

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/SB 220

INTRODUCER: Finance and Tax Committee and Senator Fasano

SUBJECT: Sales and Use Tax/Aircraft Temporarily in State

DATE: April 13, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	<b>Favorable</b>
2.	ODonnell	McKee	FT	<b>Fav/CS</b>
3.			WPSC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

SB 220 creates paragraph 212.07(ggg), Florida Statutes, to provide two new tax exemptions for aircraft owned by nonresidents.

A use tax exemption is provided for aircraft that was sold in this state free of sales tax to a non-resident when the plane returns to Florida for fewer than 21 total days within 6 months after the date of purchase. The aircraft owner may demonstrate that it has met the requirements of the exemption by producing specified documentation.

An use tax exemption is created for aircraft owned by a non-resident when it is used in Florida exclusively for the purpose of flight training, repairs, alterations, refitting, or modification. The owner must be able to prove entitlement to the exemption by producing written documentation issued by in-state vendors or suppliers that identifies the aircraft. There are no time limitations associated with this exemption.

These exemptions are not mutually exclusive and are in addition to the existing exemptions provided by paragraph 212.05(1)(a), F.S.

The Revenue Estimating Conference met on March 12, 2010, and determined that the bill would have an insignificant fiscal impact on state and local revenue.

SB 220 amends s. 212.08(7) of the Florida Statutes.

## II. Present Situation:

Chapter 212, F.S., contains the state's statutory provisions authorizing levy and collection of Florida's 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 different exemptions.

Section 212.05(1)(a)1., F.S., imposes a 6 percent sales tax on tangible personal property sold in Florida, including aircraft. Section 212.05(1)(b), F.S., imposes a 6 percent use tax on tangible personal property used, consumed, distributed, or stored for use or consumption in Florida. Section 212.06, F.S., imposes a 6 percent use tax on tangible personal property imported or caused to be imported into Florida for use, consumption, distribution, or storage.<sup>1</sup>

### Sales & Use Tax – Exemption when Purchased

Purchase of an aircraft can be exempt from state and local sales and use taxes when:

- The purchaser is a nonresident of Florida, and
- The aircraft leaves Florida within 10 days of its purchase, or within 20 days after the completion of repairs or alterations.<sup>2</sup>

In order to qualify for the exemption, a nonresident purchaser is required to provide DOR with documentation identifying the aircraft, including registration of the aircraft outside of Florida, receipts for fuel, tie-downs, or hangaring outside of Florida, a sales invoice and an affidavit attesting that the purchaser has read the pertinent section of Florida law. Any purchaser who fails to remove the aircraft within 10 days of purchase or 20 days after repairs, returns to Florida within 6 months after the date of departure, or does not submit correct information to DOR is liable for payment of a use tax on the cost of the aircraft and a mandatory penalty equal to the tax payable. Any purchaser who submits fraudulent information to avoid tax liability is liable for payment of the tax due, a mandatory penalty of 200 percent of the tax, and a fine of up to \$5,000 and/or imprisonment for up to 5 years.

### Sales & Use Tax – Exemption for Repairs

There is an allowance for an aircraft purchased in this state on which no tax has been paid to re-enter Florida for repairs within 6 months from the date of its departure.<sup>3</sup> The aircraft may enter the state without incurring tax liability so long as the aircraft is removed within 20 days of completion of repairs. This is proven by receipts for fuel, tie-downs, or hangar charges issued by out-of-state vendors or suppliers, or similar documentation.

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<sup>1</sup> Section 212.06(8)(a), F.S.

<sup>2</sup> Section 212.05(1)(a)2., F.S.

<sup>3</sup> Id.

### Use Tax – Exemption for Aircraft Used Outside of Florida

It is presumed that tangible property (such as aircraft) used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being brought into Florida was not purchased for use in Florida.<sup>4</sup> Thus, such an aircraft would not be subject to Florida's use tax.

Further, aircraft exported under its own power out of the continental U.S. is not subject to Florida use tax. The purchaser must provide a validated U.S. customs declaration and the canceled U.S. registry of the aircraft.<sup>5</sup> This exemption also applies to parts and equipment installed on aircraft of foreign registry.

### Sales & Use Tax – Other Aviation Exemptions:

Several other aviation-related exemptions have been enacted by the Legislature. Some exemptions are based on the type of aircraft, while others are based on whether, or for how long, the aircraft stays in Florida. Currently exempt from sales and use taxes are:

- Aircraft modification service charges – Including parts and equipment furnished or installed, these charges are exempt if performed under authority of a supplemental-type certificate issued by the Federal Aviation Administration.<sup>6</sup>
- Aircraft repair and maintenance labor charges – For qualified aircraft,<sup>7</sup> for aircraft of more than 15,000 pounds maximum certified takeoff weight, and for rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight.<sup>8</sup>
- Equipment, parts, and replacement engines used in aircraft repair and maintenance – For qualified aircraft, for aircraft of more than 15,000 pounds maximum certified takeoff weight, and for rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight.<sup>9</sup>
- 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.<sup>10</sup>

### Partial Exemption:

- Section 212.08(11), F.S., provides that the sales tax imposed on a flyable aircraft manufacturer is equal to the amount of sales tax that would be imposed by the state where the aircraft will be domiciled, up to the 6 percent imposed by Florida. This partial exemption applies only if the purchaser is either: a resident of another state who will not use the aircraft in Florida; a purchaser who is a resident of another state and uses the aircraft in interstate or foreign commerce; or if the purchaser is a resident of a foreign country.

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<sup>4</sup> Section 212.06(8)(a), F.S.

<sup>5</sup> Section 212.06(5)(a), F.S.

<sup>6</sup> Section 212.08(5)(i), F.S.

<sup>7</sup> "Qualified aircraft" are certain aircraft of less than 10,000 pounds maximum certified takeoff weight. Section 212.02(33), F.S. To be eligible for the exemptions under s. 212.08(7), F.S., qualified aircraft purchasers or lessees must also comply with s. 212.0801, F.S., requiring participating in university flight training or research programs.

<sup>8</sup> Section 212.08(7)(ee), F.S.; Charges for parts and equipment furnished in connection with such labor charges are taxable, except as otherwise exempt.

<sup>9</sup> Section 212.08(7)(rr), F.S.

<sup>10</sup> Section 212.08(7)(ss), F.S.

### III. Effect of Proposed Changes:

Section 1 amends s. 212.08, F.S., by adding paragraph (7)(ggg), and creating two tax exemptions for aircraft used in Florida. To be eligible for the first exemption, the aircraft:

- Must be owned by a non-resident; and
- May only stay in Florida for fewer than 21 days during the 6-month period from the date of purchase.

The removal from this state may be shown by the production of invoices for fuel, tie-downs, or hangar charges issued by out-of-state vendors or suppliers, or by similar documentation that clearly and specifically identifies the aircraft.

To be eligible for the second exemption, the aircraft:

- Must be owned by a non-resident; and
- Must be used exclusively for the following:
  - Flight training
  - Repairs
  - Alterations
  - Refitting
  - Modification.

The permitted usage of the aircraft in Florida must be supported by written documentation issued by in-state vendors or suppliers identifying the aircraft. The aircraft is not required to leave the state within a specified period of time.

The new exemptions are in addition to existing the aircraft-related exemption provisions in s. 212.05(1)(a), F.S. Under s. 212.05(1)(a), F.S., the purchaser of an aircraft that is removed from Florida either within 10 days of purchase, or within 20 days of repairs, is not liable for use tax on an aircraft so long as the aircraft does not reenter Florida within 6 months after the date of purchase.

Section 2 provides an effective date of July 1, 2010.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Article VII, s. 18 Subsection (b) of the Florida Constitution, prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.88 million for FY 2010/11), are exempt.

The Revenue Estimating Conference estimated that this bill will have an insignificant total fiscal impact annually. Consequently, it appears that the bill is exempt from the mandates restriction due to its insignificant fiscal impact.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference met on March 12, 2010, and determined that the bill would have an insignificant fiscal impact.

**B. Private Sector Impact:**

Non-resident airplane owners will be able to obtain flight training, repairs, alterations, refitting, or modification in this state within six months of purchasing an aircraft in this state which may provide for increased business activity in Florida. Non-resident airplane owners may be more likely to visit Florida for events such as Lakeland's week-long "Sun 'n Fun Fly-In" if they could temporarily bring aircraft into the state within six months of its tax-free purchase.

**C. Government Sector Impact:**

DOR may incur indeterminate expenses administering the program, including rulemaking and the issuance of a Tax Information Publication.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Finance and Tax Committee on April 13, 2010:**

Section 212.05(1)(a)2.f.(VIII), F.S., is amended to eliminate a mandatory penalty for failure to provide documentation necessary to support an exemption requiring removal of an airplane after a tax free Florida sale and to further amend the provision to remove an allowance for an aircraft to return for repairs within 6 months of removal from this state.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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