

- SUBJECT:** Explicitly classifying certain sales of aircraft as sales for resale
- COMMITTEE:** Ways and Means — favorable, without amendment
- VOTE:** 7 ayes — D. Bonnen, Bohac, Button, Darby, Murphy, Springer, Wray  
3 nays — Y. Davis, Martinez Fischer, C. Turner  
1 absent — Parker
- SENATE VOTE:** On final passage, May 6 — 31-0
- WITNESSES:** (*On House companion bill, HB 3287*)  
For — David Norton and Cindy Ohlenforst, 2015 Fair Sales Tax Initiative for Texas Aircraft; (*Registered, but did not testify:* Allen Beinke and Tim Sorrells, Texas Aviation Advocacy Fund; John Hadley, National Business Aviation Association; Shelly Lesikar Dezevallos, Texans For General Aviation)  
Against — None  
On — (*Registered, but did not testify:* Karey Barton and William Hamner, Texas Comptroller of Public Accounts)
- BACKGROUND:** Tax Code, sec. 151.302 exempts sales for resale from the sales tax.  
Sec. 151.054 provides that a sale is exempt from the tax if the seller receives a resale certificate from a purchaser stating that the taxable item is acquired for the purpose of selling, leasing, or renting it. However, under sec. 151.154, a purchaser who gives a resale certificate is liable for the sales tax if the purchaser makes any use of the item other than in demonstration or display while holding it for sale, lease, or rental.
- DIGEST:** SB 1396 would include in the definition of “sale for resale” an aircraft purchased for the purpose of leasing, renting, or reselling to another person in the United States or Mexico in the form in which it was

acquired. Leasing or renting the aircraft would include the transfer of operational control — i.e., authority over initiating, conducting, or terminating a flight — pursuant to a written lease in exchange for some consideration.

The purchase of an aircraft would qualify as a sale for resale regardless of whether the purchaser used the aircraft — in addition to leasing, renting, or reselling it to another person — if more than 50 percent of the aircraft's departures were made under the operational control of one or more lessee pursuant to a written lease as described above.

A transaction between related persons involving an aircraft would be exempt from the sales tax if the same transaction between unrelated persons also would be exempt. Certain uses of an aircraft by an owner, member, or affiliate of the purchaser of the aircraft also would be exempt from the sales tax.

The bill would specify other conditions under which an aircraft brought to, stored, or used in Texas would not be subject to sales tax, including an aircraft:

- brought to Texas for the purpose of being completed, repaired, remodeled, or restored;
- brought to Texas by a person who had not acquired it directly from a seller by means of a purchase; and
- that made more than half of its departures from locations outside the state for a year after either the acquisition of the aircraft or its first flight containing passengers or property, whichever date was later.

Under the bill, the purchase, sale, or use of an aircraft operated under certain fractional ownership programs would not be subject to the sales tax.

This bill would take effect September 1, 2015.

**SUPPORTERS  
SAY:**

SB 1396 would clarify current law to ensure that the state did not charge sales taxes on sales that were actually made for resale. Operations and transfers of aircraft are governed largely by technical requirements established by the Federal Aviation Administration (FAA). This bill is the product of work between the comptroller and industry groups. It provides specific language that would make clear that a lease complying with the FAA lease terms was a lease for Texas sales tax purposes.

The bill would provide clear and objective standards, giving guidance to the comptroller and the industry. Because of the current ambiguity in tax liability, operators of aircraft have avoided bringing aircraft into Texas, which results in significant lost revenue to the state. The latest version of the Legislative Budget Board's fiscal note, which takes this into account, estimates no significant fiscal impact to the state and concludes that the bill should improve voluntary compliance with respect to transactions that remain taxable.

In addition, the comptroller historically has treated similar transactions differently, depending on the relation of the parties. This bill would serve as a confirmation of current law and ensure that parties were treated equally regardless of whether they were related.

This bill is purely prospective in its authority and would not affect any ongoing litigation.

**OPPONENTS  
SAY:**

SB 1396 could result in a reduction of tax revenue because it would create a definable category of sales that would be exempt from the sales tax.

**NOTES:**

The House companion bill, HB 3287 by Paddie, was sent to the Calendars Committee on May 11.