



# The Florida Senate

*Interim Project Report 2000-49*

*August 1999*

Committee on Fiscal Resource

Senator Jim Horne, Chairman

## **AUTOMATIC REPEAL OF SECTION 206.9825(2), F.S., - PRORATION OF THE AVIATION FUEL TAX**

### **SUMMARY**

Section 206.9825(2), F.S., authorizes certain air carriers that utilize mileage apportionment for corporate income tax purposes to prorate their aviation fuel taxes based on the ratio of Florida mileage to total mileage. Proration of aviation fuel taxes was adopted to benefit airlines based in Florida who buy more fuel in Florida than they use over Florida air space. There are currently fifteen air carriers that prorate their aviation fuel taxes. Subsection (2) of s. 206.9825, F.S., is scheduled to expire effective July 1, 2000. The purpose of this project is to determine whether the proration of aviation fuel taxes should be continued or not. Data obtained from the Department of Revenue and Florida air carriers provided information on the amount of aviation fuel such air carriers purchase in Florida and how much they receive in refunds annually. A table is provided listing six air carriers, estimated gallons of aviation fuel purchased in Florida, and estimated refunds received for a twelve month period.

The 1995 Legislature re-wrote the motor fuel and special fuel tax statutes, to conform to the federal diesel fuel dyed program. All of the motor and special fuel tax provisions found in chapters 206, 212, and 336 were combined into chapter 206. The point of collection for state motor, diesel and aviation fuel and local diesel fuel was changed from the wholesaler, special fuel dealer, importer, or retailer, to the terminal supplier. The changes took effect July 1, 1996. Prior to the changes, aviation fuel could be purchased either tax paid or tax-free, since air carriers could apply for, and receive an aviation fuel dealers license. The majority of air carriers that elected to prorate their aviation fuel taxes, generally purchased aviation fuel tax-free, calculated their tax liability, and paid tax to the Department of Revenue based on such calculation. Since July 1, 1996, all air carriers pay the 6.9 percent regular aviation fuel tax on all purchases at the terminal rack, and receive a refund if the credit for tax paid gallons is greater than the tax due on the apportioned gallons.

### **BACKGROUND**

In 1988, the Florida Legislature passed ch. 88-371, Laws of Florida, which authorized certain air carriers that utilize mileage apportionment for corporate income tax purposes to use the apportionment formula established in s. 212.0598, F.S., for their aviation fuel tax. The basis of the tax is the ratio of Florida mileage to total mileage. Section 206.9825(2), F.S., provides for a tax rate of 8 percent of the retail sales price on aviation fuel used in Florida only, as compared to the regular aviation fuel tax rate of 6.9 percent of all fuel purchased in Florida. However, in no event shall the tax be lower than 4.4 cents per gallon. This provision was adopted to benefit airlines based in Florida who load more fuel in Florida than they utilize in Florida. The proration of aviation fuel tax is set to expire on July 1, 2000. Aviation fuel is also known as "kerosene". Most of the kerosene produced meets standards for jet fuel. Thus, kerosene purchased for home use could also be used as jet fuel.

### **METHODOLOGY**

Information for this project was obtained in a number of ways. First, research of the legislative history of s. 206.9825(2) F.S., was done. Second, data was obtained from the Department of Revenue from the tax returns of Florida air carriers utilizing the proration of the aviation fuel tax to help determine the total gallons of aviation fuel purchased in Florida as well as total refunds. In addition, several of the air carriers utilizing the proration provisions of s. 206.9825(2), F.S., were contacted by telephone to obtain feedback on what would be the effect on their airline of the repeal of the proration of aviation fuel tax.

### **FINDINGS**

According to the Department of Revenue, as a result of changing the point of collection from the wholesaler, special fuel dealer, importer, or retailer level to the terminal supplier, aviation fuel tax collections increased by 14 percent in the first year, net of refunds. The

increase appears to be a direct result of the elimination of the ability for air carriers and others to purchase kerosene (aviation fuel) tax-free. The change eliminated most errors and evasion. The Department of Revenue issues ten to fifteen refunds each month. The cost to administer these refunds is insignificant compared to the increase in aviation fuel tax collections.

As of August, 1999, there were fifty-six active air carrier dealers registered with the Department of Revenue. Of those fifty-six, fifteen prorate their aviation fuel taxes pursuant to s. 206.9825(2), F.S. A telephone sample was taken of forty percent of the air carriers that prorate and the following questions asked:

- C Are you aware that the proration of aviation fuel tax provided for in s. 206.9825(2), F.S., is scheduled to expire on July 1, 2000?
- C How would your airline be impacted by the repeal of the proration of aviation fuel taxes?
- C How many gallons of aviation fuel was purchased in Florida by your airline over a twelve month period?
- C How much did your airline receive in refunds over the same twelve month period?
- C Do you have any other observations to share concerning the repeal of s. 206.9825(2), F.S.?

**Table 1**  
**Aviation Fuel Gallons Purchased in Florida and Refunds Processed for a 12-month Period for Selected Air Carriers**

Air Carrier	Gallons Purchased in Florida	Refunds
Sun Country Airlines *	2.2 million	\$127,000
Spirit Airlines **	20.0 million	900,000
Air Carrier	Gallons Purchased in Florida	Refunds
Gulf Stream International *	5.4 million	221,000

Miami Air International **	2.3 million	120,000
Southeastern Airlines @	2.4 million	132,000
National Jets, Inc. *	0.7 million	37,000

\* Based on actual figures.

\*\* Based on less than 12 months of data. Estimates assume monthly patterns.

@ Southeastern Airlines (formerly Sun Jet International) only in operation for last 2 months. Estimates assume monthly patterns.

Air carriers that prorate aviation fuel taxes travel primarily in Florida. Based on telephone interviews, such air carriers: 1) were unaware that the provisions of s. 206.9825(2), F.S., were scheduled to expire on July 1, 2000; and 2) maximize their fuel purchases in Florida and without proration, they report that they would purchase less fuel in Florida. This would have a negative impact on total state-wide aviation fuel tax collections, as well as on aviation fuel companies domiciled in Florida. In addition, for some of the smaller air carriers, the proration of aviation fuel taxes means the difference between profitability or not. The larger airlines that fly the continental United States do not use proration because their Florida mileage is small compared to their overall mileage, which results in a small apportionment factor, less than the 4.4 percent floor. Such a small apportionment factor does not make it cost effective for the larger airlines to apportion their Florida aviation fuel taxes.

## RECOMMENDATIONS

The proration of aviation fuel taxes as provided for in s. 206.9825(2), F.S., was enacted by the Florida Legislature to benefit airlines based in Florida who load more fuel in Florida than they utilize in Florida. Today, smaller airlines that travel primarily in Florida, whether they are based in Florida or not, purchase most of their aviation fuel in Florida as a direct result of proration. Buy purchasing the majority of their aviation fuel in Florida, such air carriers have a positive impact on the state's economy by increasing state-wide aviation fuel tax collections and by stimulating business for local aviation fuel companies.

In addition, the ability to prorate aviation fuel taxes has enabled some of the small air carriers to remain in business.

Based on the findings of this report, it is the recommendation of the Fiscal Resource Committee that the July 1, 2000 expiration of subsection (2) of s. 206.9825 F.S., be eliminated, and that the

authorization for the proration of aviation fuel taxes be continued indefinitely.

**COMMITTEE(S) INVOLVED IN REPORT** (*Contact first committee for more information.*)

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**MEMBER OVERSIGHT**

Senators Sebesta and Geller