HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 445 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Altman and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Economic Development		McAuliffe	Croom
2) Economic Expansion & Infrastructure Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 445 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 as a program that:

- Is provided by a business or affiliated group that has at least 25 turbojet or turboprop aircraft, regardless of the maximum certified takeoff weight of the aircraft;
- Provides significant management services;
- Requires one or more fractional owners per aircraft, with at least one aircraft having more than one owner having at least a one-sixteenth interest;
- Has a dry-lease intercharge arrangements in effect among the owners; and
- Has multiyear program arrangements in effect for all of the above components of the fractional aircraft ownership program.

The Revenue Impact Estimating Conference estimated the bill will have an annual negative revenue impact on the General Revenue Fund of approximately $2.4 million and an annual negative revenue impact of $500,000 on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes – The bill creates an exemption from the state sales and use tax for aircraft, parts and labor, and ownership interest related to fractional aircraft ownership programs.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Aviation-related State Tax Exemptions

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's six-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]
- 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.

To be eligible to receive the exemption for sales and use tax, the purchaser or lessee of a qualified aircraft must offer to participate in a flight training and research program with two or more universities which offer graduate programs in aeronautical or aerospace engineering and offer flight training through a school of aeronautics or college of aviation.[5]

Fractional Aircraft Ownership Programs

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[1] Section 212.08(7)(ee), F.S.
[2] Section 212.08(7)(rr), F.S.
[3] Section 212.08(7)(ss), F.S.
[4] Section 212.08(11), F.S.
[5] Section 212.0801, F.S.

In a "fractional aircraft ownership program" 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. [6] 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 1990s, 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. [7] The new rules 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. [8]

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. [9] 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). [10] 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. [11]

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.

Effects of Proposed Changes

HB 445 creates a 100 percent 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.

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[6] Montgomery Research Institute's CFO Project website. Available online at: www.cfoproject.com/documents.asp?d_ID=2143.
[7] Title 14, Chapter I, Part 91, Subpart K, Code of Federal Regulations (CFR).
[8] Title 14, Chapter I, Part 91, Subpart K, Section 91.1001(b)(10), CFR.
[9] General Aviation Manufacturers Association annual report; available online at: http://www.gama.aero/events/air/dloads/2007GAMAAnnualIndustryReview.pdf.
[10] Ibid.
[11] Federal Aviation Administration. Report available online at: http://www.faa.gov/data_statistics/aviation/aerospace_forecasts/2006-2017/.

The term "fractional aircraft ownership program" is defined as a program that:

- Is provided by a business or affiliated group that has at least 25 turbojet or turboprop aircraft, regardless of the maximum certified takeoff weight of the aircraft;
- Provides significant management services;
- Requires one or more fractional owners per aircraft, with at least one aircraft having more than one owner having at least a one-sixteenth interest;
- Has a dry-lease intercharge arrangements in effect among the owners; and
- Has multiyear program arrangements in effect for all of the above components of the fractional aircraft ownership program.

To be eligible to receive the exemption for sales and use tax, the purchaser or lessee of the fractional aircraft must offer to participate in a flight training and research program with two or more universities which offer graduate programs in aeronautical or aerospace engineering and offer flight training through a school of aeronautics or college of aviation.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S., to exempt aircraft, parts and labor, and ownership interest in a fractional ownership program from sales and use taxes, and defines a fractional ownership program.

Section 2: Amends s. 212.0801, F.S., to require participation in a flight training and research program with two or more universities.

Section 3: Provides the act will take effect July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Impact Estimating Conference estimated the bill will have the following impact on state revenues:

	FY 07-08	FY 08-09	FY 09-10
General Revenue	($2.2M)	($2.5M)	($3.4M)
Trust Funds	Insignificant	Insignificant	Insignificant

2. Expenditures:

The Department of Revenue may incur expenses administering the program; however the department should be able to absorb these costs with current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

According to the Revenue Impact Estimating Conference, the bill will have an estimated negative fiscal impact on local government revenues of $500,000 per year.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill has a fiscal impact on local governments; however, an exemption applies because the fiscal impact is insignificant.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Revenue, the definition of a "fractional aircraft ownership program" should be clarified.

D. STATEMENT OF THE SPONSOR

The fiscal impact should be zero or even have a positive fiscal impact.

Without this tax exemption it is likely existing fractional aircraft companies will leave Florida and new ones will not move into the State. Under present law existing companies can legally avoid the tax by holding newly purchased aircraft out of the State for a period of six months. If we lose these companies we will lose the tax benefit of having the fastest growing sector of the aircraft industry as a part of our economy.

The impact conference analysis recognizes that the negative fiscal impact "is assuming the planes are initially domiciled (in Florida) in the first 6 months. If legal tax avoidance is 100%, the current revenue impact could be zero." It does not seem reasonable to assume that everyone would voluntarily pay taxes that they can legally avoid.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES