

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 469 Tax on Sales, Use, and Other Transactions

**SPONSOR(S):** Economic Development Policy Committee, Grady and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 2376

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Economic Development Policy Committee	18 Y, 2 N, As CS	West	Kruse
2)	Economic Development & Community Affairs Policy Council		West	Tinker
3)	Finance & Tax Council			
4)				
5)				

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**SUMMARY ANALYSIS**

The tax rate at sale for aircraft and boats in Florida is 6% of the purchase price of the aircraft or boat. The bill provides that the maximum amount of tax collected on each individual sale of an aircraft or boat may not exceed \$25,000. The \$25,000 cap applies only to sales between individuals and does not apply to aircraft or boat purchases from an agent, broker, or dealer.

The 2009 Revenue Estimating Conference estimated a cash impact of \$7.4 million and a recurring impact of \$8.1 million on state revenues and a cash impact of \$0.9 million and a recurring impact of \$1.1 million on local revenues.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The tax rate at sale for aircraft and boats in Florida is 6% of the purchase price of the aircraft or boat. Exemptions apply to certain sales.

##### **Aircraft**

###### Purchases

Section 212.05, F.S., provides exemptions from the sales and use tax on the purchase of an aircraft if the purchaser removes the aircraft from the state within 10 days after the date of purchase, or when the aircraft is repaired or altered, within 20 days after completion of the repairs or alterations. A purchaser must provide proof to the Department of Revenue (DOR) that the aircraft has been removed from the state within 10 days of purchase to maintain their tax exempt status.

If a purchaser fails to remove the aircraft within 10 days of purchase, fails to remove the aircraft within 20 days of repair, returns to Florida within six months after purchase, or does not submit correct information to the DOR, the purchaser must pay the use tax on the cost of the aircraft and a penalty equal to the tax payable. The 100 percent penalty cannot be waived by DOR. 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 imprisonment for up to five years.

###### Importation

Section 212.06, F.S., provides that a use tax shall apply and be due on tangible personal property imported or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that, it shall be presumed that tangible personal property used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state.

###### Exports

Section 212.06(5)(a)1., F.S., provides that aircraft exported outside of the continental U.S. is tax exempt when the purchaser provides a validated U.S. customs declaration and the cancelled U.S. registry of the aircraft.

### Dealers

Section 212.08(11), F.S., provides that the sales tax imposed on an aircraft dealer is equal to the amount of sales tax that would be imposed by the state where the aircraft will be domiciled, up to the six percent imposed by Florida. This partial exemption applies only if the purchaser is 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.

### Miscellaneous 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;
- 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;
- 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; and

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.

### Boats

#### Purchases

Section 212.05, F.S., provides exemptions from the sales and use tax on the purchase of a boat by a non-resident from a registered dealer in the state so long as:

- A boat larger than 5 net tons with a proper decal (qualifying boat) is removed from the state within 90 days of purchase;
- A boat less than 5 net tons without a proper decal (non-qualifying boat) is removed from the state within 10 days of purchase; or
- A boat that is repaired or altered is removed from the state within 20 days of repair or alteration.

A boat purchaser is liable for use tax on the “cost price” of the boat and a penalty equal to the tax payable to the Department of Revenue (DOR) if they do not comply with all of the provisions of s. 212.05, F.S. This penalty shall be in lieu of the penalty imposed by s. 212.12(2), F.S., and is mandatory and cannot be waived by DOR. The use tax and penalty will be assessed on purchasers that:

- Do not remove a qualifying boat from this state within 90 days after purchase or a non-qualifying boat from this state within 10 days after purchase or, when the boat is repaired or altered, within 20 days after completion of such repairs or alterations;
- Permit the boat to return to this state within 6 months from the date of departure; or
- Fail to furnish the department with any of the required documentation within the prescribed time period.

### Importation

Section 212.06, F.S., provides that a use tax shall apply and be due on tangible personal property imported or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that, it shall be presumed that tangible personal

property used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state.

### Exports

Section 212.06(5)(a)1., F.S., provides that boats constructed in Florida for the purpose of being exported outside of the continental U.S. are tax exempt.

To avoid paying use tax on boat purchases in Florida, purchasers must register their vessel out of state and keep that vessel outside of Florida for 180 days.

### **Effects of Proposed Changes**

The bill amends s. 212.05(1)(a), F.S., to provide that the maximum amount of tax collected on each individual sale of an aircraft or boat may not exceed \$25,000. The \$25,000 cap on sales tax applies only to sales between individuals and does not apply to aircraft or boats sold by dealers, brokers, or agents.

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

**Section 1:** Creates a title for this act, the "Aviation and Maritime Full Employment Act."

**Section 2:** Amends s. 212.05(1)(a), F.S., to provide that the maximum amount of tax collected on each individual sale of an aircraft or boat may not exceed \$25,000.

**Section 3:** Provides an effective date of July 1, 2009.

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

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

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

The 2009 Revenue Estimating Conference estimated a cash impact of \$7.4 million and a recurring impact of \$8.1 million on state revenues.

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

None.

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

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

The 2009 Revenue Estimating Conference estimated a cash impact of \$0.9 million and a recurring impact of \$1.1 million on local revenues.

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

None.

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

Capping the tax due at purchase of aircraft and boats to \$25,000 may generate increased aircraft and boat purchases from individuals in Florida. Purchases from agents, brokers, and dealers will still be taxed at 6% of the purchase price of the aircraft or boat so it is unclear if Florida-based businesses that sell aircraft or boats will be affected. The impact on the private sector is indeterminate.

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

None.

### **III. COMMENTS**

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

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

The mandates provision appears to apply because the bill reduces the authority that municipalities or counties have to raise revenue. The Revenue Estimating Conference determined that the bill would have a negative fiscal impact of \$1.1 million annually to local governments. However, an exemption applies to the mandates provision when the impact is insignificant. The fiscal impact to local governments in this bill does not meet or exceed the \$1.9 million threshold. Therefore, the bill's impact to local governments is insignificant and the exemption applies in this case.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Department of Revenue (DOR) raised concerns during their analysis of the bill that the proposed language to limit the sales tax due on purchases of an aircraft or boat from an individual does not require the purchaser to affirm that the aircraft or boat is purchased from an individual or the amount paid. DOR noted that the sponsor may wish to require purchasers issue affidavits affirming the sales price of the aircraft or boat and that the purchase is from an individual who is not an agent, broker, or dealer.

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

On March 25, 2009, the Economic Development Policy Committee reported the bill favorably with a strike-all amendment. The amendment moved the maximum sales tax provision to the correct provision of law in s. 212.05, F.S.