

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 711 Aircraft Taxes

**SPONSOR(S):** Overdorf

**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	22 Y, 1 N	Berg	Aldridge
2) Commerce Committee			

**SUMMARY ANALYSIS**

Florida generally levies a 6 percent sales and use tax on the sale or rental of tangible personal property. Counties are also authorized to levy local discretionary sales surtaxes in addition to the state sales tax.

Currently, Florida provides an exemption from sales and use tax for aircraft purchased by a common carrier or purchased by a non-resident individual who plans to remove the aircraft from the state after purchase.

The Revenue Estimating Conference estimated the impact of the bill on General Revenue in FY 2023-24 would be -\$15.3 million cash; -\$16.7 million recurring, with a negative insignificant impact on state trust funds and an impact on local government revenues of -\$4.1 million cash; -\$4.5 million recurring.

The bill limits the total sales and use tax collected on the sale of any aircraft to \$18,000.

The bill has an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Florida Sales Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,<sup>1</sup> admissions,<sup>2</sup> transient rentals,<sup>3</sup> and a limited number of services. Chapter 212, F.S., contains provisions authorizing the 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. Sales and use tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>4</sup>

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.<sup>5</sup> A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202."<sup>6</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 1.5 percent.<sup>7</sup>

Generally, tangible personal property that is sold in an isolated or occasional sale is exempt from the state sales and use tax.<sup>8</sup> A seller makes an isolated or occasional sale if the sale or series of sales occurs no more than twice during any 12-month period.<sup>9</sup> A seller is required to register as a dealer if he or she completes more than three sales of the same type of item during a 12-month period.<sup>10</sup> The sale of mobile homes, aircraft, boats, and motor vehicles are expressly excluded from the isolated or occasional state sales and use tax exemption.<sup>11</sup>

##### Florida Taxation of Aircraft

Aircraft purchased through a local dealer or broker are taxed as tangible personal property that are subject to a 6 percent sales tax at the time of the sale.<sup>12</sup> A discretionary local sales tax on up to the first \$5,000 of the purchase price may also be added to the tax.<sup>13</sup>

An aircraft that is sold by a nonregistered dealer or an aircraft that is purchased in another state and brought into Florida for storage or use is subject to Florida's 6 percent use tax.<sup>14</sup>

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

<sup>2</sup> Section 212.04(1)(b), F.S.

<sup>3</sup> Section 212.03(1)(a), F.S.

<sup>4</sup> Section 212.07(2), F.S.

<sup>5</sup> Section 212.055, F.S.

<sup>6</sup> Section 212.054(2)(a), F.S.

<sup>7</sup> Fla. Dep't of Revenue, *Form DR-15DSS, Discretionary Sales Surtax Information for Calendar Year 2023*, (rev. 11/22), available at [https://floridarevenue.com/Forms\\_library/current/dr15dss.pdf](https://floridarevenue.com/Forms_library/current/dr15dss.pdf) (last visited April 5, 2023).

<sup>8</sup> Rule 12A-1.037(1), F.A.C.

<sup>9</sup> Rule 12A-1.037(3)(b), F.A.C.

<sup>10</sup> Id.

<sup>11</sup> See, s. 212.05(1)(a)1.b., and Rule 12A-1.037(2)(a)1., F.A.C.

<sup>12</sup> Section 212.05(1), F.S.

<sup>13</sup> Fla. Dep't of Revenue, *Form GT-800008, Sales and Use Tax Aircraft Information for Owners and Purchasers* (rev. Sept., 2020), available at [https://floridarevenue.com/Forms\\_library/current/gt800008.pdf](https://floridarevenue.com/Forms_library/current/gt800008.pdf) (last visited April 5, 2023). See also, Fla. Dep't of Revenue, *Sales and Use Tax Return for Aircraft- Form DR-15AIR* (rev. Jan. 2016), available at [https://floridarevenue.com/Forms\\_library/current/dr15air.pdf](https://floridarevenue.com/Forms_library/current/dr15air.pdf) (last visited April 5, 2023).

<sup>14</sup> Section 212.05(1)(a), F.S.

## Aircraft Sales and Use Tax Exemptions

### ***Common Carrier Exemptions—Sales and Lease Tax***

Aircraft operated by a common carrier that either have a maximum certified takeoff weight of more than 15,000 pounds, and those deemed “qualified aircraft” are exempt from Florida’s sales and use tax.<sup>15</sup> A “qualified aircraft” is any aircraft that has a maximum certified takeoff weight of less than 10,000 pounds and that is equipped with twin turbofan engines that meet Stage IV noise requirements that is used by a business that operates as an on-demand air carrier, which owns or leases a fleet of 25 or more aircraft in Florida.<sup>16</sup> In order to qualify for this sales and lease tax exemption, the qualified aircraft must be offered for use in a Florida university’s flight training and research program.<sup>17</sup> Aircraft with a 15,000 pound maximum certified takeoff weight are exempt from sales tax.<sup>18</sup>

### ***Common Carrier Exemption- Tax on Repair and Maintenance***

Labor charges for the repair and maintenance of qualified aircraft and aircraft that weigh more than 2,000 pounds maximum certified takeoff weight are exempt from tax under ch. 212, F.S.<sup>19</sup> Similarly, replacement engines, parts, and equipment used to repair or maintain these aircraft are exempt from the tax imposed under ch. 212, F.S. if the repair occurs in Florida.<sup>20</sup>

To receive the repair and maintenance exemptions for a qualified aircraft, a purchaser or lessee must offer, in writing, to participate in a flight training and research program with at least two Florida Universities that offer graduate programs in aeronautical or aerospace engineering and that offer flight training through a school of aeronautics or college of aviation.<sup>21</sup>

### ***Fly-Away Exemption***

If a nonresident purchases an aircraft in Florida and plans to remove the aircraft from the state, the purchase is exempt from sales tax pursuant to an exemption commonly referred to as the “fly-away exemption.”<sup>22</sup> However, the nonresident purchaser must remove the aircraft from Florida within 10 days of its purchase.<sup>23</sup> Additionally, the aircraft cannot return to Florida for a total of more than 21 days during the 6-month period after its date of purchase or otherwise appropriate departure from the state.<sup>24</sup>

The nonresident purchaser must provide the Department of Revenue with proof of transport of the aircraft out of state and its registration (or application for registration) in a state other than Florida.<sup>25</sup>

### ***Aircraft Repair and Maintenance***

Labor charges and specific equipment used for the repair and maintenance of qualified aircraft and aircraft of more than 2,000 pounds maximum certified takeoff weight, including rotary wing aircraft, are exempt from the tax imposed under ch. 212, F.S.<sup>26</sup>

Additionally, nonresident purchasers of aircraft in Florida are exempt from Florida use tax for the duration of the aircraft’s placement in a Florida registered repair facility for the purpose of repairs, alterations, refitting, or modification.<sup>27</sup> However, the nonresident aircraft must be removed from Florida within 20 days of completion of the repairs to maintain this exemption.<sup>28</sup>

## Boat Sales and Use Tax Exemption

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<sup>15</sup> Section 212.08(7)(ss), F.S.

<sup>16</sup> Section 212.02 (33), F.S.

<sup>17</sup> Section 212.0801, F.S.

<sup>18</sup> Section 212.08(7)(ss), F.S.

<sup>19</sup> Section 212.08(7)(ee), F.S.

<sup>20</sup> Section 212.08(7)(rr), F.S.

<sup>21</sup> Section 212.0801, F.S.

<sup>22</sup> Sections 212.08(7)(fff)1. and 212.05(1)(a)2., F.S.

<sup>23</sup> Section 212.05(2)(a), F.S.

<sup>24</sup> Section 212.08(7)(fff)1., F.S.

<sup>25</sup> See, e.g., Rule 12A-1.007(10), F.A.C.

<sup>26</sup> Section 212.08(7)(ee), F.S.

<sup>27</sup> Section 212.08(7)(fff)2., F.S.

<sup>28</sup> Section 212.05(2)(f), F.S.

Prior to 2010, the sale of boats in Florida were generally taxable unless the boat was purchased by a non-resident and was removed from the state within 90 days of purchase or within 20 days of repair or alteration.<sup>29</sup> In 2010, the Legislature enacted a provision that capped the amount of tax imposed on the sale or use of a boat at \$18,000.<sup>30</sup>

### **Effect of Proposed Changes**

The bill limits the total sales tax that can be collected on the sale of any aircraft to \$18,000. It does not modify or otherwise affect any other existing exemptions.

The bill is effective July 1, 2023.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 212.05(5), F.S., to limit the tax on aircraft to \$18,000.

**Section 2:** Provides an effective date of July 1, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The Revenue Estimating Conference estimated the impact of the bill on General Revenue in FY 2023-24 would be -\$15.3 million cash; -\$16.7 million recurring, with a negative insignificant impact on state trust funds.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

The Revenue Estimating Conference estimated the impact of the bill on local government revenues in FY 2023-24 would be -\$4.1 million cash; -\$4.5 million recurring.

##### **2. Expenditures:**

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may increase sales of aircraft in the state.

#### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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<sup>29</sup> Senate Bill Analysis for PCS/SB 1752 (2010), available at [https://www.flsenate.gov/Session/Bill/2010/1752/Analyses/20101752SWPSC\\_2010s1752.wpsc.pdf](https://www.flsenate.gov/Session/Bill/2010/1752/Analyses/20101752SWPSC_2010s1752.wpsc.pdf) (last visited April 11, 2023), Engrossed bill language available at <https://www.flsenate.gov/Session/Bill/2010/1752/BillText/e1/PDF> (last visited April 11, 2023).

<sup>30</sup> Section 7, Chapter 2010-147, L.O.F.

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue requested emergency rulemaking authority to implement the exemption created by the bill beginning July 1, 2023.<sup>31</sup>

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

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<sup>31</sup> Department of Revenue, Agency Bill Analysis for HB 711, dated 2/21/2023.  
**STORAGE NAME:** h0711a.WMC  
**DATE:** 4/12/2023