Legislative Analysis

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AIRCRAFT USE AND SALES TAX EXEMPTIONS

House Bill 4855 as enrolled
Public Act 17 of 2006
Sponsor: Rep. Michael Nofs

House Bill 4856 as enrolled
Public Act 18 of 2006
Sponsor: Rep. Lorence Wenke
House Committee: Commerce
Senate Committee: Commerce and Labor

Second Analysis (7-12-06)

BRIEF SUMMARY: The bills would exempt certain aircrafts and aircraft parts from the sales and use taxes.

FISCAL IMPACT: Although the bills would reduce sales and use tax revenue, the reduction is likely to be relatively small (in the range of $1 million to $2 million) given the current level of activity. Approximately 73 percent of all sales tax revenue is earmarked to the School Aid Fund (SAF), and 10 percent is dedicated to Constitutional revenue sharing to cities, villages, and townships. One-third of all use tax revenue is earmarked to the SAF, and the remainder goes to the General Fund.

THE APPARENT PROBLEM:

Currently, aircraft and aircraft parts of domestic air carriers are exempt from taxation under the General Sales Tax Act and the Use Tax Act. Generally speaking, these exemptions have been enacted over the years to "level the playing field" between Michigan-based companies that were previously taxed and out-of-state companies that are not taxed in their home state. Public Act 5 of 1992, for example, exempted parts and materials (excluding shop equipment and fuel) affixed to an aircraft owned or used by a domestic air carrier. It was noted that neighboring states did not tax such materials, which placed Michigan at a competitive disadvantage when airlines decide where to locate maintenance facilities.

A similar situation now faces Duncan Aviation, a Nebraska-based company that specializes in the maintenance and refurbishment of private airplanes. The company operates a 200,000 square foot facility with over 500 employees at W.K. Kellogg Regional Airport in Battle Creek, and has recently broken ground on a $19.5 million expansion expected to add another 380 employees to its Battle Creek operations. The company services planes from around the world that are flown into the Battle Creek airport for routine maintenance and inspection, and much of what it does is subject to taxation under the state's sales and use taxes, as their clients are not "domestic air carriers." Many states, including those that are home to Duncan's competitors and Duncan's home state of Nebraska, do not subject these aircrafts and parts to taxation.

This, it is believed, places Duncan Aviation, the Battle Creek area, and all of Michigan at a competitive disadvantage.

THE CONTENT OF THE BILL:

The bills would amend the Sales and Use Tax Acts to provide exemptions in two cases.

1) The taxes would not apply to parts and materials (excluding shop equipment and fuel) affixed or to be affixed to an aircraft that meets all of the following criteria:

** The aircraft leaves the state within 15 days after: (1) the issuance of final billing or authorized approval for final return to service, whichever is sooner; (2) completion of the maintenance record entry; and (3) completion of the test flight and ground test as required under federal regulations.

** The aircraft was not based or registered in the state before or after the parts or material were affixed to the aircraft.

2) The taxes would not apply to the sale of an aircraft temporarily located in the state for the purpose of a prepurchase evaluation and postsale customization if all of the following conditions are satisfied:

** The aircraft leaves the state within 15 days after authorized approval for final return to service, (2) completion of the maintenance record entry, and (3) completion of the test flight and ground test as required under federal regulations.

** The aircraft was not based or registered in the state before or after the prepurchase evaluation or prepurchase evaluation and postsale customization are completed.

Under the bills, "based in this state" would mean that the aircraft is hangared or stored in this state for at least 10 days in at least three nonconsecutive months during the immediately preceding 12-month period. "Registered in this state" would mean an aircraft registered with the Department of Transportation's Bureau of Aeronautics or with the Federal Aviation Administration to an address located in the state.

House Bill 4855 would amend the General Sales Tax Act (MCL 205.54x) and House Bill 4856 would amend the Use Tax Act (MCL 205.94k).

BACKGROUND INFORMATION:

Currently, the Use Tax Act does not apply to parts and materials, excluding shop equipment or fuel, affixed to or to be affixed to an aircraft owned or used by a domestic air carrier that is any of the following:

(a) An aircraft for use solely in the transport of air cargo or a combination of air cargo and passengers that has a maximum certificated takeoff weight of at least 6,000 pounds.

(b) An aircraft that is used solely in the regularly scheduled transport of passengers.

(c) An aircraft other than an aircraft described in subdivision (b), that has a maximum certificated takeoff weight of at least 6,000 pounds and that is designed to have a maximum passenger seating configuration of more than 30 seats and is used solely in the transport of passengers.

Similarly, the General Sales Tax Act provides that the sale to a domestic air carrier of one or more of the following is exempt from the tax:

(a) An aircraft that has a maximum certificated 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.

(b) Parts and materials, excluding shop equipment or fuel, affixed or to be affixed to an aircraft that has a maximum certificated 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.

Additionally, the sale of an aircraft to a person for subsequent lease to a domestic air carrier operating under a certificate issued by the Federal Aviation Administration for use solely in the regularly scheduled transport of passengers is exempt from the tax under the General Sales Tax Act.

ARGUMENTS:

For:

The bill addresses a unique situation as it relates to Duncan Aviation, and simply levels the playing field in relation to its competitors. According to committee testimony, the company (particularly its Battle Creek facility) has recently lost out on several lucrative contracts because of the imposition of sales and use taxes. Given the cost of aircraft parts, an additional six percent is significant enough for potential customers to take their business elsewhere. Moreover, these are planes that, other than flying to or from the Battle Creek airport for repair and maintenance, would not be taxable in Michigan. The exemptions proposed in the bills would position Duncan Aviation to add jobs and expand its operations in Battle Creek. Further, it is believed that whatever amount of revenue is "lost" by the bills will be more than made up through increased employment and economic activity. In this regard, the bills only improve the state's financial picture and the overall health of its economy and that of the Battle Creek area.

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