

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 Committee on Finance and Tax

BILL: CS/SB 844

INTRODUCER: Finance and Tax Committee and Senator Flores

SUBJECT: Aviation Fuel Taxes

DATE: February 9, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Favorable
2.	Fournier	Diez-Arguelles	FT	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 844 reduces the excise tax rate imposed on aviation fuel, kerosene, and aviation gasoline beginning July 1, 2019, and at the same time repeals the existing credit or refund of the tax paid for aviation fuel used by an air carrier that has increased the air carrier's Florida work force by certain amounts. The bill also limits eligibility for the existing credit or refund to those carriers who qualify before July 1, 2016.

The bill is estimated to have an indeterminate recurring impact on state revenue beginning July 1, 2018. There is no cash impact in fiscal years 2016-2017 through 2018-2019. (See Section V., "Fiscal Impact Statement," for further information.)

The bill takes effect July 1, 2016.

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.¹ State taxes are imposed on net gallons when aviation fuel is:

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.

- Removed from the terminal at the rack.
- Imported into Florida by means other than the bulk transfer system 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 licensed wholesaler or terminal supplier that delivers aviation fuel to an air carrier offering transcontinental jet service and that 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. This credit or refund results in certain air carriers being able to buy aviation fuel tax free. 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.

This credit or refund was first authorized in 1996³ and expired by its terms on July 1, 2001. Following the events of September 11, 2001, the Legislature re-enacted the exemption, but did not include a sunset provision.⁴

Aviation Fuel Taxes in Other States

All but three states impose a tax on aviation fuel. The Tax Foundation, using data from Airlines for America as of June 25, 2014, reports that the *effective* tax rates⁵ for Florida and Georgia were \$0.0897 cents and \$0.15 cents per gallon, respectively. The Tax Foundation summarizes the all-states data as follows:

There are 19 states that don't include any jet fuel in their sales tax base, 16 that tax private jet fuel purchases but exempt commercial airlines, and 15 states that apply the sales tax to commercial jet fuel (though sometimes at a reduced rate). Furthermore, 28 states apply fuel excise taxes, and many states also apply various other taxes such as environmental taxes . . .

The highest total tax rates for commercial jet fuel are in Illinois (\$0.3275 per gallon), California (\$0.27), and Connecticut (\$0.2643). The lowest rates are in Delaware, Ohio, and Texas, none of whom tax jet fuel . . .⁶

² See the FDOR website, "Tax on Fuel" heading, "Aviation Fuel" subheading, available at <http://dor.myflorida.com/dor/taxes/fuel/> (last visited Jan. 6, 2016).

³ Chapter 1996-323, s. 21, Laws of Fla.

⁴ Chapter 2002-218, s. 10, Laws of Fla.

⁵ Note that the Airlines for America (A4A) rates assume a wholesale price of \$3 per gallon and do not include the federal excise tax of 4.4 cents per gallon. The rates are based on an A4A-developed methodology for determining the effective tax rate on a gallon of commercial airliner fuel and may include other taxes. See the Tax Foundation's website for a map and chart of the rates of all states, as well as additional information available at <http://taxfoundation.org/blog/combined-effective-commercial-jet-fuel-tax-rates-and-fees-state>. (last visited Jan. 7, 2016).

⁶ *Id.*

North Carolina recently granted a full exemption for jet fuel and aviation gasoline from its sales and use tax when sold to an interstate air business for use in a commercial aircraft.^{7, 8}

Florida Sales of Aviation Fuel to Commercial Air Carriers

The Florida Department of Revenue (FDOR) provided the following information⁹ relating to aviation fuel sales and tax due for the 2014-2015 fiscal years. The shaded lines show the carriers that currently do not pay tax; the amount due column shows what they would have paid if their purchases were not exempt.

Sales of Aviation Fuel to Commercial Air Carriers (2014/2015)			
	Sum of Gallons	% of Total Sales	Tax Due (Includes Tax Exempt Disbursements)
AMERICAN AIRLINES	298,649,092	33.42%	\$20,606,787.35
DELTA AIR LINES 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
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

⁷ See the Charlotte Observer article available at <http://www.charlotteobserver.com/news/business/article35681102.html>. (last visited Jan. 7, 2016).

⁸ The exemption expires in 2020. See the North Carolina Department of Revenue overview of changes enacted by the 2015 Session of the North Carolina General Assembly. (on file with the Senate Committee on Transportation).

⁹ E-mail from the FDOR to House committee staff (Nov. 24, 2015) (on file with the Senate Committee on Transportation) The FDOR advises the table does not include sales from fixed based operators or jobbers to commercial air carriers, fuel sold for export, or bulk sales in the terminal. All returns have not been processed through June 2015. Sales reported on unworked returns is not listed on the table. Finally, the tax due does not include reductions due to collection allowances.

PRESIDENTIAL	14,277	0.00%	\$985.11
REVA INC	10,337	0.00%	\$713.25
PROFESSIONAL	5,018	0.00%	\$346.24
Grand Total	893,708,166	100.00%	\$61,665,863.45

*Allegiant Air, LLC was not exempt in the 2014-2015 fiscal years, but is currently exempt.

After deducting the General Revenue service charge, administrative costs, and the air carrier credits or refunds based on wages paid to employees located in this state,¹⁰ the tax proceeds are distributed monthly to the State Transportation Trust Fund.¹¹ Deposits into the State Transportation Trust Fund from this source for the last five fiscal years were:

- \$37.6 million in 2011.
- \$13.4 million in 2012.
- \$40.7 million in 2013.
- \$35.5 million in 2014.
- \$30.4 million in 2015.¹²

III. Effect of Proposed Changes:

Beginning on July 1, 2019, the bill:

- Reduces the excise tax rate imposed on aviation fuel, kerosene, and aviation gasoline, from 6.9 cents to 4.27 cents per gallon.
- 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.

The bill also limits eligibility for the existing tax exemption to those carriers that increased their workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions *between* January 1, 1996, and July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or to take an action requiring expenditure, does not reduce the authority of municipalities and counties to raise revenues, and does not reduce the percentage of a state tax shared with municipalities and counties. Therefore, the bill is exempt from the provisions of Article VII, Section (18(b), Florida Constitution, and the provisions of Article VII, Section 18(c), of the Florida Constitution do not apply to the bill.

¹⁰ Section 206.9855, F.S., 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.

¹¹ See s. 206.9845, F.S.

¹² E-mail from FDOT staff to Senate Transportation Committee staff (Jan. 6, 2016) (on file with the Senate Committee on Transportation).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The Revenue Estimating Conference estimates that 4.27 percent is the revenue-neutral tax rate for eliminating the exemption for certain air carriers and reducing the rate for all carriers based on current market conditions. Adopting this rate has an indeterminate impact on state revenues after July 1, 2019.

B. Private Sector Impact:

Air carriers that are or become eligible (before July 1, 2016) to receive the existing aviation fuel tax credit or refund will continue to benefit from the tax credit or refund until July 1, 2019.

Air carriers paying the current aviation fuel tax rate of 6.9 cents per gallon will realize a benefit as a result of the reduction of the tax rate to 4.27 cents per gallon. Those carriers currently receiving the credit or refund will experience a tax increase, partially offset by the reduced tax rate. Carriers currently receiving the credit or refund under s. 206.9825, F.S., will also become eligible for credits or refunds under s. 206.9855, F.S.

C. Government Sector Impact:

The bill will have an indeterminate impact on the State Transportation Trust Fund revenue.

The FDOR noted only insignificant expenditures.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 206.9825 of the Florida Statutes.

¹³ *Id.*

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 February 8, 2016:

The CS reduces the aviation fuel tax rate to 4.27 percent, effective July 1, 2019.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
