Senate Fiscal Agency
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SFA BILL ANALYSIS

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Senate Bill 576 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Bill Bullard, Jr.
Committee: Finance

Date Completed: 10-1-01

RATIONALE

The Use Tax Act exempts from the use tax the storage, use, or consumption of an aircraft by a domestic air carrier after September 30, 1996, for use in the transport of air cargo and/or passengers that has a maximum certified takeoff weight of at least 6,000 pounds. (A domestic air carrier is an entity engaged primarily in the commercial transport for hire of air cargo, passengers, or a combination of air cargo and passengers as a business activity.) The exemption and a similar exemption under the General Sales Tax Act were established by Public Acts 200 and 204 of 2000. Public Act 204 also expanded a sales tax exemption that had applied to aircraft with a maximum takeoff weight of at least 12,500 pounds, purchased after 1992. Further, Public Acts 39 and 40 of 2001 exempted from the use and sales taxes, respectively, sales of aircraft for subsequent lease for use solely in the regularly scheduled transport of passengers.

A question has arisen, however, over the application of the use tax and the sales tax to aircraft that are purchased for subsequent lease for charter purposes. Reportedly, at least one charter aircraft company in Michigan purchases its aircraft through its holding company, which then leases the aircraft to the operating company for use in charter flights. The company has been unable to claim the existing exemptions for aircraft because the Use Tax Act and the General Sales Tax Act do not specifically allow an exemption for aircraft leased under these circumstances. It has been suggested that the law be amended to allow such an exemption.

CONTENT

The bill would amend the Use Tax Act to exempt from the tax, beginning January 1, 1996, the storage, use, or consumption of certain aircraft by an entity that leased the aircraft to a domestic air carrier. The bill would apply to aircraft leased to a domestic air carrier operating under a certificate for on demand charter issued by the Federal Aviation Administration (FAA), that had a maximum certified takeoff weight of at least 6,000 pounds, for use solely in the transport of air cargo, passengers, or a combination of air cargo and passengers.

(Please note: Senate Bill 437, which passed the Senate in June, proposes to amend the General Sales Tax Act to allow an exemption for these leased aircraft.)

MCL 205.94

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

A charter airline company in Michigan, Aerogenesis, has a business structure that contains a holding company and an operating company. The holding company purchases aircraft and parts and materials and then leases those items to the operating company. The Use Tax Act exempts from the tax aircraft used by a domestic air carrier solely in the transport of air cargo and/or passengers, that has maximum takeoff weight of at least 6,000 pounds. Further, the Act exempts aircraft purchased for subsequent lease to a domestic air carrier for use solely in the regularly scheduled transport of passengers. The Act does not, however, specifically exempt aircraft leased to a domestic air carrier operating under a certificate for on demand charter for use solely in the transport of air cargo and/or passengers. Reportedly, this has prevented the Aerogenesis holding company from claiming an exemption under the Act for aircraft it purchases for subsequent lease for on demand charter. It is unclear why a company should not be allowed to claim an exemption for aircraft leased for on demand charter of cargo and/or passengers, when a similar exemption exists for aircraft leased for the regularly scheduled transport of passengers. Together with Senate Bill 437, this bill would extend the availability of an exemption that for many years has been in place in various forms, and thus would help to ensure that charter airline companies would not be reluctant, because of tax policy, to base their operations in Michigan.

Opposing Argument

The bill would provide a retroactive exemption to one company. It is not wise tax policy for the State to provide retroactive tax relief for individual taxpayers.

Legislative Analyst: G. Towne

FISCAL IMPACT

At a minimum, this bill would eliminate a current contested liability, covering several years, totaling almost $400,000. Since this liability has not been paid, the Treasury Department would not have to issue a refund to this particular taxpayer under the bill. It is not known, however, if there are other taxpayers who would be entitled to a refund because of the bill. It is expected that the bill would not have any ongoing fiscal impact. While revenue from the use tax is earmarked to the General Fund (67%) and the School Aid Fund (33%), all of the loss of use tax revenue under this bill would affect only the General Fund, because the School Aid Fund is held harmless from any loss in revenue resulting from the use tax exemptions granted for certain aircraft transactions under this subsection.

Fiscal Analyst: J. Wortley