HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 173 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Economic Development Policy Committee, Poppell and others
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	9 Y, 0 N, As CS	Tecler	Kruse
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill provides that any aircraft owned by a nonresident is exempt from the use tax under chapter 212, F.S., if it enters and remains in this state for less than a total of 21 days during the 6-month period after the date of purchase, or if the aircraft enters and remains in the state exclusively for the purpose of flight training, repairs, alterations, refitting, or modification. The bill also removes the mandatory penalty for failing to comply with chapter 212, F.S.

The Revenue Estimating Conference found that the bill's provisions will have an insignificant fiscal impact on state and local government 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

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 of Aircraft
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 of Aircraft
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.

Aircraft Manufacturers
Section 212.08(11), F.S., provides that the sales tax imposed on an aircraft sold by a 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 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

- An 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.

Effect of Proposed Changes

The bill provides that aircraft owned by non-residents that enter and remain in the state for less than 21 days during the six-month period after the date of purchase are exempt from the use tax imposed under chapter 212. The bill removes the mandatory 100 percent penalty that the Department of Revenue (DOR) must impose, thus DOR may elect not to impose penalties. The use and removal of aircraft from the state must be proven with documentation such as invoices for fuel or hangars, repairs, or other similar documentation issued by Florida-based vendors or suppliers which clearly identify the aircraft owned by the non-resident.

The use tax exemption also applies to aircraft owned by non-residents that enter the state exclusively for the purpose of flight training, repairs, alterations, refitting, or modification. These exempt activities must be proven with written documentation issued by Florida-based vendors or suppliers which clearly identify the aircraft owned by the non-resident.

The bill provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1. Amends paragraph (a) of subsection (1), s. 212.05, F.S. to eliminate the mandatory 100 percent penalty for failing to comply with chapter 212, F.S. Further, the bill removes the provision allowing an aircraft to be in the state for repairs during the 6-month period after its date of departure.

Section 2. Paragraph (ggg) is added to subsection (7) of s. 212.08, F.S., to provide that an aircraft owned by a non-resident of Florida is exempt from the use tax imposed under s. 212, F.S., if the aircraft enters and remains in Florida for less than a total of 21 days during the six-month period after the purchase date or if the aircraft enters the state exclusively for the purpose of training, repairs, alterations, refitting, or modification.

Section 3. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference found that the bill's provisions relating to aircraft in the state for fewer than 21 days and in the state for training would have an insignificant fiscal impact on state revenues.

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference found that the bill's provisions relating to aircraft in the state for fewer than 21 days and in the state for training would have an insignificant fiscal impact on local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This legislation has the potential to positively impact the private sector by reducing the potential use tax liability incurred by nonresidents on aircraft temporarily in the state. Anecdotal evidence indicates that aircraft owners that are not Florida residents have avoided bringing their aircraft into the state because of potential use tax liabilities. The provisions of this legislation may increase tourism and visitors to the state due to private aircraft entering the state for conventions, sporting events, vacations, and other similar activities.

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 reduces the authority that counties or municipalities have to raise revenues in the aggregate; however, an exemption applies because the Revenue Estimating Conference estimated that this bill will have an insignificant fiscal impact on local governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue (DOR) expressed concern over the effective date of July 1, 2010, in their analysis of this bill. DOR stated that the effective date does not provide enough time to implement the provisions of the bill. Implementation logistics include notification to taxpayers, computer programming, form development, and other similar activities. DOR suggested an effective date of July 1, 2011. Further, DOR requested rulemaking authority to amend rule 12A-1.007, F.A.C., relating to the taxation of aircraft.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Economic Development Policy Committee adopted a Proposed Committee Substitute to HB 173. The Proposed Committee Substitute removed the 3 percent tax rate on aircraft sales and made minor changes to the syntax of paragraph (ggg). The bill was reported favorably as a committee substitute.