

BILL ANALYSIS

C.S.H.B. 3287
By: Paddie
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report that, because operation and transfers of aircraft are governed in large part by technical requirements of the Federal Aviation Administration, the increasing number and frequency of aircraft-related transactions have also introduced increasing uncertainty about the proper application of state sales and use tax to those transactions. In some instances, this uncertainty has required both taxpayers and the comptroller of public accounts to dedicate significant time to determining the proper application of tax to these transactions. C.S.H.B. 3287 seeks to benefit both taxpayers and the comptroller by confirming and clarifying the proper taxation of transactions involving aircraft.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3287 amends the Tax Code to make a statutory provision exempting aircraft sold to a person using the aircraft as a certificated or licensed carrier of persons or property from sales and use tax applicable with respect to a certificated carrier's acquisition of an aircraft, without regard to whether the certificated carrier acquired the aircraft by purchase, lease, or rental. The bill defines "certificated or licensed carrier" for purposes of the sales and use tax as a person authorized by the Federal Aviation Administration to operate an aircraft to transport persons or property in compliance with the certification and operations specifications requirements of certain federal regulations.

C.S.H.B. 3287 specifies that, for purposes of defining a sale for resale with regard to the sales and use tax, the term "sale for resale" includes the sale of an aircraft to a purchaser who acquires the aircraft for the purpose of leasing, renting, or reselling the aircraft to another person in the United States of America, in a possession or territory of the United States of America, or in the United Mexican States in the form or condition in which it is acquired. The bill also specifies that the leasing or renting of an aircraft in such a manner includes the transfer of operational control of the aircraft from a lessor to one or more lessees pursuant to one or more written agreements in exchange for consideration, regardless of whether the consideration is in the form of a cash payment and regardless of whether the consideration is fixed, variable, or periodic. The bill provides for the meaning of "operational control" by reference to the meaning assigned by the Federal Aviation Regulations and includes in the term the exercise of authority over initiating, conducting, or terminating a flight. The bill makes its provisions relating to sale for

resale of aircraft applicable to a purchase of an aircraft regardless of whether the purchaser, in addition to leasing, renting, or reselling the aircraft to another person, also uses the aircraft if, for a period of one year beginning on the date the purchaser purchases the aircraft, more than 50 percent of the aircraft's departures are made under the operational control of one or more lessees pursuant to one or more described written agreements. The bill specifies that a statutory provision relating to the liability for payment of sales tax under certain conditions of a purchaser who gives a resale certification does not apply to a purchaser of an aircraft.

C.S.H.B. 3287 establishes that, for purposes of the imposition and collection of use tax, an aircraft that is brought into Texas for the sole purpose of being completed, repaired, remodeled, or restored is not brought into Texas for storage, use, or other consumption in Texas and that there is no presumption that an aircraft was purchased for storage, use, or consumption in Texas if the person bringing the aircraft into Texas did not acquire the aircraft directly from a seller by means of a purchase, as that term is defined by statutory provisions relating to a sale or purchase in the context of sales and use tax.

C.S.H.B. 3287 establishes that no use tax is imposed with respect to an aircraft that is brought into Texas if the aircraft is predominantly used outside of Texas for a period of one year beginning on the later of the date the aircraft was acquired by purchase, lease, rental, or otherwise by the person bringing the aircraft into Texas or the date the aircraft was substantially complete in the condition for its intended use and conducted its first flight for the carriage or persons or property. The bill establishes that, for such purposes, an aircraft is predominantly used outside of Texas if more than 50 percent of the aircraft's departures are from locations outside of Texas.

C.S.H.B. 3287 establishes that, for purposes of sales and use tax, a sale, lease, rental, or other transaction between a person and a member, owner, or affiliate of the person involving an aircraft that would not be subject to tax, or would qualify for an exemption from tax if the transaction were between unrelated persons, remains not subject to tax or exempt from tax to the same extent as if the transaction were between unrelated persons. The bill establishes that no sales and use tax is imposed with respect to the use of an aircraft by an owner or member of the purchaser of the aircraft, by an entity that is an affiliate of the purchaser of the aircraft, or by an owner or member of an affiliate of the purchaser of the aircraft if, with respect to the purchase of the aircraft, the purchaser paid the sales and use tax or if the purchaser's purchase of the aircraft was exempt from sales and use tax other than as a sale for resale or relating to an occasional sale, unless the purchase would have been exempt from tax as an occasional sale if the owner, member, affiliate, or owner or member of the affiliate who is using the aircraft had been the purchaser. The bill defines "affiliate" as an entity that would be classified as a member of the purchaser's affiliated group with regard to the franchise tax.

C.S.H.B. 3287 establishes that no sales and use tax is imposed with respect to the purchase, sale, or use of an aircraft that is operated pursuant to federal regulations relating to general operating and flight rules for fractional ownership operations. The bill establishes that nothing in its provisions shall be construed to impose a tax and that its provisions control over statutory provisions governing sales and use tax to the extent of any conflict.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3287 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Tax Code Section 151.105 is amended to insert new Subsection (c) as follows:

(c) For purposes of Subsection (a), there shall be no presumption that an aircraft, as that term is defined in Section 151.328, was purchased from a retailer for storage, use, or consumption in this state if the person bringing such aircraft into this state acquired the aircraft other than by a purchase, as that term is defined in Section 151.005.

SECTION 2. Tax Code Section 151.328 is amended to insert new Subsection (i) as follows:

(i) The leasing or renting of tangible personal property for purposes of Section 151.006(a)(2) includes the lease or rental of an aircraft pursuant to a written agreement that transfers operational control, as that term is defined in the Federal Aviation Regulations, from a lessor to a lessee in exchange for consideration. If, pursuant to any such lease or rental agreement, charges for nontaxable services are combined with and not separately stated from the charges for the transfer from the lessor to the lessee of operational control of the aircraft, the combined charge is presumed subject to tax unless the lessor or lessee can identify the portion of the charges that are nontaxable through books and records kept in the regular course of business.

SECTION 3. The amendment made by this Act to Tax Code Section 151.328 is a clarification of existing law and does not imply that Tax Code Section 151.006(a)(2) may be construed as having been, before the amendment to Tax Code Section 151.328 was made by this Act, inconsistent with Tax Code Section 151.328, as amended by this Act.

No equivalent provision. *(But see notations below.)*

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision. *(But see SECTION 1, Sec. 163.004 below.)*

No equivalent provision. *(But see SECTION 1, Sec. 163.002 below.)*

No equivalent provision.

SECTION 1. Subtitle E, Title 2, Tax Code, is amended by adding Chapter 163 to read as follows:

CHAPTER 163. SALES AND USE TAXATION OF AIRCRAFT

Sec. 163.001. CERTIFICATED OR LICENSED CARRIERS. (a) For purposes of Chapter 151, "certificated or licensed carrier" means a person authorized by the

Federal Aviation Administration to operate an aircraft to transport persons or property in compliance with the certification and operations specifications requirements of 14 C.F.R. Part 121, 125, 133, or 135.

(b) Section 151.328(a)(1) applies with respect to a certificated carrier's acquisition of an aircraft, without regard to whether the certificated carrier acquired the aircraft by purchase, lease, or rental.

Sec. 163.002. RESALE OF AIRCRAFT. (a) For purposes of Section 151.006, "sale for resale" includes the sale of an aircraft to a purchaser who acquires the aircraft for the purpose of leasing, renting, or reselling the aircraft to another person in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the form or condition in which it is acquired.

(See SECTION 2 above.)

(b) The leasing or renting of an aircraft under Subsection (a) includes the transfer of operational control of the aircraft from a lessor to one or more lessees pursuant to one or more written agreements in exchange for consideration, regardless of whether the consideration is in the form of a cash payment and regardless of whether the consideration is fixed, variable, or periodic. For purposes of this subsection, "operational control" has the meaning assigned by the Federal Aviation Regulations and includes the exercise of authority over initiating, conducting, or terminating a flight.

(c) Subsection (a) applies to a purchase of an aircraft regardless of whether the purchaser, in addition to leasing, renting, or reselling the aircraft to another person, also uses the aircraft if, for a period of one year beginning on the date the purchaser purchases the aircraft, more than 50 percent of the aircraft's departures are made under the operational control of one or more lessees pursuant to one or more written agreements as described by Subsection (b).

(d) Section 151.154(a) does not apply to a purchaser of an aircraft.

Sec. 163.003. USE OF AIRCRAFT. For purposes of the tax imposed under Subchapter D, Chapter 151, an aircraft that is brought into this state for the sole purpose of being completed, repaired, remodeled, or restored is not brought into the state for storage, use, or other consumption in this state.

(See SECTION 1 above.)

Sec. 163.004. NO PRESUMPTION OF USE. For purposes of the tax imposed under Subchapter D, Chapter 151, there is no presumption that an aircraft was purchased for storage, use, or consumption in this state if the person bringing the aircraft into this state did not acquire the aircraft directly from a seller by means of a purchase, as that term is defined by Section 151.005.

Sec. 163.005. NO IMPOSITION OF TAX FOLLOWING OUT-OF-STATE USE. (a) No tax is imposed under Subchapter D, Chapter 151, with respect to an aircraft that is brought into this state if the aircraft is predominantly used outside of this state for a period of one year beginning on the later of:

(1) the date the aircraft was acquired, whether by purchase, lease, rental, or otherwise, by the person bringing the aircraft into this state; or

(2) the date the aircraft:

(A) was substantially complete in the condition for its intended use; and

(B) conducted its first flight for the carriage of persons or property.

(b) For purposes of this section, an aircraft is predominantly used outside of this state if more than 50 percent of the aircraft's departures are from locations outside of this state.

Sec. 163.006. CERTAIN TRANSACTIONS BETWEEN RELATED PERSONS. (a) For purposes of the tax imposed under Chapter 151, a sale, lease, rental, or other transaction between a person and a member, owner, or affiliate of the person involving an aircraft that would not be subject to tax or would qualify for an exemption from tax if the transaction were between unrelated persons remains not subject to tax or exempt from tax to the same extent as if the transaction were between unrelated persons.

(b) No tax is imposed under Chapter 151 with respect to the use of an aircraft by an owner or member of the purchaser of the aircraft, by an entity that is an affiliate of the purchaser of the aircraft, or by an owner or member of an affiliate of the purchaser of the aircraft if:

(1) with respect to the purchase of the aircraft, the purchaser paid the tax imposed under Chapter 151; or

(2) the purchaser's purchase of the aircraft was exempt from the tax imposed under

Chapter 151, other than under:

(A) Section 151.302; or

(B) Section 151.304, unless the purchase would have been exempt from tax under Section 151.304 if the owner, member, affiliate, or owner or member of the affiliate who is using the aircraft had been the purchaser.

(c) For purposes of this section, the term "affiliate" means an entity that would be classified as a member of the purchaser's affiliated group under Section 171.0001.

Sec. 163.007. AIRCRAFT OPERATED UNDER FRACTIONAL OWNERSHIP PROGRAMS. No tax is imposed under Chapter 151 with respect to the purchase, sale, or use of an aircraft that is operated pursuant to 14 C.F.R. Part 91, Subpart K.

Sec. 163.008. NO IMPOSITION OF TAX UNDER THIS CHAPTER. Nothing in this chapter shall be construed to impose a tax.

Sec. 163.009. CONFLICTS WITH OTHER LAW. This chapter controls over Chapter 151 to the extent of any conflict.

SECTION 4. This Act takes effect September 1, 2015.

SECTION 2. Same as introduced version.