



State of Georgia

December 7, 2017

MEMORANDUM

To: Local Government Airport Sponsors

From: Teresa A. MacCartney, Chief Financial Officer & Director, Office of Planning & Budget JM
Lynnette T. Riley, State Revenue Commissioner LR
Russell R. McMurry, Commissioner, Department of Transportation RRM

Re: Compliance with Federal Aviation Administration Rule on Taxation of Aviation Fuel

This Memorandum is to remind Local Government Airport Sponsors of their responsibility to be in full compliance, by December 8, 2017, with federal law regarding the permissible use of state and local aviation fuel taxes for those state and local jurisdictions benefitting from federal aviation grants and other federal support.¹ In a November 2014 policy amendment,² the Federal Aviation Administration (“FAA”) required noncompliant state and local jurisdictions to submit an Action Plan documenting how they would comply with federal law over a reasonable transition period, with a firm deadline of December 8, 2017.

During this transition period the FAA agreed, in an exercise of prosecutorial discretion, not to take adverse action against noncompliant jurisdictions. Actions the FAA may take against airport sponsors and taxing jurisdictions to enforce the statutory prohibitions against unlawful revenue diversion include: (1) withholding approval of future grants; (2) withholding payments under existing grants; (3) imposing civil penalties up to a maximum of \$50,000 on an airport sponsor for violating the AIP sponsor assurance on revenue diversion; and (4) imposing civil penalties of up to three times the amount of airport revenues used in violation of 49 U.S.C. §§ 47107(b) and 47133(a).

State Tax Compliance

Because 3% of the 4% state sales tax was enacted prior to December 30, 1987, that portion of the State sales tax is grandfathered and not subject to airport use restrictions. See 49 U.S.C. §§ 47107 and 47133. Additionally, due to the passage of the Transportation Funding Act of 2015 (H.B. 170), the remaining 1% of state sales tax on jet fuel will be used for airport purposes as required beginning on July 1, 2017. See O.C.G.A. § 48-8-3(33.1)(G) (2015) (“On or after July 1, 2017, revenue derived from the levy of sales and use taxes on jet fuel shall be used

¹ Permissible uses include airport capital and operating costs, and state aviation programs. 49 U.S.C. §§ 47107(b)(1) and 47133(a).

² *Policy and Procedures Concerning the Use of Airport Revenue; Proceeds from Taxes on Aviation Fuel*, Docket No. FAA-2013-0988, 79 Fed. Reg. 66,282 (Nov. 7, 2014).

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for a state aviation program or airport related purposes to the extent required to comply with 49 U.S.C. Sections 47107(b) and 47113.”).

In order to implement the new law, on July 1, 2015 the Georgia Department of Revenue (“DOR”) re-designed their tax forms and re-programmed their Integrated Tax System to accommodate separate reporting requirements for state and local taxes on aviation fuels. These new requirements enabled the DOR to annually track and report on a statewide and county by county basis the amount of state and local tax revenues collected that are subject to the FAA policy. An annual report, based on the state’s fiscal year beginning in July and ending in June, is now being produced by DOR by September 30th of each year, with the first report having been produced in 2016, listing the total annual amount of state sales tax and county by county sales taxes collected on aviation fuels.

This past year, the amount of State taxes collected in FY16 was part of the Georgia Department of Transportation’s (“GDOT”) budget request to the Governor’s Office of Planning and Budget (“OPB”) for the fiscal year budget which began on July 1, 2017. On a go-forward basis, once the state budget is passed by the Georgia General Assembly in approximately late April, GDOT will review the prior year state tax collections against the amount appropriated for funding for the state’s Aviation Program in the upcoming fiscal year. GDOT will annually report the state’s compliance to the FAA, not later than May 30th each year beginning May 30, 2018, by documenting its review of prior year collections against appropriations to the state’s Airport Aid Program.

The above procedures will ensure that state sales taxes will be spent on state airport programs in compliance with federal law.

Local Tax Compliance

With respect to compliance of federally eligible local general aviation airport sponsors (“Airport Sponsor”), by October 15th of each year GDOT’s Aviation Program will provide each such sponsor with the amount of local aviation fuel tax collections reported by the DOR for the preceding fiscal year. This will allow the Airport Sponsor to plan for the allocation of funding in an amount equal to or in excess of the local tax collections in the coming year. By November 30th of each year GDOT will require each Airport Sponsor to provide a certification for the preceding fiscal year of the amount of local funds invested in the airport(s) in the county in which the airport(s) reside. Local funds invested in the airport can include fully documented in-kind services.

The required reporting will include a certification by the Airport Sponsor of the reconciliation of the taxes generated in the preceding year and the amount of funding or in-kind services rendered to the airport in the same year. Supporting documentation such as an annual audit for the airport or local government with the revenue line item noted or the inter-government in-kind services noted. GDOT will request this certification information from the Airport Sponsor on October 1st of each year and it will be due not later than November 30th of

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that year. GDOT will formally report to the FAA (Atlanta Airports District Office) the status of compliance for all general aviation airports. Although the seven Georgia commercial service airports have each submitted their own action plans directly to the FAA, DOR and GDOT have made the same local aviation fuel tax collection information available to the commercial airport sponsors so that they have the information they need to implement their respective action plans for compliance.

The State of Georgia and Georgia airport sponsors have taken these significant actions in order to be compliant by the December 8, 2017 deadline mandated by the FAA. Any question regarding compliance should be directed to Carol Comer, Director, Division of Intermodal, Georgia Department of Transportation.