

**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 2376

INTRODUCER: Commerce Committee and Senator Altman

SUBJECT: Aircraft and Boats

DATE: April 6, 2009

REVISED: \_\_\_\_\_

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

CS/SB 2376 is titled the “Aviation and Maritime Full Employment Act.”

It creates a \$25,000 cap on the amount of sales and use tax that may be levied against each sale of an aircraft or boat in Florida.

This CS amends s. 212.05, 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), F.S.

Section 212.05(1)(a)1., F.S., imposes a 6 percent sales tax on tangible personal property sold in Florida, including aircraft and boats. However, s. 212.05(1)(a)2., F.S., provides an exemption

from state and local sales taxes, on the sale of an aircraft or boat by a registered dealer<sup>1</sup> to a purchaser who is:

- A nonresident of Florida who is not engaged in Florida in carrying on any employment, trade, business, or profession that the aircraft or boat will be used;
- A corporation with no officers or directors who are residents of Florida; or
- A noncorporate entity that has no individual vested with authority to participate in the management, direction, or control of the entity's affairs that is a resident of Florida.

An aircraft or a nonqualifying boat must leave Florida within 10 days of its purchase, or within 20 days after the completion of repairs or alterations. A qualifying boat must leave the state within the same time periods, unless the nonresident purchaser receives a decal from the registered dealer which allows the qualifying boat to remain for 90 days after the date of purchase.<sup>2</sup>

The nonresident purchaser, in order to qualify for the exemption, is required to provide DOR with written proof, within 30 days of the date of departure, that the aircraft or boat was licensed, registered, titled, or documented outside of the state, or that the purchaser has applied for such documentation. Within 10 days of removing the aircraft or boat from Florida, the nonresident purchaser must provide DOR with certain documentation that identifies the aircraft or boat, including receipts for fuel, dockage, slippage, tie-downs, or hangaring from outside of Florida. Within 5 days of the date of sale, the registered dealer must provide DOR with a copy of the sales invoice and affidavit that the purchaser has read this section.

Any purchaser who fails to remove the aircraft or boat within the proper time period, 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 or boat 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.

However, there is an allowance that an exempted aircraft may re-enter Florida for repairs within 6 months from the date of its departure. 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.

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.<sup>3</sup>

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<sup>1</sup> Section 212.18, F.S.

<sup>2</sup> A “qualified boat” is a boat of 5 net tones of admeasurement or larger.

<sup>3</sup> Section 212.08(5)(i), F.S.

- Aircraft repair and maintenance labor charges – For qualified aircraft defined in s. 212.02(33), F.S.,<sup>4</sup> 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.<sup>5</sup>
- 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.<sup>6</sup>
- 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.<sup>7</sup>
- 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.<sup>8</sup>
- 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.<sup>9</sup>
- Sales of aircraft to veterans – Any amount paid directly to the dealer by the Veterans Administration, pursuant to 38 U.S.C. s. 3902(a), is not taxable. Any portion of the purchase price paid by the veteran to the dealer directly is taxable.

Partial aircraft 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.

Other boat exemptions:

Currently exempt from sales and use taxes are:

- Boats temporarily docked in Florida – A boat will remain exempt if it enters and remains in the state for a total of 20 days or less in a calendar year, calculated by the dates of dockage or slippage at a registered facility in the state. This time can be tolled once if repairs, alterations, refitting, or modifications are made at a repair facility that is given physical care, custody, and control of the boat; it may only be tolled again in a calendar year upon approval by DOR. This does not apply to mere storage of a boat at a repair facility.<sup>10</sup>

<sup>4</sup> “Qualified aircraft” are certain aircraft of less than 10,000 pounds maximum certified takeoff weight. Section 212.02(33), F.S.

<sup>5</sup> 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.

<sup>6</sup> Section 212.08(7)(rr), F.S.

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

<sup>8</sup> Section 212.06(5)(a), F.S.

<sup>9</sup> Section 212.06(5)(a), F.S.

<sup>10</sup> Section 212.08(7)(t), F.S.

- Boats used outside of Florida – It is presumed that tangible property (such as boats) 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.<sup>11</sup>
- Sales of boats to veterans – Any amount paid directly to the dealer by the Veterans Administration, pursuant to 38 U.S.C. s. 3902(a), is not taxable. Any portion of the purchase price paid by the veteran to the dealer directly is taxable.

### III. Effect of Proposed Changes:

Section 1 states that this act may be cited as the “Aviation and Maritime Full Employment Act.”

Section 2 creates s. 212.05(5), F.S., to create a \$25,000 cap on the amount of sales and use tax that may be levied against each sale of an aircraft or boat in Florida.

Section 3 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 tax cap will have a \$900,000 negative fiscal impact on local governments in FY 2009-10, and \$1.1 million 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.

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<sup>11</sup> Section 212.06(8), F.S. This applies unless the boat is used for noncommercial saltwater fishing, pursuant to s. 379.354(7), F.S. The amount of sales tax applied depends on the length of time that has passed since the purchase date of the boat.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference met on March 27, 2009, and made the following assessment of the impact of this sales tax exemption period:<sup>12</sup>

	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013
<b>General Revenue</b>	(7.4)	(8.4)	(8.8)	(9.1)
<b>State Trust</b>	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
<b>Total State Impact</b>	(7.4)	(8.4)	(8.8)	(9.1)

	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013
<b>Revenue Sharing</b>	(.2)	(.3)	(.3)	(.3)
<b>Local Gov't Half Cent</b>	(.7)	(.8)	(.8)	(.9)
<b>Local Option</b>	0	0	0	0
<b>Total Local Impact</b>	(.9)	(1.1)	(1.1)	(1.2)

	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013
<b>Total Impact</b>	(8.3)	(9.5)	(9.9)	(10.3)

B. Private Sector Impact:

Certain individuals will pay less in sales and use tax: individuals who purchase a boat or aircraft in Florida subject to sales and use tax greater than \$25,000, and the purchase does not meet any of the exemptions of ch. 212, F.S.

C. Government Sector Impact:

DOR may incur insignificant expenses administering the program, including rulemaking and the issuance of a Tax Information Publication.

VI. Technical Deficiencies:

None.

<sup>12</sup> The Revenue Estimating Conference impact estimate states “while it is expected that the reduced tax will lead to increased taxable purchases of aircraft and boats in Florida, that effect cannot be quantified.”

**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.)

**CS by the Commerce Committee on April 6, 2009:**

This CS amends the bill by transferring the proposed sales and use tax cap to a new section created in s. 212.05, F.S.

- B. **Amendments:**

None.

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

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