

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 Commerce and Tourism

BILL: SB 1642

INTRODUCER: Senator Gruters

SUBJECT: Tax Exemptions

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 1642 exempts from sales tax the purchase of aircraft equipment used for advanced training purposes as part of a contract with the U.S. Department of Defense (DOD) or a military branch of a recognized foreign government, as well as certain parts and accessories for industrial machinery and equipment. The bill also creates a use tax exemption for aircraft owned by a nonresident if the aircraft enters or remains in the state to be used in service of a contract with the DOD or with a military branch of a recognized foreign government.

Except as otherwise provided, the bill takes effect July 1, 2020.

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,¹ admissions,² transient rentals,³ 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. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁴ Sales tax receipts accounted for approximately 77 percent of the state's General Revenue in Fiscal Year 2018-2019.⁵

¹ Section 212.05, F.S.

² Section 212.04, F.S.

³ Section 212.03, F.S.

⁴ Florida Department of Revenue, *Florida Sales and Use Tax*, available at https://floridarevenue.com/taxes/taxesfees/pages/sales_tax.aspx (last visited Feb. 3, 2020).

⁵ Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Feb. 3, 2020).

Sales and Use Tax Exemptions for Aircraft

Aircraft Purchases

Section 212.05, F.S., provides exemptions from the sales and use tax on the purchase of an aircraft by a nonresident of the state 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 the completion of the repairs or alterations. Within 10 days of an aircraft's removal from the state, a purchaser must provide to the Department of Revenue (DOR) proof of the removal in the form of receipts for fuel, tie-down, or hangaring from outside of Florida. A purchaser must also provide the DOR, within 30 days of departure, with written proof that the purchaser licensed or registered the aircraft outside the state. If a purchaser fails to remove an aircraft within the specified period; returns to Florida within 6 months after the purchase, except as provided in s. 212.08(7)(fff), F.S.; or does not provide the DOR with the required information the purchaser must pay the use tax on the cost of the aircraft and a penalty equal to the tax payable.

As provided for in s. 212.08(7)(fff), F.S., aircrafts owned by a nonresident are exempt from use tax if the aircraft enters and remains in Florida for less than a total of 21 days during the 6-month period after the date of purchase, or if the aircraft enters or remains in Florida exclusively for the purposes of flight training, repairs, alterations, refitting, or modification. These conditions must be proven with invoices or written documentation.

Imports and Exports of Aircraft

Use tax applies to and is due on tangible personal property, *e.g.* aircraft, imported or caused to be imported into the state for use, consumption, distribution, or storage to be used or consumed in this state. It is presumed that the tangible personal property used in another state, territory, or the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state.⁶

Aircraft exported under their own power outside the continental United States are tax exempt when a validated U.S. customs declaration and the canceled U.S. registry of the aircraft are submitted to the DOR.⁷

Aircraft Manufacturers

Section 212.08(11), F.S., provides that the sales tax imposed on an aircraft sold by a 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.⁸ This partial exemption only applies if the purchaser is a resident of another state who will not use the aircraft in Florida; if the purchaser 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. The purchaser must provide a sworn affidavit stating they are not a resident of the state and where the aircraft will be domiciled. If the

⁶ Section 212.06(8)(a), F.S.

⁷ Section 212.06(5)(a)1., F.S.

⁸ Tax may not be imposed if the state where the aircraft will be domiciled exempts aircraft from sales and use tax. Section 212.08(11)(c), F.S.

aircraft is used in the state within 6 months of purchase,⁹ the purchaser must pay the full use tax on the aircraft and a penalty of 10 percent of the tax pursuant to s. 212.12(2), F.S.

Sales and Use Tax Exemptions for Industrial Machinery and Equipment

Section 212.08(7)(jjj), F.S., exempts the purchase of industrial machinery and equipment from sales and use tax if the equipment is purchased by an eligible manufacturing business and used at a fixed location in the state for the manufacture, processing, compounding, or production of items of tangible personal property for sale.

“Eligible manufacturing business” means any business whose primary business activity¹⁰ where the industrial machinery and equipment are located is within the industries classified under the North American Industry Classification System (NAICS) codes 31-33, 112511, and 423930, pertaining to manufacturing, finfish farming and fish hatcheries, and recyclable material merchant wholesalers, respectively.¹¹

“Industrial machinery and equipment” means tangible personal property or other property with a depreciable life of 3 years or more that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale. The term includes parts and accessories for industrial machinery and equipment only if the parts and accessories are purchased before the date the machinery and equipment are placed in service.

The purchaser must provide the seller with a signed certificate certifying the purchaser’s entitlement to the tax exemption; this certificate relieves the seller of any potential tax liability on nonqualified purchases.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 212.08(5), F.S., exempting aircraft equipment used in government contracts from sales and use tax. Under the bill, equipment used to service, test, operate, upgrade, or configure aircraft for advanced training purposes as part of any contract with the DOD or with a military branch of a recognized foreign government is exempt from sales and use tax. “Equipment” includes electric and hydraulic ground power units, jet starter units, oxygen servicing and test equipment, engine trim boxes, and communications and avionics test sets.

Section 1 also amends s. 212.08(7)(fff), F.S., to provide that an aircraft owned by a nonresident is exempt from use tax if the aircraft enters or remains in the state exclusively to be used in service of a contract with the DOD or with a military branch of a recognized foreign government.

⁹ Section 212.08(11)(d), F.S. specifies that the purchaser must pay the full tax and the penalty if the aircraft is used in the state within 6 months of the purchase *in violation of the intent of [subsection 11 of s. 212.08, F.S.]*.

¹⁰ Section 212.08(7)(jjj)2.d., F.S., defines “primary business activity” as activity representing more than 50 percent of the activities conducted at the location where the industrial machinery and equipment are located.

¹¹ North American Industry Classification Systems Association, *NAICS Code List*, available at <https://www.naics.com/search/#naics> (last visited Feb. 3, 2020). The manufacturing sector represented by NAICS codes 31, 32, and 33 comprises establishments engaged in the mechanical, physical, or chemical transformation of raw materials into new products. See North American Industry Classification Systems Association, *NAICS Code Description: 31-33 – Manufacturing*, available at <https://www.naics.com/naics-code-description/?code=31-33> (last visited Feb. 3, 2020).

Section 2 amends s. 212.08(7)(jjj), F.S., relating to tax exemptions for the purchase of industrial machinery and equipment by an eligible manufacturing business. Under current law, parts and accessories for industrial machinery and equipment are only included in the definition of “industrial machinery and equipment” and exempt from sales and use tax if the parts and accessories are purchased before the date the machinery and equipment are placed into service. The bill expands “industrial machinery and equipment” to include parts and accessories “necessary for the continued operation of the industrial machinery or equipment.”

Section 2 takes effect October 1, 2020.

Section 3 provides that, except as expressly provided for in the bill, the bill takes effect July 1, 2020.

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. The mandate requirements do not apply to laws having an insignificant fiscal impact,^{12, 13} which is \$2.1 million or less for Fiscal Year 2019-2020.¹⁴ It is unclear if the bill’s potential fiscal impact would necessitate a two-thirds vote in each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹² FLA. CONST. art. VII, s. 18(d).

¹³ 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 Feb. 3, 2020).

¹⁴ Based on the Demographic Estimating Conference’s population adopted on July 8, 2019, available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 3, 2020).

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet met regarding the bill.

B. Private Sector Impact:

Purchasers of aircraft equipment used as part of a contract with the DOD or a military branch of a recognized foreign government, nonresident owners of aircraft that enter or remain in Florida to be used as part of a contract with the DOD or a military branch of a recognized foreign government, and eligible manufacturing businesses purchasing parts and accessories necessary for the continued operation of industrial machinery or equipment will realize savings.

C. Government Sector Impact:

The DOR has indicated that the bill would have no impact on its expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill exempts parts and accessories for industrial machinery and equipment purchased by an eligible manufacturing business from sales tax if the parts and accessories are “*necessary* for the continued operation of the industrial machinery or equipment.” The bill does not provide specific criteria that parts and accessories must meet in order to be considered “*necessary*.” Without any such criteria, there could be differing interpretations as to whether particular parts or accessories are eligible for the exemption.

VIII. Statutes Affected:

The bill substantially amends section 212.08 of the Florida Statutes.

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.
