

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1396
By: West
Finance
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The same statutes apply to the purchase and use of aircraft as apply to all other types of tangible personal property, despite the fact that aircraft operations and transfers are governed by technical requirements of the Federal Aviation Administration. S.B. 1396, as introduced, would have addressed the issues unique to aircraft by creating a limited sales tax for aircraft, much like Chapter 152 for motor vehicles and Chapter 160 for boats. To do this, S.B. 1396 first repealed provisions of Chapter 151 addressing aircraft and moved those provisions into Chapter 163. The bill also copied sections of Chapter 151 defining relevant terms, creating recordkeeping provisions, and preserving exemptions, such as for tax exempt organizations. Creating a separate aircraft tax also required making conforming amendments to the Local Tax Code. Those conforming amendments alone accounted for more than 12 pages of the as-filed bill.

Section 4 of S.B. 1396 is the section that added Chapter 163. It was intended to resolve ambiguities in current law which have resulted in costly litigation for the state, and also to address concerns raised by the aviation industry about the double taxation of aircraft.

After Chapter 163 was introduced, tax practitioners, representatives from the aviation industry and the Office of the Comptroller of the State of Texas (comptroller's office), and legislative staff met to discuss alternative approaches to meeting these same goals. Through these discussions, we identified a few specific areas of Chapter 151 that could be revised to address the concerns of the comptroller's office about ambiguity and industry's concerns about the intersection of the federal aviation regulations and the sales and use tax.

The committee substitute addresses specific areas of Chapter 151 without creating a separate aircraft tax. This allows us to focus directly on a few areas—for example, when an aircraft is purchased for resale, or when use tax applies to aircraft brought into this state—without also having to also consider administrative provisions and changes to the Local Tax Code.

The committee substitute amends Subtitle E, Title 2, Tax Code, by adding Chapter 163.

C.S.S.B. 1396 amends current law relating to the sales and use taxation of aircraft.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle E, Title 2, Tax Code, by adding Chapter 163, as follows:

CHAPTER 163. SALES AND USE TAXATION OF AIRCRAFT

Sec. 163.001. CERTIFICATED OR LICENSED CARRIERS. (a) Defines, for purposes of Chapter 151 (Limited Sales, Excise, and Use Tax), "certificated or licensed carrier."

(b) Provides that 151.328(a)(1) (providing that aircraft sold to a person using the aircraft as a certificated or licensed carrier of persons or property are exempted

from the taxes imposed) applies with respect to a certified 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) Provides that for purposes of Section 151.006 ("Sale for Resale") "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.

(b) Provides that 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. Defines, for this subsection, "operational control."

(c) Provides that 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) Provides that Section 151.154(a) (relating to the use by a reseller of the aircraft and applicable tax resulting from the use) does not apply to a purchaser of an aircraft.

Sec. 163.003. USE OF AIRCRAFT. Provides that for purposes of the tax imposed under Subchapter D (Imposition and Collection of Use Tax), 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.

Sec. 163.004. NO PRESUMPTION OF USE. Provides that 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 purchase, as that term is defined by Section 151.005 ("Sale" or "Purchase").

Sec. 163.005. NO IMPOSITION OF TAX FOLLOWING OUT-OF-STATE USE. (a) Provides that no tax is imposed under Subchapter D, Chapter 151, with respect to an aircraft that is brought into this state if the aircraft is predominately used outside of this state for a period of one year beginning on the later of the date the aircraft was acquired, whether by purchase, lease, rental, or otherwise, by the person bringing the aircraft into this state or the date the aircraft was substantially complete in the condition for its intended use and conducted its first flight for the carriage of persons or property.

(b) Provides that 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) Provides that 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) Provides that 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 (Sales for Resale); or

(B) Section 151.304 (Occasional Sales), unless the purchase would have been exempt from 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) Defines, for purposes of this section, "affiliate."

Sec. 163.007. AIRCRAFT OPERATED UNDER FRACTIONAL OWNERSHIP PROGRAMS. Provides that no tax is imposed under Chapter 151 with respect to the purchase, sale, or use of an aircraft that is operated pursuant to 19 C.F.R. Part 91, Subpart K.

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

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

SECTION 2. Effective date: September 1, 2015.