

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 551 Aviation Fuel Taxes  
**SPONSOR(S):** Moraitis, Jr.  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 844

| REFERENCE                                      | ACTION    | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| 1) Economic Development & Tourism Subcommittee | 12 Y, 0 N | Lukis   | Duncan                                   |
| 2) Finance & Tax Committee                     |           |         |  |
| 3) Economic Affairs Committee                  |           |         |  |

### SUMMARY ANALYSIS

Currently, s. 206.9825, F.S., imposes an excise tax of 6.9 cents on every gallon of aviation fuel, kerosene, and aviation gasoline sold or brought into the state for use in an aircraft.

Section 206.9825, F.S., also provides for an aviation fuel tax credit or refund for “any licensed wholesaler or terminal supplier that delivers aviation fuel to an air carrier offering transcontinental jet service and that, after January 1, 1996, increases the air carrier’s Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions.”

Any employees that existed before January 1, 1996, are not counted toward reaching the employment threshold, and the wholesaler or terminal supplier can only receive the credit or refund if the air carrier has no facility for fueling highway vehicles from the tank in which the aviation fuel is stored. Further, if before July 1, 2001, the number of full-time equivalent employee positions created or added to the air carrier’s Florida workforce fell below the additional 250, the exemption granted would cease to apply as long as the number of employees remains below the additional 250.

Accordingly, any air carrier offering transcontinental jet service that is able to meet the employment and other criteria described above is exempt from paying aviation fuel tax. Such qualifying air carriers can purchase aviation fuel from a wholesaler or terminal supplier without having to pay the wholesaler or terminal supplier tax on the fuel. The wholesaler or terminal supplier, in turn, receives a credit or refund on the tax amount that it would otherwise have passed along to the air carrier as a result of its tax payment due on the sale of the fuel or tax amount previously paid.

The bill amends s. 206.9825, F.S., limiting carriers that qualify for the aviation fuel tax exemption to those that increased their Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions between January 1, 1996 and July 1, 2016.

Then, beginning July 1, 2019, the bill repeals the aviation fuel tax exemption altogether and reduces the aviation fuel, kerosene, and aviation gasoline tax rates from 6.9 cents per gallon to 3.3 cents per gallon.

See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2016. However, as stated above, the removal of the aviation fuel tax exemption and reduction in the tax rates would not be effective until July 1, 2019.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Aviation Fuel, Kerosene, and Aviation Gasoline Taxes

Florida law imposes an excise tax of 6.9 cents on every gallon of aviation fuel sold in the state or brought into the state for use and a tax of 6.9 cents on each gallon of kerosene and aviation gasoline sold or brought into the state for use in an aircraft.<sup>1</sup>

Florida law defines aviation fuel, kerosene, and aviation gasoline as follows:

- Aviation fuel means “fuel for use in aircraft, and includes aviation gasoline and aviation turbine fuels and kerosene, as determined by the American Society for Testing Materials specifications D-910 or D-1655 or current specifications.”<sup>2</sup>
- Kerosene means “all aviation turbine fuels and any distillate known as diesel #1, K-1, or any product suitable for use as a substitute for kerosene not taxed as a diesel fuel under Ch. 206, Part II, F.S. Any kerosene meeting the definition of diesel under s. 206.86(1) is taxed under Ch. 206, Part II, F.S.”<sup>3</sup> When kerosene is used for aviation fuel, it is awarded the same tax treatment as aviation fuel.<sup>4</sup>
- Aviation gasoline means “any motor fuel blended or produced specifically for use in aircraft which has been dyed in accordance with federal regulations. Aviation gasoline does not include any such fuel used in any manner other than being placed in the storage tank of an aircraft.”<sup>5</sup>

##### Florida Aviation Fuel Tax Exemption

Despite Florida’s tax on aviation fuel, Florida law also provides for a refund or credit of the aviation fuel tax paid as follows:

Any licensed wholesaler or terminal supplier that delivers aviation fuel to an air carrier offering transcontinental jet service and that, after January 1, 1996, increases the air carrier’s Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions may receive a credit or refund as the ultimate vendor of the aviation fuel for the 6.9 cents excise tax previously paid.<sup>6</sup>

Any employees that existed before January 1, 1996, are not counted toward reaching the employment threshold, and the wholesaler or terminal supplier can only receive the credit or refund if the air carrier has no facility for fueling highway vehicles from the tank in which the aviation fuel is stored.<sup>7</sup> Further, if before July 1, 2001, the number of full-time equivalent employee positions created or added to the air carrier’s Florida workforce fell below the additional 250, the exemption granted would cease to apply as long as the number of employees remains below the additional 250.<sup>8</sup>

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<sup>1</sup> See section 206.9825, F.S. (The administration of kerosene taxes and aviation gasoline taxes differ from aviation fuel. 206.9825(2)-(3), F.S.)

<sup>2</sup> Section 206.9815, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> See s. 206.9825, F.S.

<sup>5</sup> Section 206.9815, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Accordingly, any air carrier offering transcontinental jet service that is able to meet the employment and other criteria described above, is exempt from paying aviation fuel tax.<sup>9</sup> Such qualifying air carriers can purchase aviation fuel from a wholesaler or terminal supplier without having to pay the wholesaler or terminal supplier tax on the fuel.<sup>10</sup> The wholesaler or terminal supplier, in turn, receives a credit or refund on the tax amount that it would otherwise have passed along to the air carrier as a result of its tax payment due on the sale of the fuel or tax amount previously paid.<sup>11</sup>

The Legislature first established the aviation fuel tax credit in 1996<sup>12</sup> to attract new airlines to Florida. The provisions of the original fuel tax credit expired on July 1, 2001; however, following the events of September 11, 2001, the 2002 Legislature decided to reenact the tax credit policy and did so without providing for an expiration date.<sup>13</sup>

The following chart illustrates data relating to the aviation fuel tax from June 2013, through July 2014.<sup>14</sup>

| Sales of Aviation Fuel to Commercial Air Carriers<br>(2014/2015) |                |                  |   |
|--|----------------|------------------|---|
| Carrier  | Sum of Gallons | % of Total Sales | Tax Due (Includes Tax Exempt Disbursements) |
| American Airlines  | 298,649,092    | 33.42%           | \$20,606,787.35                             |
| Delta Airlines, Inc.   | 129,635,299    | 14.51%           | \$8,944,835.63                              |
| JetBlue Airways  | 113,293,136    | 12.68%           | \$7,817,226.38                              |
| Southwest Airlines   | 108,026,647    | 12.09%           | \$7,453,838.64                              |
| Continental Airlines, Inc.                                       | 72,505,569     | 8.11%            | \$5,002,884.26                              |
| Allegiant Air LLC  | 49,966,012     | 5.59%            | \$3,447,654.83                              |
| Spirit Airlines, Inc.  | 41,414,492     | 4.63%            | \$2,857,599.95                              |
| US Airways, Inc.   | 34,688,081     | 3.88%            | \$2,393,477.59                              |
| Federal Express  | 18,187,079     | 2.04%            | \$1,254,908.45                              |
| Frontier Airlines  | 5,568,293      | 0.62%            | \$384,212.22                                |
| Silver Airways Corp.   | 3,984,321      | 0.45%            | \$274,918.15                                |
| DHL Express (USA)  | 3,578,371      | 0.40%            | \$246,907.60                                |
| Virgin America, Inc.   | 3,425,117      | 0.38%            | \$236,333.07                                |
| National Jets, Inc.  | 3,096,216      | 0.35%            | \$213,638.90                                |
| United Parcel  | 2,725,184      | 0.30%            | \$188,037.70                                |
| Envoy Air, Inc.  | 1,675,693      | 0.19%            | \$115,622.82                                |
| AirTran Airways, Inc.  | 1,398,434      | 0.16%            | \$96,491.95                                 |
| Miami Air  | 1,038,493      | 0.12%            | \$71,656.02                                 |
| United Airlines, Inc.  | 343,751        | 0.04%            | \$23,718.82                                 |
| Atlas Air, Inc.  | 298,737        | 0.03%            | \$20,612.85                                 |

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See s. 206.9825(1)(a), F.S.

<sup>12</sup> Section 21, Ch. 96-323, L.O.F.

<sup>13</sup> See s. 5, Ch. 2002-2, L.O.F.

<sup>14</sup> The Department of Revenue provided the data in this chart to the Economic Development and Tourism Subcommittee via e-mail on November 24, 2015 (which e-mail is on file with staff). The data does not include sales from fixed based operators or jobbers to commercial air carriers, fuel sold for export, or bulk sales in the terminal. Further, all returns have not been processed through June 2015, and sales reported on unworked returns are not included. Lastly, tax due does not include reduction due to collection allowance.

|                       |                    |                |                        |
|-----------------------|--------------------|----------------|------------------------|
| ABX Air, Inc.         | 69,280             | 0.01%          | \$4,780.32             |
| TEM Enterprises, Inc. | 57,719             | 0.01%          | \$3,982.61             |
| AmeriJet              | 53,518             | 0.01%          | \$3,692.74             |
| Presidential          | 14,277             | 0.00%          | \$985.11               |
| Reva, Inc.            | 10,337             | 0.00%          | \$713.25               |
| Professional          | 5,018              | 0.00%          | \$346.24               |
| <b>Grand Total</b>    | <b>893,708,166</b> | <b>100.00%</b> | <b>\$61,665,863.45</b> |

### Effect of Proposed Changes

First, the bill amends s. 206.9825, F.S., limiting carriers that qualify for the aviation fuel tax exemption to those that increased their Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions between January 1, 1996 and July 1, 2016.

Then, beginning July 1, 2019, the bill repeals the aviation fuel tax exemption altogether and reduces the aviation fuel, kerosene, and aviation gasoline tax rates from 6.9 cents per gallon to 3.3 cents per gallon.

The bill provides an effective date of July 1, 2016. However, as stated above, the removal of the aviation fuel tax exemption and reduction in tax rates would not be effective until July 1, 2019.

#### B. SECTION DIRECTORY:

Section 1: Amends s. 206.9825, F.S., limiting the carriers that qualify for the exemption to those that increase their Florida workforce between January 1, 1996 and July 1, 2016.

Section 2: Amends s. 206.9825, F.S., removing an exemption from the aviation fuel tax and reducing the aviation fuel, kerosene, and aviation gasoline tax rates from 6.9 cents per gallon to 3.3 cents per gallon.

Section 3: Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

See FISCAL COMMENTS.

##### 2. Expenditures:

See FISCAL COMMENTS.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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

The bill's eventual repeal of the aviation fuel tax exemption and reduction of the aviation fuel, kerosene, and aviation gasoline tax rates will increase the expenditures of air carriers that benefit from the tax exemption and reduce the expenditures of air carriers that do not benefit from the tax exemption.

#### D. FISCAL COMMENTS:

The Revenue Estimating Conference (REC) scored the bill on November 12, 2015, and estimated the following:

- The bill will have a \$0 cash impact in fiscal years (FY) 2016-17 through 2018-19 but will have a \$9.5 million negative cash impact in FY 2019-20 and \$11.5 million negative cash impact in FY 2020-21.
- The bill will have a negative recurring impact to general revenue of \$0.9 million each year from FY 2016-17 through 2020-21.
- The bill will have a negative recurring impact to the state trust fund of \$9.9 million in FY 2016-17, \$10.1 million in FY 2017-18, \$10.2 million in FY 2018-19, \$10.4 million in FY 2019-20, and \$10.6 million in FY 2020-21.
- The total recurring negative fiscal impact of the bill in FYs 2016-17 through 2020-21 will be \$10.8 million, \$11 million, \$11.1 million, \$11.3 million, and \$11.5 million, respectively.

Additionally, the Department of Revenue (DOR) determined the bill would have an insignificant negative fiscal impact to DOR's expenditures.<sup>15</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>15</sup> DOR, Agency Bill Analysis of HB 551 (November 20, 2015).  
**STORAGE NAME:** h0551a.EDTS  
**DATE:** 12/2/2015