

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 Commerce Committee

BILL: SB 220

INTRODUCER: Senator Fasano

SUBJECT: Sales & Use Tax/Aircraft Temporarily in State

DATE: March 23, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Favorable
2.			FT	
3.			WPSC	
4.				
5.				
6.				

I. Summary:

SB 220 creates two additional exemptions from sales and use taxes on aircraft owned by nonresidents.

An exemption is created for aircraft that enter Florida for fewer than 21 days during the 6 months after purchase. Eligible aircraft are those for which no Florida sales tax was paid when purchased, and were purchased by non-Floridians. The aircraft owner may prove to the Florida Department of Revenue (DOR) that the plane was temporarily in Florida with certain types of documentation that identify the aircraft, such as invoices for fuel, tie-downs, or hangar charges issued by out-of-state vendors or suppliers, or similar documentation.

An exemption is created for aircraft that enter, or remain in, Florida exclusively for the purpose of flight training, repairs, or alterations. The nonresident owner must show support for this exemption with written documentation issued by in-state vendors or suppliers that identifies the aircraft. There are no time limitations stated in this exemption.

These exemptions are not mutually exclusive and are in addition to the existing aircraft tax exemption provisions of s. 212.05(1)(a), F.S., which requires the aircraft to leave the state within a specified time subsequent to the authorized purposes.

SB 220 amends s. 212.08(7) of the Florida Statutes.

II. Present Situation:

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying 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. The statutes currently provide more than 200 different exemptions.

Section 212.05(1)(a)1., F.S., imposes a 6 percent sales tax on tangible personal property sold in Florida, including aircraft. Section 212.05(1)(b), F.S., imposes a 6 percent use tax on tangible personal property used, consumed, distributed, or stored for use or consumption in Florida. Section 212.06, F.S., imposes a 6 percent use tax on tangible personal property imported or caused to be imported into Florida for use, consumption, distribution, or storage.¹

Sales & Use Tax – Exemption when Purchased

Purchase of an aircraft can be exempt from state and local sales and use taxes when:

- The purchaser is a nonresident of Florida, and
- The aircraft leaves Florida within 10 days of its purchase, or within 20 days after the completion of repairs or alterations.²

The nonresident purchaser, in order to qualify for the exemption, is required to provide DOR with certain documentation that identifies the aircraft, including registration of the aircraft outside of Florida, receipts for fuel, tie-downs, or hangaring from outside of Florida, the sales invoice, and affidavit that the purchaser has read this section. Any purchaser who fails to remove the aircraft within 10 days of purchase or 20 days after repairs, returns to Florida within 6 months after the date of departure, or does not submit correct information to DOR, must pay the use tax on the cost of the aircraft and a mandatory penalty equal to the tax payable. 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/or imprisonment for up to 5 years.

Sales & Use Tax – Exemption for Repairs

There is an allowance that an exempted aircraft may re-enter Florida for repairs within 6 months from the date of its departure.³ The aircraft may enter the state without being in violation of the law and incurring liability for taxes so long as the aircraft is removed within 20 days of completion of repairs. Again, this must be proven with receipts for fuel, tie-downs, or hangar charges issued by out-of-state vendors or suppliers, or similar documentation.

Use Tax – Exemption for Aircraft Used Outside of Florida

It is presumed that tangible property (such as aircraft) used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being brought into Florida was not purchased for use in Florida.⁴ Thus, such an aircraft would not be subject to Florida's use tax.

¹ Section 212.06(8)(a), F.S.

² Section 212.05(1)(a)2., F.S.

³ Id.

⁴ Section 212.06(8)(a), F.S.

Further, aircraft exported under its own power out of the continental U.S. is not subject to Florida use tax. The purchaser must provide a validated U.S. customs declaration and the canceled U.S. registry of the aircraft.⁵ This exemption also applies to parts and equipment installed on aircraft of foreign registry.

Sales & Use Tax – Other Aviation Exemptions:

Several other aviation-related exemptions have been enacted by the Legislature. Some exemptions are based on the type of aircraft, while others are based on whether, or how long, the aircraft stays in Florida. Currently exempt from sales and use taxes are:

- Aircraft modification service charges – Including parts and equipment furnished or installed, these charges are exempt if performed under authority of a supplemental-type certificate issued by the Federal Aviation Administration.⁶
- Aircraft repair and maintenance labor charges – For qualified aircraft,⁷ for aircraft of more than 15,000 pounds maximum certified takeoff weight, and for rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight.⁸
- Equipment, parts, and replacement engines used in aircraft repair and maintenance – For qualified aircraft, for aircraft of more than 15,000 pounds maximum certified takeoff weight, and for rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight.⁹
- 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.¹⁰

Partial Exemption:

- Section 212.08(11), F.S., provides that the sales tax imposed on a flyable aircraft 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 6 percent imposed by Florida. This partial exemption applies only if the purchaser is either: 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.

III. Effect of Proposed Changes:

Section 1 amends s. 212.08, F.S., to create two new exemptions to state and local taxes for certain aircraft temporarily in Florida. This is designated as new paragraph (7)(ggg).

⁵ Section 212.06(5)(a), F.S.

⁶ Section 212.08(5)(i), F.S.

⁷ “Qualified aircraft” are certain aircraft of less than 10,000 pounds maximum certified takeoff weight. Section 212.02(33), F.S. To be eligible for the exemptions under s. 212.08(7), F.S., qualified aircraft purchasers or lessees must also comply with s. 212.0801, F.S., requiring participating in university flight training or research programs.

⁸ Section 212.08(7)(ee), F.S.; Charges for parts and equipment furnished in connection with such labor charges are taxable, except as otherwise exempt.

⁹ Section 212.08(7)(rr), F.S.

¹⁰ Section 212.08(7)(ss), F.S.

To be eligible for the first exemption, the aircraft:

- Must be owned by a non-resident; and
- Must enter and stay in Florida for fewer than 21 days during the 6-month period following the date of purchase.

The first exemption provides that the temporary use of the aircraft in Florida, and its subsequent removal from the state, may be proven by invoices for fuel, tie-downs, or hangar charges issued by out-of-state vendors or suppliers, or by similar documentation that clearly and specifically identifies the aircraft.

To be eligible for the second exemption, the aircraft:

- Must be owned by a non-resident; and
- Must enter or stay in Florida exclusively for the purpose of any of the following:
 - Flight training
 - Repairs
 - Alterations
 - Refitting
 - Modification.

The second exemption provides that the temporary use of the aircraft in Florida for one of the exclusive purposes must be supported by written documentation issued by in-state vendors or suppliers that identifies the aircraft. Unlike the exemption in s. 212.05(1)(a), F.S., the aircraft is not required to leave the state within a specified time period subsequent to the authorized purposes.

Section 212.05(1)(a), F.S., provides that an aircraft purchased in the state must depart the state within 20 days of any repairs or alterations; it also provides that an aircraft may reenter the state for repairs without incurring tax liability if, following such repairs, the aircraft departs from the state within 20 days.

Finally, the two subsections each specify that the new exemption is in addition to the other, and in addition to an existing, aircraft-related exemption in s. 212.05(1)(a), F.S. Under s. 212.05(1)(a), F.S., the purchaser of an aircraft that is removed from Florida either within 10 days of purchase, or within 20 days of repairs, does not have to pay state and local sales taxes on the aircraft so long as the aircraft does not subsequently reenter Florida for 6 months.

Section 2 provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.88 million for FY 2010/11), are exempt.

The Revenue Estimating Conference estimated that this bill will have an insignificant total fiscal impact annually. Consequently, it is exempt from the mandates restriction due to its insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference met on March 12, 2010, and determined that the bill would have an annual insignificant fiscal impact.

B. Private Sector Impact:

Pilots who land their aircraft to refuel in Florida before continuing a long journey, or who attend events such as Lakeland’s week-long “Sun ‘n Fun Fly-In” each year, likely will benefit from the sales tax exemption if they currently are required to pay sales taxes based on the age and type of their aircraft. Further, non-resident pilots will be able to bring their aircraft for flight training in Florida at any time.

C. Government Sector Impact:

DOR may incur indeterminate expenses administering the program, including rulemaking and the issuance of a Tax Information Publication.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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.
