

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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: CS/SB 722

INTRODUCER: Finance and Tax Committee and Senator Flores

SUBJECT: Aviation

DATE: April 14, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Price	Eichin	TR	Favorable
2. Fornier	Diez-Arguelles	FT	Fav/CS
3. Gusky	Miller	ATD	Pre-meeting
4.		AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 722 reduces the excise tax rate imposed on aviation fuel, kerosene, and aviation gasoline, effective July 1, 2017, from 6.9 cents to 5.4 cents per gallon.

Effective July 1, 2017, the bill:

- Repeals the existing credit or refund of the current 6.9 cents per gallon excise tax paid for aviation fuel delivered by a licensed wholesaler or terminal supplier to an air carrier that offers transcontinental jet service and increases the air carrier's Florida workforce by more than 1,000 percent and by 250 or more full-time equivalent (FTE) positions since January 1, 1996; and
- Creates a credit or refund of the 5.4 cents per gallon excise tax paid by the wholesaler or supplier for aviation fuel that is delivered to any of the three air carriers that has the greatest growth during a state fiscal year, beginning July 1, 2015. The bill provides factors that must be used when determining which carrier or carriers qualify for the credit or refund, as follows:
 - The number of new jobs created in this state which are at or above this state's average prevailing wage.
 - Total capital investment in this state.
 - The number of new routes established to or from this state.
 - The number of ticket sales to or from this state.

The bill requires the Department of Economic Opportunity (DEO) to conduct a study of intrastate air service and flight training and education, which must be submitted in a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 13, 2015. The study must also compare and analyze incentives provided to the commercial airline industry in this and other states.

While certain provisions of this bill have been scored by the Revenue Estimating Conference, this bill has not been scored by the conference.

The bill provides an effective date of July 1, 2015, with the exception of the aviation fuel tax provisions, which have an effective date of July 1, 2017.

II. Present Situation:

Section 206.9825(1)(a), F.S., generally imposes an excise tax of 6.9 cents per gallon on every gallon of aviation fuel, kerosene, and aviation gasoline sold or brought into this state for use.¹ State taxes are imposed on net gallons when aviation fuel is:

- Removed from the terminal at the rack.
- Imported into Florida by means other than the bulk transfer system (e.g., pipelines and vessels) or by means of the bulk transfer system, and the importer of record is not licensed as a terminal supplier or importer.
- Sold to an unlicensed person unless there was a prior taxable removal, entry, or sale of the fuel.²

Section 206.9825(1)(b), F.S., authorizes any licensed³ wholesaler or terminal supplier that delivers aviation fuel to an air carrier offering transcontinental jet service and increases its Florida workforce by more than 1,000 percent, and by 250 or more full-time equivalent employee positions after January 1, 1996, to receive a credit or refund of the 6.9 cents per gallon tax. If the number of full-time equivalent employees created or added to the air carrier's Florida workforce falls below 250 before July 1, 2001, the exemption taken by credit or refund does not apply during the period in which the carrier has fewer than the 250 additional employees.⁴ This credit or refund results in certain air carriers being able to buy aviation fuel tax free.

This credit or refund was first authorized in 1996⁵ and expired by its terms on July 1, 2001. Following the events of September 11, the Legislature re-enacted the exemption but did not include a sunset provision.⁶ Because the current language is tied to job creation for the five years after January 1, 1996, an air carrier that actually has been reducing its workforce since then could qualify for a refund because it employed more workers than it did before January 1, 1996, in

¹ Certain exemptions are authorized for kerosene used for home heating or cooking purposes. See subsection (2)(b),(c), and (d); and subsections (4) and (5) of s. 206.9825, F.S. Aviation fuel purchased by the United States is also exempt from the tax under s. 206.9875, F.S.

² See Florida Department of Revenue website available at <http://dor.myflorida.com/dor/taxes/fuel/> (last visited Feb. 21, 2015) See also ss. 206.87(2) and 206.872, F.S.

³ Commercial air carriers must obtain an aviation fuel tax license and comply with reporting requirements under s. 206.9865, F.S.

⁴ This exemption does not apply to aviation gasoline. See s. 206.9825(3), F.S.

⁵ Chapter 1996-323, s. 21, Laws of Fla.

⁶ Chapter 2002-218, s. 10, Laws of Fla.

numbers still sufficient to meet the thresholds. The Florida Department of Revenue (FDOR) provided the following information relating to entities receiving the credit or refund:

Sales of Aviation Fuel to Commercial Air Carriers⁷
July 2013 – June 2014

Air Carriers (Credit or Refund-Eligible Carriers are Shaded)	Sum of Gallons	% of Total Sales	Tax Due (Total gallons multiplied by tax rate, not reduced by credits or refunds)
AMERICAN AIRLINES INC.	202,050,355.00	22.24%	\$13,941,474.50
SOUTHWEST AIRLINES COMPANY	142,227,745.00	15.66%	\$9,813,714.41
DELTA AIR LINES INC.	137,858,527.00	15.17%	\$9,512,238.36
JETBLUE AIRWAYS CORPORATION	116,415,416.00	12.81%	\$8,032,663.70
CONTINENTAL AIRLINES INC.	77,802,200.00	8.56%	\$5,368,351.80
US AIRWAYS INC.	52,751,086.00	5.81%	\$3,639,824.93
ALLEGiant AIR LLC	49,826,891.00	5.48%	\$3,438,055.45
SPIRIT AIRLINES INC.	43,622,669.00	4.80%	\$3,009,964.16
AIRTRAN AIRWAYS INC.	40,516,854.00	4.46%	\$2,795,662.93
FEDERAL EXPRESS CORPORATION	19,010,670.00	2.09%	\$1,311,736.23
UNITED AIR LINES INC.	5,009,154.00	0.55%	\$345,631.63
AIR BERLIN PLC & CO LUFTVERKEHRS KG	4,370,595.00	0.48%	\$391,571.06
VIRGIN AMERICA INC.	3,327,819.00	0.37%	\$229,619.51
FRONTIER AIRLINES INC.	3,029,215.00	0.33%	\$209,015.84
NATIONAL JETS INC.	2,933,507.00	0.32%	\$202,411.98
UNITED PARCEL SERVICE COMPANY	2,138,690.00	0.24%	\$147,569.61
ENVOY AIR INC.	1,967,678.00	0.22%	\$135,769.78
SILVER AIRWAYS CORPORATION	1,653,121.00	0.18%	\$114,065.35
MIAMI AIR INTERNATIONAL INC.	1,329,196.00	0.15%	\$91,714.52
ATLAS AIR INC.	473,891.00	0.05%	\$32,698.48
AMERIJET INTERNATIONAL INC.	75,931.00	0.01%	\$5,239.24
HYANNIS AIR SERVICE INC.	23,621.00	0.00%	\$1,629.85
AERO JET INTERNATIONAL INC.	16,943.00	0.00%	\$1,169.07
PRESIDENTIAL AVIATION INC.	13,509.00	0.00%	\$932.12
ABX AIR INC.	11,982.00	0.00%	\$826.76
PROFESSIONAL FLIGHT TRANSPORT INC.	11,002.00	0.00%	\$759.14
AIR TRANSPORT INTERNATIONAL LLC	3,446.00	0.00%	\$237.77
Total	908,471,713.00	100.00%	\$62,684,548.20

After deducting the General Revenue service charge, administrative costs, and the air carrier credits or refunds under s. 206.9855, F.S.,⁸ the proceeds are ultimately distributed monthly to the

⁷ E-mail from the Florida Department of Revenue to committee staff (Mar. 2, 2015) (on file in the Senate Committee on Transportation). The table does not include sales from fixed based operators or jobbers to commercial air carriers, all returns have not been processed through July 2014, and sales reports on unworked returns are not listed on this report, and the tax due is not reduced by the collection allowance.

⁸ That section authorizes a refund to for-hire air carriers of not more than 0.6 percent of the wages paid by the carrier to employees located or based within Florida and who are covered by the provisions of ch. 443, F.S., relating to reemployment assistance.

State Transportation Trust Fund.⁹ Deposits into the State Transportation Trust Fund from the source for the last four years were:

- \$37.6 million in 2011.
- \$13.4 million in 2012.
- \$40.7 million in 2013.
- \$35.5 million in 2014.

III. Effect of Proposed Changes:

The bill reduces the current tax rate for aviation fuel, kerosene, and aviation gasoline from 6.9 cents to 5.4 cents per gallon effective July 1, 2017.

Effective July 1, 2017, the bill eliminates the existing credit or refund of the current 6.9 cents per gallon excise tax paid for aviation fuel delivered by a licensed wholesaler or terminal supplier to an air carrier that offers transcontinental jet service and increases the air carrier's Florida workforce by more than 1,000 percent and by 250 or more FTE positions since January 1, 1996.

Also effective July 1, 2017, the bill creates a credit or refund of the 5.4 cents per gallon excise tax paid by the wholesaler or supplier for aviation fuel that is delivered to any of the three air carriers that has the greatest growth during a state fiscal year, beginning July 1, 2015. The bill provides factors that must be used when determining which carrier or carriers qualify for the credit or refund, as follows:

- The number of new jobs created in this state which are at or above this state's average prevailing wage.
- Total capital investment in this state.
- The number of new routes established to or from this state.
- The number of ticket sales to or from this state.

The bill requires the DEO to conduct a study of intrastate air service and flight training and education, which must be submitted in a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 13, 2015. The study must also compare and analyze incentives provided to the commercial airline industry in this and other states.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁹ See s. 206.9845, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not estimated the impact of CS/SB 722.

B. Private Sector Impact:

Air carriers paying the current aviation fuel tax rate of 6.9 cents per gallon will realize a positive fiscal impact as a result of the reduction of that rate to 5.4 cents per gallon. Those carriers currently receiving the exemption through a credit or refund will realize a negative fiscal impact, offset by the reduced tax rate.¹⁰ Air carriers that become eligible to receive the newly-created exemption will realize an additional positive fiscal impact. These private sector impacts would begin on July 1, 2017.

C. Government Sector Impact:

The Department of Transportation advises it expects an indeterminate fiscal impact and notes that “[t]o the extent the tax revenue goes down, projects currently programmed in the work plan may be impacted.”¹¹

The Department of Economic Opportunity is required to conduct a study of intrastate commercial air service and flight training and education. This study must also include a comparison and analysis of incentives provided to the commercial airline industry in this and other states. The cost of conducting this study has not been estimated.

Although the bill does not specifically identify which state agency will be responsible for determining the air carrier or carriers that are eligible for a fuel tax exemption through a credit or refund, this approval process will require additional resources for the entity making the determinations.¹²

VI. Technical Deficiencies:

It is not clear from the language of the bill whether the new credit or refund is available for one carrier or three carriers. The use of the singular verb (has) in the phrase “any of the three air carriers that has” suggests that a single carrier is eligible.

¹⁰ The impact of the loss of the exemption will also be somewhat offset by the refund to carriers under s. 206.9855, F.S. All carriers are eligible for this refund, but for the fully-exempt carriers there are no taxes to refund. For the period from 2010 through 2014, this offset would have averaged \$3.3 million.

¹¹ Florida Department of Transportation, *Senate Bill 722 Fiscal Analysis* (on file with the Senate Committee on Transportation).

¹² Section 206.9845, F.S., allows the Department of Revenue to deduct up to 2 percent of aviation fuel tax collections to cover administrative costs associated with collecting, administering, enforcing, and distributing the tax.

The bill does not specifically identify which state agency is responsible for determining the air carrier or carriers that are eligible for the aviation fuel tax exemption.

It is unclear from the bill whether qualification for the new exemption by credit or refund occurs once and continues indefinitely, based on the air carriers' performance in fiscal year 2015-2016, or will occur every year with additional carriers becoming eligible.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 206.9825 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on March 30, 2015:

The CS delays the reduction in the aviation fuel tax rate until July 2017 and replaces the existing exemption for certain air carriers with an exemption for an air carrier or carriers that has the greatest growth during a state fiscal year, beginning July 1, 2017, as determined by specified criteria. It also requires the Department of Economic Opportunity to conduct a study of intrastate commercial air service and flight training and education.

- B. **Amendments:**

None.