international flights (there are in some other US state).

The \$0.02 per gallon Motor Fuel Tax on aviation fuel applies to fuel delivered to smaller, general aviation airports. The tax is not applied to fuel delivered to international airports, which currently includes Newark Liberty International Airport and Atlantic City International Airport. Therefore, the \$0.02 per gallon Motor Fuel Tax on aviation fuel does not apply to international flights because international flights do not depart from general aviation airports in New Jersey.

Only the "burnout" portion of the aviation fuel that is consumed in New Jersey is subject to the \$0.04 per gallon petroleum products gross receipts tax. The aviation fuel that is not consumed in New Jersey is not subject to the \$0.04 per gallon petroleum products gross receipts tax. The "burnout" portion is the fuel deemed to have been used in New Jersey during departure in New Jersey. This amount is established by the Division of Taxation based on the type of aircraft. Use and consumption for all flights taking off from New Jersey and landing outside New Jersey includes the fuel used in taxiing from the loading gate to the take-off area and the fuel consumed in takeoff. All fuel consumed in a flight that originates and terminates in New Jersey is taxable.

For additional information on specific aircraft and gallons deemed consumed in New Jersey please see the following chart:

https://www.state.nj.us/treasury/taxation/pdf/other_forms/petroleum/psgrtAvFuelConsumChart.pdf
I hope that you find this information helpful.

14 October 2020