

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 30, 2015

TO: Honorable Jane Nelson, Chair, Senate Committee on Finance

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1396 by West (relating to the sales and use taxation of aircraft.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

This bill would add new Chapter 163 to Subtitle E, Title 2, Tax Code, regarding sales and use taxation of aircraft.

Section 163.001 would define "certificated or licensed carriers" and provide that the exemption under Section 151.328(a)(1) of aircraft sold to such carriers applies regardless of whether the aircraft is acquired by purchase, lease, or rental.

Section 163.002 would provide that "sale for resale" includes sale to a purchaser for the purpose of leasing, renting, or reselling the aircraft to another person; that leasing or renting includes transfer of operational control as defined by Federal Aviation Regulations in exchange for consideration; and that liability for tax on divergent use does not apply with respect to aircraft.

Section 163.003 would provide that use tax does not apply to aircraft brought into the state for the sole purpose of being completed, repaired, remodeled, or restored.

Section 163.004 would provide that there is no presumption of taxable use when an aircraft is brought into the state if the aircraft was not purchased directly from a seller.

Section 163.005 would provide that no tax is due on certain aircraft following out-of-state use.

Section 163.006 would provide that with respect to transactions involving aircraft, transactions between related persons are taxable or not taxable to the same extent as such transactions between unrelated persons. It would also provide that use by a related entity of a purchaser is not taxable if tax was paid by the purchaser or if, subject to certain exceptions, the purchase was exempt.

Section 163.007 would provide that aircraft operated under fractional ownership programs are exempt.

The imposition of use tax on aircraft brought into the state from out-of-state, and on certain leases of aircraft between related entities, has been a source of disputes between taxpayers and the state. The objective criteria provided by the bill for determining taxability of such uses will eliminate those sources of contested hearings and litigation. While the bill clearly will exempt some transactions that may be subject to tax under current law, the application of current law is

uncertain, and the added clarity provided by the bill should improve voluntary compliance with respect to transactions that remain taxable. The bill will also narrow the definition of certificated or licensed carriers whose purchases of aircraft are exempt, relative to the appeals court decision in Cirrus Exploration v. Combs. On balance, the fiscal implications of the bill are uncertain but are not expected to be significant.

The bill would take effect September 1, 2015.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

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