

## **BILL ANALYSIS**

S.B. 1396  
By: West  
Ways & Means  
Committee Report (Unamended)

### **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. S.B. 1396 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**

S.B. 1396 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.

S.B. 1396 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.

S.B. 1396 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.

S.B. 1396 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 of 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.

S.B. 1396 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.

S.B. 1396 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.