

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce Committee

BILL: CS/SB 286

SPONSOR: Commerce Committee and Senator Fasano

SUBJECT: Tax-Fractional Air Ownership

DATE: February 21, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pugh</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

CS/SB 286 creates an exemption from the state sales and use tax for:

- An aircraft that primarily will be used in a fractional aircraft ownership program;
- Parts or labor used in the completion, maintenance, repair, or overhaul of an aircraft for primary use in a fractional aircraft ownership program; and
- A fractional ownership interest in an aircraft, including amounts paid by the fractional owner as monthly maintenance or management fees.

The term “fractional aircraft ownership program” is defined in the committee substitute.

This committee substitute amends sections 212.02 and 212.08, Florida Statutes.

II. Present Situation:

Aviation-related State Tax Exemptions

Chapter 212, F.S., contains the state’s statutory provisions authorizing the levying and collection of Florida’s 6-percent sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. The statutes currently provide more than 200 exemptions.

A number of sales and use tax exemptions related to aviation exist in s. 212.08, F.S.:

- Aircraft repair and maintenance labor charges – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight.¹

¹ Section 212.08(7)(ee), F.S.

- Equipment used in aircraft repair and maintenance – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight.²
- Aircraft sales and leases – For qualified aircraft and for aircraft of more than 15,000 pounds maximum certified takeoff weight used by a common carrier, as defined by federal regulations.³
- Aircraft that is purchased in Florida, but will not be used or stored in this state, qualifies for either a full or partial sales tax exemption, depending on the circumstances.⁴

“Qualified aircraft” is defined in s. 212.02(33), F.S., as:

- Any aircraft having a maximum certified takeoff weight of less than 10,000 pounds;
- Is equipped with twin turbofan engines that meet Stage IV noise requirements;
- Is used by a business operating as an on-demand air carrier under Federal Aviation Administration Regulation Title 14, chapter I, part 135, Code of Federal Regulations; and
- Is used by a business that owns and operates a fleet of at least 25 such aircraft in Florida.

The sales and use tax exemptions for “qualified aircraft,” commonly referred to as Very Light Jets (VLJs), were enacted in 2006 to encourage DayJet Corporation and similar “air taxi” businesses to locate in Florida.

Fractional Aircraft Ownership Programs

With “fractional aircraft ownership,” individuals or entities purchase an undivided interest in a specific, serial-numbered aircraft, and are guaranteed availability of the plane (or a similar one) within a time-frame specified by contract. Typically, fractional aircraft ownership contracts also require fractional owners to pay management fees for the operation, upkeep, and storage of the planes.

NetJets, based in New Jersey, is generally acknowledged by the industry as the first fractional ownership operation.⁵ It began in 1986 with the creation of a program that offered aircraft owners increased flexibility in the ownership and operation of aircraft, and provided for the management of the aircraft by an aircraft management company. The aircraft owners participating in the program agreed not only to share their own aircraft with others having a shared interest in that aircraft, but also to lease their aircraft to other owners in the program (called a “dry lease exchange”). The aircraft owners used a common management company to provide aviation management services including maintenance of the aircraft, pilot training and assignment, and administration of the leasing of the aircraft among the owners.

During the 1990's, the growth of fractional aircraft ownership programs was substantial in terms of size, numbers, and complexity of operations and issues. In 2001, the Federal Aviation Administration (FAA) adopted new rules on fractional aircraft ownership.⁶ The new rules

² Section 212.08(7)(rr), F.S.

³ Section 212.08(7)(ss), F.S.

⁴ Section 212.08(11), F.S.

⁵ Montgomery Research Institute's CFO Project website. Article at: www.cfoproject.com/documents.asp?d_ID=2143.

⁶ Title 14, Chapter I, Part 91, Subpart K, Code of Federal Regulations (CFR).

established that an aircraft's fractional owners and the aircraft management company share the responsibility for aircraft operations and passenger safety. The new rules also established ownership definitions and clarified certain administrative requirements for fractional aircraft ownership. For example, the rules define "fractional ownership interest" as equal to, or greater than, 1/16th of a subsonic, fixed-winged, or powered-lift program aircraft; for a helicopter, the ownership interest can be as small as 1/32nd.⁷

Fractional aircraft ownership continues to grow in popularity. According to the General Aviation Manufacturers Association, fractional aircraft programs comprised almost 14 percent of the business jets purchased worldwide in 2006.⁸ The number of aircraft operating in fractional programs increased from 949 in 2005 to 984 in 2006 (a 3.7-percent increase) and the number of entities and individuals involved in fractional ownership rose to 4,903 in 2006 (a 4.5-percent increase over 2005 figures).⁹ Similarly, the FAA's Aerospace Forecast for Fiscal Years 2006-2017 noted that flights by fractional aircraft are outpacing the rest of the aviation industry, up nearly 3 percent in the first nine months of 2006 over the same time period in 2005.¹⁰

Florida has one fractional aircraft ownership program: Avantair, which relocated from New Jersey to Clearwater, Florida last year. But some of the airplanes typically used in fractional aircraft ownership programs fall between the current 10,000-pound and the 15,000-pound certified takeoff weight thresholds, so Avantair and other fractional companies that have expressed interest in moving to Florida are ineligible for the tax exemptions.

III. Effect of Proposed Changes:

Section 1. Creates s. 212.02(34), F.S., adding "fractional aircraft ownership program" to the list of definitions for terms used in ch. 212, F.S.

"Fractional aircraft ownership program" is defined as a program that meets the requirements set forth in FAA regulation Title 14, chapter I, part 91, subpart K, C.F.R. According to s. 911.1001(5), C.F.R.:

(5) A fractional ownership program or program means any system of aircraft ownership and exchange that consists of all of the following elements:

(i) The provision for fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners.

(ii) Two or more airworthy aircraft.

(iii) One or more fractional owners per program aircraft, with at least one program aircraft having more than one owner.

(iv) Possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner.

(v) A dry-lease aircraft exchange arrangement among all of the fractional owners.

⁷ Title 14, Chapter I, Part 91, Subpart K, Section 91.1001(b)(10), CFR.

⁸ General Aviation Manufacturers Association annual report at: <http://www.gama.aero/events/air/dloads/2007GAMAAnnualIndustryReview.pdf>.

⁹ Ibid.

¹⁰ Federal Aviation Administration. Report at: http://www.faa.gov/data_statistics/aviation/aerospace_forecasts/2006-2017/.

(vi) Multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

Section 2. Creates s. 212.08(19), F.S., related to an exemption from the state's sales and use tax.

The new provision exempts from the 6-percent tax the sale and use of:

- An aircraft that will be primarily used in a fractional aircraft ownership program;
- Parts or labor used in the completion, maintenance, repair, or overhaul of an aircraft for primary use in a fractional aircraft ownership program; and
- A fractional aircraft ownership interest, including amounts paid by the fractional owner as monthly maintenance or management fees.

Section 3. Provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Impact Estimating Conference has met twice in February 2007 to consider CS/SB 286's fiscal impact, but has not settled on a consensus. It plans to reevaluate the committee substitute after reviewing the amendment adopted in the Commerce Committee.

The most recent state Department of Revenue (DOR) fiscal estimates a cash loss to General Revenue ranging from zero to \$103.7 million in fiscal year 2007-2008.

B. Private Sector Impact:

Companies interested in offering fractional aircraft ownership programs in Florida, and individuals or entities wishing to purchase interests in these aircraft, will benefit from not having to pay certain sales taxes related to their purchases and operations.

C. Government Sector Impact:

DOR may incur indeterminate expenses administering the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
