

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 380
INTRODUCER: Commerce Committee and Senator Fasano
SUBJECT: Tax on Sales, Use & Other Transactions
DATE: February 19, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Fav/CS
2.			FT	
3.			GA	
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:

Committee Substitute for Senate Bill 380 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 380 also caps at \$300 the amount of state sales taxes and discretionary sales surtaxes levied under ch. 212, F.S., that can be assessed on the sale or use of a fractional aircraft ownership interest, defined as the total purchase price of the interest including monthly management or maintenance fees.

A definition for “fractional aircraft ownership program” also is included in the committee substitute.

CS/SB 380 amends sections 212.02 and 212.08, Florida Statutes, and creates section 212.0597, Florida Statutes.

II. Present Situation:

Aviation-related State Tax Exemptions

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's 6-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. Several aviation-related exemptions have been enacted by the Legislature over the years.

Currently exempt from sales and use taxes are:

- Aircraft repair and maintenance labor charges – For qualified aircraft, 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.¹
- Equipment 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.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 purchased in Florida, but which will not be used or stored in this state. Such aircraft may receive 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 that:

- Has 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 the 2006 Regular Session to encourage DayJet Corporation and similar “air taxi” businesses to locate in Florida.

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 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.

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.

NetJets, based in New Jersey, is generally acknowledged by the industry as the first fractional ownership operation.⁵ 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 1990's, 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.⁶ 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.⁷

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 2006.⁸ 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).⁹ 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 9 months of 2006 over the same time period in 2005.¹⁰ The FAA's 2007-2020 report did not specify specific growth estimates for fractional aircraft, but indicated that general aviation activity is expected to grow by 3.8 percent a year, compared to an average of 3.3 percent annually for commercial service, because of the popularity of fractional aircraft and the new microjets.¹¹

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

⁵ Information at http://www.netjets.com/about_netjets/history. Last visited Feb. 4, 2008.

⁶ Title 14, Chapter I, Part 91, Subpart K, Code of Federal Regulations (CFR).

⁷ Title 14, Chapter I, Part 91, Subpart K, Section 91.1001(b)(10), CFR.

⁸ General Aviation Manufacturers Association Annual Industry Review and Market Outlook 2007. Found at: <http://www.gama.aero/events/air/dloads/2007GAMAAnnualIndustryReview.pdf>. Page 13. Last visited Feb. 7, 2008.

⁹ Ibid.

¹⁰ Federal Aviation Administration. Report at: http://www.faa.gov/data_statistics/aviation/aerospace_forecasts/2006-2017/. Page 20. Last visited Feb. 6, 2008.

¹¹ Federal Aviation Administration. Report at: http://www.faa.gov/data_statistics/aviation/aerospace_forecasts/2007-2020/. Page 44. Last visited Feb. 6, 2008.

Several of the types of planes typically used in fractional aircraft ownership programs fall between the current 10,000-pound and the 15,000-pound certified takeoff weight thresholds, so some fractional companies are ineligible for the current Florida tax exemptions.

III. Effect of Proposed Changes:

Section 1 creates s. 212.02(34), F.S., adding “fractional aircraft ownership program” to the list of definitions for terms used in ch. 212, F.S. The term is defined as a program meeting the requirements set forth in FAA regulation Title 14, chapter I, part 91, subpart K, Code of Federal Regulations (C.F.R.), except that it must include a minimum fleet of 25 aircraft owned or leased by the business or affiliated group, as defined by the IRS tax code, and which are for primary use in the program.

Pursuant to 14 CFR, s. 91.1001(5):

- (5) A fractional ownership program or program means 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 add a new exemption from the state’s 6-percent sales and use tax for fractional aircraft. Exempt will be:

- An aircraft that will be primarily 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 new provision also establishes paperwork and certification requirements for purchasers or lessees of fractional aircraft interests, to be kept on file with dealers, in order to receive the tax exemption.

Section 3 creates s. 212.0597, F.S., to set a maximum tax of \$300 on the sale or use of a fractional ownership interest in a fractional aircraft ownership program. Included in the tax cap are discretionary sales surtaxes such as a county’s local-option sales tax.

The \$300 cap applies to the total consideration paid for the ownership interest, including monthly management and maintenance fees. The tax cap applies only when a fractional ownership interest is sold by, or sold to, the operator of the fractional ownership program, or when the fractional ownership interest can be transferred only upon approval by the program operator.

Section 4 provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

On Jan. 18, 2008, the Revenue Estimating Conference estimated that passage of SB 380 will have a \$500,000 negative fiscal impact on cash in the state's General Revenue Fund in FY 08-09. The fiscal impact in FY 09-10 has been estimated at a \$1 million loss in state general revenue and in FY 10-11 at a \$1.1 million loss.

Local governments are expected to experience insignificant losses in revenue-sharing and local sales tax revenues in FY 08-09, according to the Revenue Estimating Conference, and an estimated \$200,000 annual loss in local revenues in outer years.

The amendment adopted in the Commerce Committee on Feb. 19 does not alter the Revenue Estimating Conference's fiscal impact analysis.

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:

The Florida Department of Revenue (DOR) may incur indeterminate expenses administering the program, including rulemaking.

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.)

The differences between the original SB 380 and the committee substitute are technical and clarifying in nature. Specifically, CS/SB 380:

- Specifies that a fractional aircraft business or affiliated group must be defined as by the Internal Revenue Service;
- Specifies in the program definition and in the sales tax exemption provision that the exemption applies only to those planes, aircraft parts, and repairs and maintenance of planes whose primary use is in fractional aircraft ownership program.
- Clarifies that the \$300 cap on sales and use taxes assessed against fractional aircraft ownership interests includes discretionary sales surtaxes.
- Replaced one reference to “exclusive use” with “primary use” for internal consistency.

B. Amendments:

Not applicable.