

## **BILL ANALYSIS**

Senate Research Center

S.B. 1396  
By: West  
Finance  
6/8/2015  
Enrolled

### **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.

This bill amends Subtitle E, Title 2, Tax Code, by adding Chapter 163 (Sale and Use Taxation of Aircraft).

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 14 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.