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 Commerce Committee

BILL: CS/SB 618

INTRODUCER: Commerce Committee and Senator Altman

SUBJECT: Fractional Aircraft

DATE: March 25, 2009 REVISED:

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [X] Statement of Substantial Changes
B. AMENDMENTS........................ [ ] Technical amendments were recommended
[ ] Amendments were recommended
[ ] Significant amendments were recommended

I. Summary:

CS/SB 618 creates an exemption from the state sales and use tax for:

- An 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.

CS/SB 618 creates a new section (s. 212.0597, F.S.) to cap the amount of state and local taxes levied under 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 operator of the fractional ownership program or transferred upon the operator’s approval.

A definition of “fractional aircraft ownership program” is added to s. 212.02, F.S.

CS/SB 618 amends sections 212.02 and 212.08, Florida Statutes, and creates section 212.0597, Florida Statutes.

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.

Aviation exemptions from Florida sales tax:
Section 212.05(1)(a)1., F.S., imposes a 6 percent sales tax on tangible personal property sold in Florida, including aircraft. However, several 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.[1]
- Aircraft repair and maintenance labor charges – For qualified aircraft defined in s. 212.02(33), F.S.,[2] 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.[3]
- 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.[4]
- 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.[5]
- 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.[6]
- Aircraft exported under its own power out of the continental U.S. – Purchaser must provide a validated U.S. customs declaration and the canceled U.S. registry of the aircraft.[7]
- Aircraft purchased by a nonresident of Florida – Purchaser must leave Florida within 10 days of purchase of the aircraft, or within 20 days after the completion of repairs or alterations, and cannot return to the state within 6 months after the date of departure; an

[1] Section 212.08(5)(i), F.S.
[2] "Qualified aircraft" are certain aircraft of less than 10,000 pounds maximum certified takeoff weight. Section 212.02(33), F.S.
[3] 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.
[4] Section 212.08(7)(rr), F.S.
[5] Section 212.08(7)(ss), F.S.
[6] Section 212.06(5)(a), F.S.
[7] Section 212.06(5)(a), F.S.

exempted aircraft may re-enter Florida for repairs within 6 months from the date of its departure so long as the aircraft is removed within 20 days of completion of repairs.[8]

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.

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.[9] 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."[10]

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.[11] 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.[12]

Fractional aircraft ownership continues to grow in popularity. The National Business Aviation Association, Inc., lists 70 fractional ownership programs available in the U.S.[13] In its annual report the General Aviation Manufacturers Association states that the number of aircraft operating in fractional programs grew 6.2 percent to 1,094 in 2008, with about 5,179 total

[8] Section 212.05(1)(a), F.S.

[9] Information at http://www.netjets.com/about_netjets/history.asp (last visited 2/26/2009).

[10] Fractional Aircraft Ownership Background and Rulemaking, at http://www.nbaa.org/admin/options/fractional/ (last visited 2/26/2009).

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

[12] 14 CFR s. 91.1001(b)(10).

[13] Search for "Fractional Share Providers", at http://data.nbaa.org/prodsvcs/directory/search.cfm (last visited 2/26/2009).

fractional share owners.[14] The Federal Aviation Administration (FAA) reports in its "Aerospace Forecast for Fiscal Years 2008-2025" that fractional ownership aircraft fly about 1,200 hours annually compared to approximately 350 hours for all business jets[15] in all applications. The FAA report states that because of factors such as U.S. airport delays and the advancements being made in very light jets (VJLs),[16] the business/corporate side of aviation will likely increase its use of fractional aircraft ownership programs or the like.[17]

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

Currently in the Florida sales tax exemptions available for aircraft of a certain takeoff weight, there is a gap such that aircraft between 10,000-pound and 15,000-pound certified takeoff weight thresholds are not specifically exempt. 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., as a definition of "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 business or affiliated group providing the fractional ownership program 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."

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[14] General Aviation Manufacturers Association Annual Industry Review and Market Outlook 2008, Page 5 (data from NETJETS.com), at http://www.gama.aero/publications (last visited 2/26/2009).
[15] The business jet industry groups the jets into five loosely-defined "classes": Heavy, Super Mid-size, Mid-size, Light, and Very Light.
[16] 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.
[17] Federal Aviation Administration, Aerospace Forecast for Fiscal Years 2008-2025, at http://www.faa.gov/data_statistics/aviation/aerospace_forecasts/2008-2025/ (last visited 2/27/2009).

Section 2 amends s. 212.08, F.S., to create a new exemption to state and local sales and use taxes 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.

In order to apply the exemption, the purchaser or lessee must furnish the dealer with a DOR formatted certificate which states that:

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

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

Section 3 creates s. 212.0597, F.S., to set 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, and only when sold by or to the operator of the fractional ownership program or transferred upon the operator’s approval.

Section 4 provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article 18, Section VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

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 ten cents (which is $1.88 million for FY 2009/10), are exempt.

The Revenue Estimating Conference estimated that this bill will have a $200,000 negative fiscal impact on local governments in FY 09-10, and $200,000 annual recurring negative fiscal impact. Consequently, it 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 February 13, 2009, and made the following assessment of the impact of this sales tax exemption period:[18]

	FY 2009-2010	**FY 2010-2011**	**FY 2011-2012**	**FY 2012-2013**
General Revenue	(.6)	(.7)	(.8)	(.9)
State Trust	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
Total State Impact	(.6)	(.7)	(.8)	(.9)

	FY 2009-2010	**FY 2010-2011**	**FY 2011-2012**	**FY 2012-2013**
Revenue Sharing	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
Local Gov't Half Cent	(.1)	(.1)	(.1)	(.1)
Local Option	(.1)	(.1)	(.1)	(.1)
Total Local Impact	(.2)	(.2)	(.2)	(.2)

	FY 2009-2010	**FY 2010-2011**	**FY 2011-2012**	**FY 2012-2013**
Total Impact	(.8)	(.9)	(1.0)	(1.1)

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.

[18] The Revenue Estimating Conference impact was based solely on existing Florida owners.

C. Government Sector Impact:

DOR stated in its Fiscal Impact Analysis (January 26, 2009) that it would incur a non-recurring expense of at least $1,033 to create and send a Tax Information Publication to approximately 2,051 aircraft dealers to advise them of the sales tax exemption. DOR would also need to engage in rulemaking to administer this new exemption.

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.)

Commerce Committee on March 25, 2009:
The CS provides specific authority for the department to adopt rules to administer the exemption.

B. Amendments:

None.

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