

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1379 Tax on Sales, Use, and Other Transactions  
**SPONSOR(S):** Economic Expansion & Infrastructure & Poppell  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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| REFERENCE   | ACTION                  | ANALYST     | STAFF DIRECTOR |
|---|-------------------------|-------------|----------------|
| 1) <u>Committee on Economic Development</u>               | <u>9 Y, 0 N</u>         | <u>West</u> | <u>Croom</u>   |
| 2) <u>Economic Expansion &amp; Infrastructure Council</u> | <u>14 Y, 0 N, As CS</u> | <u>West</u> | <u>Tinker</u>  |
| 3) <u>Policy &amp; Budget Council</u>                     | <u></u>                 | <u></u>     | <u></u>        |
| 4) <u></u>  | <u></u>                 | <u></u>     | <u></u>        |
| 5) <u></u>  | <u></u>                 | <u></u>     | <u></u>        |

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### SUMMARY ANALYSIS

CS/HB 1379 creates paragraph (ggg) in subsection (7) of s. 212.08, F.S. to provide that any aircraft owned by a nonresident is exempt from the use tax under chapter 212, F.S., if it enters and remains in this state for less than a total of 21 days during the 6-month period after the date of purchase. The temporary use of the aircraft and subsequent removal from the state may be proven by invoices for fuel, tie-down, or hangar charges issued by out-of-state vendors or suppliers or similar documentation.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Ensure lower taxes* - This legislation removes provisions that require nonresidents to pay sales and use tax payments for aircraft purchased in the last six months that enters and remains in the state for less than a total of 21 days.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Section 212.05, F.S., provides exemptions from the sales and use tax on the purchase of an aircraft if the purchaser removes the aircraft from the state within 10 days after the date of purchase, or when the aircraft is repaired or altered, within 20 days after completion of the repairs or alterations. A purchaser must provide proof to the Department of Revenue (DOR) that the aircraft has been removed from the state within 10 days of purchase to maintain their tax exempt status.

If a purchaser fails to remove the aircraft within 10 days of purchase, fails to remove the aircraft within 20 days of repair, returns to Florida within six months after purchase, or does not submit correct information to the DOR, the purchaser must pay the use tax on the cost of the aircraft and a penalty equal to the tax payable. The 100 percent penalty cannot be waived by DOR. 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 imprisonment for up to five years.

Section 212.06, F.S., provides that a use tax shall apply and be due on tangible personal property imported or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that, it shall be presumed that tangible personal property used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state.

Section 212.06(5)(a)1., F.S., provides that aircraft exported outside of the continental U.S. is tax exempt when the purchaser provides a validated U.S. customs declaration and the cancelled U.S. registry of the aircraft.

Section 212.08(11), F.S., provides that the sales tax imposed on an aircraft dealer is equal to the amount of sales tax that would be imposed by the state where the aircraft will be domiciled, up to the six percent imposed by Florida. This partial exemption applies only if the purchaser is 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.

A number of sales and use tax exemptions related to aviation exist in s. 212.08, F.S.:

- Aircraft repair and maintenance labor charges – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight.
- Equipment used in aircraft repair and maintenance – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight.

- 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.
- Aircraft that is purchased in Florida, but will not be used or stored in this state, qualifies for either a full or partial sales tax exemption, depending on the circumstances.

### Effects of Proposed Change

CS/HB 1379 creates paragraph (ggg) in subsection (7) of s. 212.08, F.S. to provide that any aircraft owned by a nonresident is exempt from the use tax under chapter 212, F.S., if it enters and remains in this state for less than a total of 21 days during the 6-month period after the date of purchase. The temporary use of the aircraft and subsequent removal from the state may be proven by invoices for fuel, tie-down, or hangar charges issued by out-of-state vendors or suppliers or similar documentation.

#### C. SECTION DIRECTORY:

**Section 1:** Creates paragraph (ggg) in subsection (7) of s. 212.08, F.S. to provide that any aircraft owned by a nonresident is exempt from the use tax under chapter 212, F.S., if it enters and remains in this state for less than a total of 21 days during the 6-month period after the date of purchase.

**Section 2:** Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

The Revenue Estimating Conference determined this bill will have a recurring negative impact to the state of \$800,000 annually.

##### 2. Expenditures:

None.

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

##### 1. Revenues:

The Revenue Estimating Conference determined this bill will have a recurring negative impact to local governments of \$200,000 annually.

##### 2. Expenditures:

None.

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

This legislation has the potential to positively impact the private sector by reducing the potential use tax liability incurred by nonresidents on aircraft temporarily in the state. In addition, the CS may increase tourism and visitors to the state.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This CS does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This CS does not reduce the percentage of state tax shared with counties or municipalities. This CS does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR:

The state of Florida has a very peculiar application of the use tax regulations as they relate to the purchase of aircraft. If an individual purchases an aircraft outside the state of Florida and then brings the aircraft into the state within the first six months of purchase, he or she is penalized by having to pay a 6 percent use tax. This is in addition to sales tax already paid in the state of purchase. The only exception to this scenario would be a routine fuel stop or some similar activity. The aircraft cannot be purchased elsewhere and brought into Florida for at least six months without resulting in undue penalization of the owner of that aircraft.

Part of the reason individuals travel outside of the state of Florida to purchase an aircraft is because the sales tax in our neighboring states averages approximately 3 percent. Passage of House Bill 1379 would not only eliminate the strange application of the use tax regulations and the six-month provision, but it would also reduce the sales tax on aircraft to 3 percent, thereby rendering Florida a worthy competitor with our surrounding states with regard to the sale of aircraft.

It is important to note that several major manufacturers and dealers of aircraft are actually advising their customers to avoid Florida altogether because of the use tax regulations as they are currently written. In addition, because of the current use tax situation, a significant pilot training facility for purchasers of both Piper and Pilatus aircraft is directing its trainees to utilize training facilities in Scottsdale, Arizona, while training facilities exist in both Orlando and Vero Beach. It is apparent that the Florida use tax as it relates to aircraft is counterproductive. Instead of generating revenues for the state, it diverts revenues to other states. This will continue to occur if the current use tax regulations that pertain to aircraft remain in place.

Passage of House Bill 1379 is essential because it will actually help to generate revenue for the state. Aircraft owners will no longer have to be concerned with whether they are going to be "caught" bringing

their aircraft into the state before six months has elapsed. Individuals that purchase aircraft employ people and generate a lot of revenue in our state. In addition, the bill's passage will eliminate the stigma associated with our use tax regulations and the avoidance of Florida by purchasers of aircraft. Such caveats are widespread in national aviation magazines.

I appreciate your support of this legislation.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On Tuesday April 8, 2008, the Economic Expansion and Infrastructure Council reported the bill favorably with a strike-all amendment as a Council Substitute. The CS:

- Deleted language that lowered the sales tax rate on aircraft from 6 percent to 3 percent;
- Deleted language that provided a use tax exemption during the 6 months after purchase of an aircraft for those aircraft that will be domiciled outside of Florida; and
- Provided that aircraft owned by a non-resident is exempt from Florida use tax if it enters and remains in Florida for less than 21 days and provides proof that the aircraft has left the state before the conclusion of the 21 days.