

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 Budget Subcommittee on Finance and Tax

BILL: CS/SB 1384

INTRODUCER: Budget Subcommittee on Finance and Tax; and Senator Bennett

SUBJECT: Taxes

DATE: February 23, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Abrams	Buford	TR	Favorable
2.	Cote	Diez-Arguelles	BFT	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1384 lowers the weight requirement for aircraft to receive certain sales tax exemptions from more than 15,000 pounds maximum certified takeoff weight to more than 2,000 pounds maximum certified takeoff weight. These exemptions apply to aircraft repair and maintenance labor charges and equipment, parts and replacement engines used in aircraft repair and maintenance. The CS does not affect the current exemptions for qualified aircrafts or rotary wing aircraft.

This CS also provides an exemption from intangible tax for lessees of governmental property that perform a governmental, municipal or public purpose function.

This CS substantially amends sections 196.199 and 212.08, Florida Statutes.

II. Present Situation:

Sales Tax

Section 212.08, F.S., provides a long list of exemptions from sales, rental, use, consumption, distribution, and storage taxes. The list includes several aviation-related exemptions. Some of these exemptions are based on the type of aircraft, while others are based on whether, or how long, the aircraft stays in Florida. Two of the aircraft exemptions delineated in this section are for:

- Aircraft repair and maintenance labor charges – For qualified aircraft,¹ 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;² and
- 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.³

In order to receive these exemptions, a qualifying entity must submit an affidavit to the seller or repairer, or have the seller or repairer document why the exemption on the repair or replacement engine, equipment or parts is applicable.⁴ No consumer certificate of exemption is required.⁵

Government Property Tax

Florida law generally exempts government property from ad valorem taxation.⁶

Portions of governmental property may be leased to private parties. In instances where the government leases property to a private party, the lease is called a “governmental leasehold” and is subject to tax as “intangible personal property.”⁷

Effective January 1, 2007, ch. 2006-312, L.O F., repealed the annual tax on intangible personal property such as stocks, bonds, mutual funds, money market funds, and unsecured notes.⁸ The repeal did not include the following two taxes:

¹ “Qualified aircraft” means any aircraft having a maximum certified takeoff weight of less than 10,000 pounds and equipped with twin turbofan engines that meet Stage IV noise requirements that is used by a business operating as an on-demand air carrier under Federal Aviation Administration Regulation Title 14, chapter I, part 135, Code of Federal Regulations, that owns or leases and operates a fleet of at least 25 of such aircraft in this state. See Section 212.02(33), F.S.

² 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.

³ Section 212.08(7)(rr), F.S.

⁴ Email from Mark Zych, Florida Department of Revenue Director of Technical Assistance & Dispute Resolution (January 25, 2012) (on file with Senate Transportation Committee).

⁵ *Id.*

⁶ See s. 196.199, F.S. Subject to certain conditions, property of the United States, property of Florida and property of political subdivisions and municipalities of the state are exempt from ad valorem taxation.

⁷ See s. 196.199(2)(b), F.S. Section 192.001 (11)(b) defines “intangible personal property” as money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.

- The nonrecurring tax on a note, bond, or other obligation for payment of money that is secured by a mortgage deed or other lien on real property. Taxpayers who are lending money secured by a mortgage on Florida real property must still pay the nonrecurring intangible tax. These payments are generally made to the Clerk of Court in the county where the instrument is recorded.⁹ The proceeds of this tax are deposited into the General Fund.
- The recurring tax on the lease of real property owned by a government and leased to a non-governmental entity when rental payments are due. Taxpayers that lease property from a governmental entity must still file and pay the governmental leasehold intangible tax annually, if the amount of tax owed before discount is \$60 or more.¹⁰ The proceeds of this tax are returned to the local school board for the county in which the property subject to the leasehold is situated.

In Boca Airport, Inc. v. Florida Department of Revenue, 56 So. 3d 140 (Fla. 4th DCA 2011), the court determined that the intangible tax on governmental leaseholds applied to fixed base operators¹¹ leasing airport property from the county.

III. Effect of Proposed Changes:

Section 1 amends s. 196.199, F.S., to provide that lessees of governmental property that perform a governmental, municipal or public function are exempt from the intangible tax.

Section 2 amends s. 212.08, F.S., lowering the weight requirement for aircraft to receive the sales tax exemptions under s. 212.08 (ee) and (rr) from more than 15,000 pounds maximum certified takeoff weight to more than 2,000 pounds maximum certified takeoff weight. These exemptions apply to aircraft repair and maintenance labor charges and equipment, parts and replacement engines used in aircraft repair and maintenance. The CS does not affect the current exemptions for qualified aircrafts or rotary wing aircraft.

Section 3 provides that the amendment to s. 196.199, F.S., is effective upon becoming a law and applies retroactively to all leases of governmental property in existence as of January 1, 2011 but does not create a right to a refund.

Section 4 provides that except as otherwise expressly provided in this act and except for this section, which take effect upon becoming a law, this act shall take effect July 1, 2012.

⁸ Florida Department of Revenue, *2007 Tax Information Publication #07C02-01* (Jan 2, 2007), available at <http://dor.myflorida.com/dor/tips/tip07c02-01.html> (last visited Feb. 14, 2012).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Fixed base operators provide goods and services to the general aviation public by offering hanger space for private and commercial aircraft, aviation fuel, aircraft repairs, tie-down services, and amenities for pilots and the general public in the form of food, beverages, ground transportation, and reservations for rental cars and lodging.

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 two-thirds 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 2012-13), are exempt.

The Revenue Estimating Conference (REC) estimated that the provisions of this CS related to lowering the weight requirement for certain aircraft to receive sales tax exemptions will reduce the revenues received by cities and counties from local option sales taxes by \$1 million annually.

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 lowering the weight requirement for certain aircraft to receive sales tax exemptions will decrease general revenue by \$9.2 million and local government revenues by \$2.1 million in FY2012-13 with a \$10 million negative recurring impact to general revenue and a \$2.3 million negative recurring impact to local governments.

The REC estimates the impact of the exemption from intangibles tax for lessees of governmental property will have a negative recurring impact of \$0.9 million to local governments.

B. Private Sector Impact:

Entities owning aircrafts over 2,000 pounds maximum certified takeoff weight will no longer need to pay any taxes on labor, replacement engines, parts, and equipment.

Due to the decrease in net costs of aircraft repairs and replacement parts resulting from this tax exemption, this CS could potentially encourage owners and purchasers of currently non-exempt aircrafts to repair and replace parts of their aircrafts in Florida. Thus, the CS could have a positive impact on jobs and the workforce in Florida.

C. Government Sector Impact:

According to the Department of Revenue, the CS will require a Tax Information Publication posted on the Internet at no additional cost.¹²

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.)**CS by Finance and Tax on February 23, 2012:**

This committee substitute provides an exemption from intangible tax for lessees of governmental property that perform a governmental, municipal or public purpose function.

B. Amendments:

None.

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

¹² Florida Department of Revenue, *2012 SB 1384 Analysis* (January 19, 2012) (On file with Senate Transportation Committee).