

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: SB 786

INTRODUCER: Senator Hutson

SUBJECT: Aircraft Sales and Lease Tax

DATE: January 13, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Sachmorov</u>	<u>Babin</u>	<u>FT</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 786 exempts all sales and leases of aircraft from sales and use tax. Currently, Florida exempts the sale or lease of specific aircraft used by an airline from state tax; all other aircraft are subject to state sales and use tax of 6 percent and any discretionary local sales and use tax.

The Revenue Estimating Conference estimates that the bill will reduce General Revenue Fund receipts by \$23.3 million dollars in Fiscal Year 2022-2023, and by \$25.4 million in future years. The bill will reduce local government revenues by \$6.9 million in Fiscal Year 2022-2023, and by \$7.5 million in future years.¹

The bill takes effect July 1, 2022.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,² admissions,³ transient rentals,⁴ and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances.

¹ The Revenue Estimating Conference, *2022 Regular Session Revenue Estimating Conference: Impact Conference Results*, p. 45-46 (Nov. 19, 2021), available at

http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2022/_pdf/Impact1119.pdf (last visited Dec. 06, 2021).

² Section 212.05(1)(a)1.a., F.S.

³ Section 212.04(1)(b), F.S.

⁴ Section 212.03(1)(a), F.S.

Sales and use tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁵

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.⁶ A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202.”⁷ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 2.5 percent.⁸

Generally, tangible personal property that is sold in an isolated or occasional sale is exempt from the state sales and use tax.⁹ A seller makes an isolated or occasional sale if the sale or series of sales occurs no more than twice during any 12-month period.¹⁰ A seller is required to register as a dealer if he or she completes more than three sales of the same type of item during a 12-month period.¹¹ The sale of mobile homes, aircraft, boats, and motor vehicles are expressly excluded from the isolated or occasional state sales and use tax exemption.¹²

Florida Taxation of Aircraft

Aircraft purchased through a local dealer or broker are taxed as tangible personal property that are subject to a 6 percent sales tax at the time of the sale.¹³ A discretionary local sales tax on up to the first \$5,000 of the purchase price may also be added to the tax.¹⁴

An aircraft that is sold by a nonregistered dealer or an aircraft that is purchased in another state and brought into Florida for storage or use is subject to Florida’s 6 percent use tax.¹⁵

Aircraft Sales and Use Tax Exemptions

Common Carrier Exemptions—Sales and Lease Tax

Aircraft operated by a common carrier that either have a maximum certified takeoff weight of more than 15,000 pounds, and those deemed “qualified aircraft” are exempt from Florida’s sales

⁵ Section 212.07(2), F.S.

⁶ Section 212.055, F.S.

⁷ Section 212.054(2)(a), F.S.

⁸ Office of Economic and Demographic Research, *Florida Tax Handbook*, 227-228 (2021), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2021.pdf> (last visited Dec. 06, 2021).

⁹ Fla. Admin. Code R. 12A01.037(1). See also, s. 212.02(2), defining “business” as activity engaged in by a person with the object of private or public gain, benefit, or advantage.

¹⁰ Fla. Admin. Code R. 12A-1.037(3)(b).

¹¹ *Id.*

¹² See, s. 212.05(1)(a)1.b., and Fla. Admin. Code R. 12A-1.037(2)(a)1.

¹³ Section 212.05(1), F.S.

¹⁴ Fla. Dep’t. of Revenue, *Form GT-800008, Sales and Use Tax Aircraft Information for Owners and Purchasers* (rev. Sept., 2020), available at https://floridarevenue.com/Forms_library/current/gt800008.pdf (last visited Dec. 06, 2021). See also, Fla. Dep’t. of Revenue, *Sales and Use Tax Return for Aircraft- Form DR-15AIR* (rev. Jan. 2016), available at https://floridarevenue.com/Forms_library/current/dr15air.pdf (last visited Dec. 06, 2021).

¹⁵ Section 212.05(1)(a), F.S. See also, Fla. Dep’t. of Revenue, *Form GT-800008*, *supra* note 15.

and use tax.¹⁶ A “qualified aircraft” is any aircraft that has a maximum certified takeoff weight of less than 10,000 pounds and that is equipped with twin turbofan engines that meet Stage IV noise requirements that is used by a business that operates as an on-demand air carrier, which owns or leases a fleet of 25 or more aircraft in Florida.¹⁷ In order to qualify for this sales and lease tax exemption, the qualified aircraft must be offered for use in a Florida university’s flight training and research program.¹⁸ Aircraft with a 15,000 pound maximum certified takeoff weight are exempt from sales tax.¹⁹

Common Carrier Exemption- Tax on Repair and Maintenance

Labor charges for the repair and maintenance of qualified aircraft and aircraft that weigh more than 2,000 pounds maximum certified takeoff weight are exempt from tax under ch. 212, F.S.²⁰ Similarly, replacement engines, parts, and equipment used to repair or maintain these aircraft are exempt from the tax imposed under ch. 212, F.S. if the repair occurs in Florida.²¹

To receive the repair and maintenance exemptions for a qualified aircraft, a purchaser or lessee must offer, in writing, to participate in a flight training and research program with at least two Florida Universities that offer graduate programs in aeronautical or aerospace engineering and that offer flight training through a school of aeronautics or college of aviation.²²

Fly-Away Exemption

If a nonresident purchases an aircraft in Florida and plans to remove the aircraft from the state, the purchase is exempt from sales tax pursuant to an exemption commonly referred to as the “fly-away exemption.”²³ However, the nonresident purchaser must remove the aircraft from Florida within 10 days of its purchase.²⁴ Additionally, the aircraft cannot return to Florida for a total of more than 21 days during the 6-month period after its date of purchase or otherwise appropriate departure from the state.²⁵

The nonresident purchaser must provide the Department of Revenue with proof of transport of the aircraft out of state and its registration (or application for registration) in a state other than Florida.²⁶

¹⁶ Section 212.08(7)(ss), F.S.

¹⁷ Section 212.02 (33), F.S.

¹⁸ Section 212.0801, F.S.

¹⁹ Section 212.08(7)(ss), F.S.

²⁰ Section 212.08(7)(ee), F.S.

²¹ Section 212.08(7)(rr), F.S.

²² Section 212.0801, F.S.

²³ Sections 212.08(7)(fff)1. and 212.05(1)(a)2., F.S. *See also*, Michael Cosby, *A Practitioner’s Guide to State Tax Issues Related to Private Aircraft Ownership and Operation*, p. 33 (Summer 2018),

²⁴ Section 212.05(2)(a), F.S.

²⁵ Section 212.08(7)(fff)1., F.S.

²⁶ *See, e.g.*, Fla. Admin. Code R. 12A-1.007(10).

Aircraft Repair and Maintenance

Labor charges and specific equipment used for the repair and maintenance of qualified aircraft and aircraft of more than 2,000 pounds maximum certified takeoff weight, including rotary wing aircraft, are exempt from the tax imposed under ch. 212, F.S.²⁷

Additionally, nonresident purchasers of aircraft in Florida are exempt from Florida use tax for the duration of the aircraft's placement in a Florida registered repair facility for the purpose of repairs, alterations, refitting, or modification.²⁸ However, the nonresident aircraft must be removed from Florida within 20 days of completion of the repairs to maintain this exemption.²⁹

Foreign Jurisdiction's Taxation of Aircraft

The sales and use tax laws applicable to the sale and storage or use of aircraft in the United States vary widely. Alaska,³⁰ Delaware,³¹ Montana,³² New Hampshire,³³ and Oregon³⁴ do not levy a statewide tax on the sale of goods in general, and therefore do not levy a sales tax on aircraft. These states may apply local sales tax or rental tax to the sale or use of the aircraft, however.³⁵ Connecticut offers a sales tax exemption on aircraft that weight 6,000 pounds or more.³⁶ North Carolina caps their tax at \$2,500 for aircraft.³⁷ Rhode Island exempts the sale, storage, use, or consumption of an aircraft or aircraft parts from their state sales and use taxes if the aircraft or aircraft parts are used in Rhode Island.³⁸

III. Effect of Proposed Changes:

The bill exempts all sales and leases of aircraft from the sales and use tax. Currently, Florida exempts the sale or lease of specific aircraft used by an airline from state tax; all other aircraft are subject to state sales tax of 6 percent and any discretionary local sales tax.

²⁷ Section 212.08(7)(ee), F.S.

²⁸ Section 212.08(7)(fff)2., F.S.

²⁹ Section 212.05(2)(f), F.S.

³⁰ Alaska Dep't. of Revenue- Tax Division, *Sales and Use Tax News: Does Alaska have a Sales and Use Tax?*, <http://tax.alaska.gov/programs/programs/index.aspx?10002> (last visited Dec. 08, 2021).

³¹ Effective February 1, 2003, aircraft are exempt from retail and wholesale gross receipt taxes in Delaware. Delaware Div. of Revenue, *Aircraft Sales*, <https://revenue.delaware.gov/business-tax-forms/aircraft-sales/> (last visited Dec. 08, 2021).

³² Montana levies an annual "fee in lieu of tax" for aircraft based on the age and type of aircraft, ranging from \$37.50-\$4,500. Mont. Code Ann. §§67-3-201 and 67-3-206.

³³ New Hampshire levies an aircraft operating fee ranging from \$100-\$3,500 per aircraft, based on its weight, but does not levy any sales tax. N.H. Code Ann. § 2371:1- 237:7 (2018). *See also*, New Hampshire Dept. of Transp., *Aircraft Registrations: How Much Are the Registration Fees?*, <https://www.nh.gov/dot/org/aerorailtransit/aeronautics/faq.htm#Q1> (last visited Dec. 08, 2021).

³⁴ Owners of civil aircraft are exempt from ad valorem property taxation. ORS § 308.558, https://oregon.public.law/statutes/ors_308.558 (last visited Dec. 08, 2021).

³⁵ These five states do not levy any state sales tax, and therefore aircraft sales that occur in those states are not subject to a state sales tax in that jurisdiction. Janelle Cammenga, Tax Foundation, *State & Local Sales Tax Rates*, p. 5-6, (Jan. 2020), <https://taxfoundation.org/2020-sales-taxes/> (last visited Dec. 08, 2021). *See also*, Michael Cosby, *supra* note 26.

³⁶ Conn. Gen. Stat. §12-412(99), <https://portal.ct.gov/DRS/Sales-Tax/Exemptions-from-Sales-and-Use-Taxes> (last visited Dec. 08, 2021).

³⁷ North Carolina Dep't. of Revenue- Sales and Use Tax Div., *Sales and Use Tax Bulletins*, p. 62 (Jan. 2021), *available at* <https://www.ncdor.gov/media/11564/open> (last visited Dec. 08, 2021).

³⁸ R.I. Gen. Laws § 44-18-30(56), <http://webserver.rilin.state.ri.us/Statutes/TITLE44/44-18/44-18-30.HTM> (last visited Dec. 08, 2021).

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws that have an insignificant impact,^{39, 40} which is \$2.3 million or less for Fiscal Year 2022-2023.⁴¹

The Revenue Estimating Conference determined that the bill will reduce the authority that counties have to raise revenue from the local option sales tax by \$3.9 million in Fiscal Year 2022-2023.⁴² Therefore, the mandates provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19 of Article VII, Florida Constitution requires increased taxes or fees to be passed in a separate bill and by two-thirds vote of the membership of each house of the Legislature. This bill does not increase any taxes or fees, and thus the increased tax or fee requirements do not apply.

³⁹ FLA. CONST. art. VII, s. 18(d).

⁴⁰ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Dec. 09, 2021).

⁴¹ Based on the Demographic Estimating Conference's population adopted on March 3, 2021. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 09, 2021).

⁴² The Revenue Estimating Conference, *2022 Regular Session Revenue Estimating Conference: Impact Conference Results*, p. 45-46 (Nov. 19, 2021), available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2022/_pdf/Impact1119.pdf (last visited Dec. 09, 2021).

E. **Other Constitutional Issues:**

None identified.

V. Fiscal Impact Statement:

A. **Tax/Fee Issues:**

The Revenue Estimating Conference estimates that the bill will reduce General Revenue receipts by \$23.3 million in Fiscal Year 2022-2023 and by \$25.4 million in future years. The bill will reduce local government revenues by \$6.9 million in Fiscal Year 2022-23 and by \$7.5 million in future years.

B. **Private Sector Impact:**

The private sector will experience reduced costs associated with aircraft purchases due to the sales and use tax exemption provided in this legislation. Some individuals may delay their purchase of a qualifying aircraft until implementation of this bill in order to realize cost savings of the tax exemption.

C. **Government Sector Impact:**

The Department of Revenue will be required to update Rules 12A-1.007 and 12A-1.097, Florida Administrative Code, and Forms DR-15AIR, DR-300400, GT-800008, and GT-800009. Additionally, the Department will need to eliminate or revise certain brochures relating to the taxation of aircraft. The Department estimates that it will expend less than \$25,000 to perform these updates.⁴³

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill amends the sales and use tax exemption to apply simply to “an aircraft.” There is no definition of the term “aircraft” in ch. 212, F.S. However, s. 330.27, F.S., defines “aircraft” as “a powered or unpowered machine or device capable of atmospheric flight, except a parachute or other such device used primarily as safety equipment.” This definition may capture machines or devices other than airplanes, including drones and certain model airplanes.

VIII. Statutes Affected:

This bill substantially amends section 212.08 of the Florida Statutes.

⁴³ Fla. Dep’t. of Revenue, *SB 786 Agency Analysis*, p. 2-3 (Nov. 4, 2022) (on file with the Senate Committee on Commerce and Tourism).

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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