

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 Finance and Tax Committee

BILL: SB 300

INTRODUCER: Senator Wise

SUBJECT: Use Tax Exemption/Aircraft Temporarily in State

DATE: April 7, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Favorable
2.	ODonnell	McKee	FT	Favorable
3.			WPSC	
4.				
5.				
6.				

I. Summary:

SB 300 creates two exemptions from the tax imposed by Chapter 212, F.S., for the specified use of aircraft in this state by nonresident owners.

An aircraft that enters and remains in Florida for fewer than 21 days during the 6 month period after being purchased is exempt from use tax when the aircraft is owned by a nonresident. The aircraft owner may be required to prove to the Florida Department of Revenue (DOR) that the plane was temporarily used in Florida consistent with the exemption by providing documentation.

An exemption is created for aircraft owned by a nonresident that enters or remains in Florida exclusively for the purpose of flight training, repairs, or alterations. The nonresident owner must support the exemption with written documentation issued by in-state vendors or suppliers that identifies the aircraft. There are no time limitations stated for this exemption. It is in addition to the existing aircraft tax exemption provisions found in s. 212.05(1)(a), F.S., that requires removal of an aircraft from the state within a specified time, as well as to the other new exemption provided by the bill.

The Revenue Estimating Conference met on March 6, 2009, and determined that the bill would have an insignificant fiscal impact.

SB 300 amends s. 212.08(7) of the Florida Statutes.

II. Present Situation:

Chapter 212, F.S., contains the state's statutory 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. 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. However, s. 212.05(1)(a)2., F.S., provides an exemption from state and local sales taxes, in part, for the purchase of an aircraft by a nonresident of Florida if the aircraft leaves Florida within 10 days from the date of its purchase, or within 20 days after the completion of any repairs or alterations. In order to qualify for the exemption, the nonresident is required to provide DOR with certain documentation that identifies the aircraft, including registration of the aircraft outside of Florida, receipts for fuel, tie-downs, or hangaring from outside of Florida, the sales invoice, and an affidavit that the purchaser has read this section. Any purchaser who fails to remove the aircraft within 10 days of purchase or 20 days after repairs, returns to Florida within 6 months after the date of departure, or does not submit correct information to DOR, is liable for use tax on the cost of the aircraft and a mandatory penalty equal to the tax otherwise due. 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.

Generally, aircraft purchased in this state that has been exported without paying sales tax may re-enter Florida for repairs within 6 months from the date of departure. The aircraft may enter the state without being in violation of the law or incurring liability for taxes so long as the aircraft is removed within 20 days of completion of repairs. Proof by way of receipts for fuel, tie-downs, or hangar charges issued by out-of-state vendors or suppliers, etc., may be required.

Other aviation exemptions:

Several other aviation-related exemptions have been enacted by the Legislature. 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

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.

- 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

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.

III. Effect of Proposed Changes:

Section 1 amends s. 212.08, F.S., to create two tax exemptions for certain aircraft owned by nonresidents. They are placed in new paragraph (7)(ggg).

To be eligible for the first exemption, the aircraft:

- Must be owned by a non-resident; and
- Must enter and stay in Florida for fewer than 21 days during the 6-month period following the date of purchase.

The first exemption provides that the temporary use of the aircraft in Florida, and its subsequent removal from the state, may be proven by invoices for fuel, tie-downs, or hangar charges issued by out-of-state vendors or suppliers, or by similar documentation that clearly and specifically identifies the aircraft.

To be eligible for the second exemption, the aircraft:

- Must be owned by a non-resident; and
- Must enter or stay in Florida exclusively for the purpose of any of the following:
 - Flight training
 - Repairs

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.

- Alterations
- Refitting
- Modification.

The second exemption provides that the temporary use of the aircraft in Florida for one of the exclusive purposes must be supported by written documentation issued by in-state vendors or suppliers that identifies the aircraft. Unlike the exemption in s. 212.05(1)(a), F.S., the aircraft is not required to leave the state within a specified time period so long as it is used exclusively for an authorized purposes.⁸

The two subsections are not mutually exclusive and are in addition to the existing exemption described in s. 212.05(1)(a), F.S., described above.

Section 2 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 an insignificant total fiscal impact annually. Consequently, it is exempt from the mandates restriction due to its insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

⁸ Section 212.05(1)(a), F.S., provides that an aircraft purchased in the state must depart the state within 20 days of any repairs or alterations; it also provides that an aircraft may reenter the state for repairs without incurring tax liability if, following such repairs, the aircraft departs from the state within 20 days.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference met on March 6, 2009, and determined that the bill would have an insignificant fiscal impact.

B. Private Sector Impact:

Pilots who land their aircraft to refuel in Florida before continuing a long journey, or who attend events such as Lakeland's week-long "Sun 'n Fun Fly-In" each year, likely will benefit from the certainty that the sales tax exemption will exempt them from possible liability for use tax depending on the when the aircraft was purchased. Further, non-resident pilots will be able to bring their aircraft for flight training and other permitted activities in Florida.

C. Government Sector Impact:

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

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.)

None.

B. Amendments:

None.