

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 858

INTRODUCER: Commerce Committee and Senator Altman

SUBJECT: Sales Tax/Fractional Aircraft

DATE: April 12, 2010

REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

SB 858 creates an exemption from the state sales and use tax for:

- Aircraft that primarily will be used in a fractional aircraft ownership program; and
- Parts or labor used in the completion, maintenance, repair, or overhaul of an aircraft for primary use in a fractional aircraft ownership program.

The bill creates a new section (s. 212.0597, F.S.) to cap the amount of state and local taxes levied by ch. 212, F.S., including any discretionary sales surtaxes, to \$300 on the sale or use of a fractional aircraft ownership interest. The maximum tax applies to the total purchase price of the fractional ownership interest, including monthly management or maintenance fees, when sold by or to the program manager or transferred upon the manager’s approval. A definition of “fractional aircraft ownership program” is added to s. 212.02, F.S., that requires a program to include a minimum of 25 aircraft to qualify for the exemptions created by the bill.

The Revenue Estimating Conference determined that the bill has an negative insignificant recurring revenue impact on the General Revenue Fund and on Local Option revenue and negative revenue cash impacts on the General Revenue Fund as follows: \$300,000 in FY 2010-2011; \$200,000 in FY 2011-12; and \$100,000 in FY 2012-13.

SB 858 amends sections 212.02 and 212.08, F.S.

SB 858 creates section 212.0597, F.S..

II. Present Situation:

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying 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.¹

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.²

The nonresident purchaser, in order to qualify for the exemption, is required to provide the Department of Revenue (DOR) with certain documentation that identifies the aircraft, including registration of the aircraft outside of Florida, receipts for fuel, tie-downs, or hangaring from outside of Florida, the sales invoice, and affidavit that the purchaser has read this section. 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, must pay the 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 subject to 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 that an exempted aircraft may re-enter Florida for repairs within 6 months from the date of its departure.³ The aircraft may enter the state without being in violation of the law and incurring liability for taxes so long as the aircraft is removed within 20 days of completion of repairs. Again, this must be proven with receipts for fuel, tie-downs, or hangar charges issued by out-of-state vendors or suppliers, or similar documentation.

¹ Section 212.06(8)(a), F.S.

² Section 212.05(1)(a)2., F.S.

³ 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.⁴ 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.⁵ 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 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.⁶
- Aircraft repair and maintenance labor charges – For qualified aircraft,⁷ 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.⁸
- 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.⁹
- 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.¹⁰

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.

⁴ Section 212.06(8)(a), F.S.

⁵ Section 212.06(5)(a), F.S.

⁶ Section 212.08(5)(i), F.S.

⁷ "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.

⁸ 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.

⁹ Section 212.08(7)(rr), F.S.

¹⁰ Section 212.08(7)(ss), F.S.

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 aircraft (or a similar one) within a time-frame specified by contract. Typically, fractional aircraft ownership contracts also require fractional owners to pay management or maintenance fees for the operation, upkeep, and storage of the aircraft.

NetJets, based in New Jersey, is generally acknowledged by the industry as the first fractional ownership operation.¹¹ 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 (dry lease exchange program). 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.”¹²

Because of the substantial growth of this industry in the 1990’s, the Federal Aviation Administration (FAA) adopted rules on fractional aircraft ownership operations in 2001.¹³ The rules establish ownership definitions and set forth certain requirements for fractional aircraft ownership and program operation. For example, the rules define “minimum 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.¹⁴

The National Business Aviation Association, Inc., lists 64 fractional ownership programs available in the U.S.¹⁵ In its annual report the General Aviation Manufacturers Association states that for the first time the number of worldwide fractional share owners fell from 5,179 to 4,881, and the number of aircraft operating in fractional programs decreased 5.2 percent to 1,037 in response.¹⁶ The FAA reports in its “Aerospace Forecast for Fiscal Years 2009-2025” that fractional ownership aircraft fly about 800 hours annually compared to approximately 350 hours for all business jets¹⁷ in all applications. In 2008, the FAA report predicted that because of factors such as U.S. airport delays and the advancements being made in very light jets (VJLs),¹⁸ the business/corporate side of aviation was likely to increase its use of fractional aircraft

¹¹ Information at http://www.netjets.com/about_netjets/history.asp (last visited 3/23/2010).

¹² Fractional Aircraft Ownership Background and Rulemaking, at <http://www.nbaa.org/admin/options/fractional/> (last visited 3/23/2010).

¹³ Title 14, Chapter I, Part 91, Subpart K, Code of Federal Regulations (CFR).

¹⁴ 14 CFR s. 91.1001(b)(10).

¹⁵ Search for “Fractional Share Providers,” at <http://data.nbaa.org/prodsvcs/directory/search.cfm> (last visited 3/23/2010).

¹⁶ General Aviation Manufacturers Association 2009 General Aviation Statistical Databook & Industry Outlook, Page 7 (data from NETJET.com), at <http://www.gama.aero/publications> (last visited 3/23/2010).

¹⁷ The business jet industry groups the jets into five loosely-defined “classes”: Heavy, Super Mid-size, Mid-size, Light, and Very Light.

¹⁸ Generally, VLJs are small jet aircraft approved for single-pilot operation, seating 4-8 people, with a maximum certified takeoff weight under 10,000 pounds.

ownership programs or the like. However, the FAA has revised the prediction in its current report due to the economic downturn.¹⁹

According to Florida's Revenue Estimating Conference in 2008, there were approximately 385 Florida owners of fractional airplane interests in 2006.

Currently, Florida sales tax exemptions are available for aircraft of a certain takeoff weight. There is a gap for aircraft between 10,000-pounds and 15,000-pounds certified takeoff weight. Several of the types of planes typically used in fractional aircraft ownership programs fall between these thresholds; thus some aircraft used in fractional operations are ineligible for certain current Florida tax exemptions.

III. Effect of Proposed Changes:

Section 1 creates s. 212.02(34), F.S., to define "fractional aircraft ownership program" for purposes of ch. 212, F.S. "Fractional aircraft ownership program" means a program that meets the FAA requirements of fractional ownership operations set forth at 14 C.F.R. part 91, subpart K. Additionally, the program manager must own or lease a minimum of 25 aircraft, which are also used in the program, to fall within the definition.

The FAA rules define "fractional ownership program" in 14 CFR, s. 91.1001(b)(5), as "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.
- (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 amends s. 212.08, F.S., to create a new tax exemption for fractional aircraft ownership programs. This is designated as new paragraph (7)(ggg).

The exemption applies to:

- Aircraft primarily used in a fractional aircraft ownership program; and
- Any parts or labor used in the completion, maintenance, repair, or overhaul of an aircraft primarily used in a fractional aircraft ownership program.

¹⁹ Federal Aviation Administration, Aerospace Forecast for Fiscal Years 2009-2025, at http://www.faa.gov/data_research/aviation/aerospace_forecasts/2009-2025/ (last visited 3/24/2010).

In order to obtain the exemption, the program manager must furnish the dealer with a DOR formatted certificate stating that:

- The lease, purchase, repair, or maintenance is for an aircraft primarily used in a fractional aircraft ownership program; and
- The program manager qualifies for the exemption.

This certificate may be left on file with the dealer if the program manager transacts tax-exempt business with the dealer on a continual basis. It is up to the program manager to notify the dealer if the manager no longer qualifies for the certificate.

Section 3 creates s. 212.0597, F.S., to establish a maximum tax of \$300 for state and local taxes levied under ch. 212, F.S., including any discretionary sales surtaxes, on the sale or use of a fractional aircraft ownership interest pursuant to a fractional aircraft ownership program. The tax cap applies to the total consideration paid for the fractional ownership interest, including amounts for monthly management or maintenance fees. It applies when the fractional ownership interest is sold by or to the program manager or transferred upon the manager's approval.

Section 4 provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of the provision 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 2010-2011), are exempt.

The Revenue Estimating Conference determined that the bill will have an insignificant fiscal impact on local governments. Consequently, the bill may be 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 determined that the bill has an negative insignificant recurring revenue impact on the General Revenue Fund and on Local Option revenue and negative revenue cash impacts on the General Revenue Fund as follows: \$300,000 in FY 2010-2011; \$200,000 in FY 2011-12; and \$100,000 in FY 2012-13.

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 state sales taxes related to their purchases and operations.

C. Government Sector Impact:

DOR has indicated that the provisions of the bill will have an insignificant impact on their operations.

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.)

Committee Substitute by Commerce on April 7, 2010:

The CS conforms the Senate bill to the House companion bill by:

- Clarifying that the Fractional aircraft ownership program must include a minimum of 25 aircraft owned or leased by the program manager and used in the program. This aligns the bill with the federal definition of fractional aircraft ownership program.
- Replacing the terms “purchaser” and “lessee” with “program manager.” This aligns the bill with the federal definition of fractional aircraft ownership program.
- Replacing the term “operator” with “program manager.” This aligns the bill with the federal definition of fractional aircraft ownership program.

B. Amendments:

None.