ASSEMBLY BILL No. 311

Introduced by Assembly Member Ma

February 17, 2009

An act to amend Sections 401.17, 441, and 1153.5 of the Revenue and Taxation Code, relating to taxation.

legislative counsel's digest

AB 311, as introduced, Ma. Property taxation: certificated aircraft assessment.

Existing property tax law requires the personal property of an air carrier be taxed at its fair market value, and the California Constitution requires property subject to ad valorem property taxation to be assessed in the county in which it is situated. Existing law, for the 2005–06 fiscal year to the 2010–11 fiscal year, inclusive, specifies a formula to determine the fair market value of certificated aircraft of a commercial air carrier. Existing law further requires the Aircraft Advisory Subcommittee of the California Assessors' Association to designate, after soliciting input from commercial air carriers operating in the state, a lead county assessor's office for each commercial air carrier operating certificated aircraft in this state in an assessment year, and requires the lead county assessor to calculate the value of the air carrier's personal property and to transmit these calculations to other county assessors, but specifies that each county assessor is responsible for assessing and enrolling the taxable value of the property in his or her county, as provided. Existing law also requires the lead county assessor's office to lead a team to audit the books and records of a commercial air carrier and authorizes these air carriers to file a property statement solely with the lead county assessor's office, as provided.

This bill would delete the 2010–11 fiscal year termination date and the repeal of the above-described provisions relating to the determination of the value and taxation of certificated aircraft.

By extending the application of the aforementioned valuation process for certificated aircraft beyond the 2010–11 fiscal year, thereby imposing new duties upon a lead county assessor's office, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 401.17 of the Revenue and Taxation Code is amended to read:

401.17. (a) ~~For the 2005–06 fiscal year to the 2010–11 fiscal year, inclusive, the~~ *The* preallocated fair market value of each make, model, and series of mainline jets, production freighters, and regional aircraft that has attained situs within this state is the lesser of the sum total of the amounts determined under paragraph (1) or the sum total of the amounts determined under paragraph (2).

(1) (A) The original cost for the aircraft, which shall be determined as follows and adjusted, as applicable, under subparagraphs (B), (C), and (D):

(i) For owned and leased aircraft, the taxpayer's or lessor's acquisition cost for that individual aircraft reported in accordance with generally accepted accounting principles, and to the extent not included in the acquisition cost, transportation costs and capitalized interest and the cost of improvements made before a transaction described in ~~paragraph~~ *clause* (ii). If the original cost for leased aircraft cannot be determined from information reasonably available to the taxpayer, original cost may be determined by reference to the "average new prices" column of the Airliner Price Guide for that model, series, and year of manufacture of aircraft. If information is not available in the "average new prices" column for that model, series, and year, the original cost may be determined using the best indicator of original cost plus all conversion costs and improvement costs incurred for that aircraft.

(ii) For sale/leaseback or assignment of purchase rights transaction aircraft, the average of the taxpayer's cost established pursuant to clause (i) and the cost established in a sale/leaseback or assignment of purchase rights transaction for individual aircraft that transfers the benefits and burdens of ownership to the lessor for United States federal income tax purposes. In no event shall the original cost for sale/leaseback aircraft be less than the taxpayer's acquisition cost.

(iii) In the event of a merger, bankruptcy, or change in accounting methods by the reporting airline, there shall be a rebuttable presumption that the cost of the individual aircraft and the acquisition date reported by the acquired company, if available, or the cost reported prior to the change in accounting method, are the original cost and the applicable acquisition date.

(B) (i) For mainline jets and production freighters, the original cost described in subparagraph (A), plus the cost of any improvements not otherwise included in the original cost, shall be adjusted from the date of the acquisition of the aircraft to the lien date using the monthly United States Department of Labor Producer Price Index for aircraft and a 20-year straight-line percent-good table starting from the delivery date of the aircraft to the current owner or, in the case of a sale/leaseback or assignment of purchase rights transaction, as described in this section, the current operator with a minimum combined factor of 25 percent.

(ii) For regional aircraft, the original cost described in subparagraph (A), plus the cost of any improvements not otherwise included in the original cost, shall be adjusted from the date of the acquisition of the aircraft to the lien date using the monthly United States Department of Labor Producer Price Index for aircraft and a 16-year straight-line percent-good table starting from the delivery date of the aircraft to the current owner or, in the case of a sale/leaseback or assignment of purchase rights transaction, as described in this section, the current operator with a minimum combined factor of 25 percent.

(iii) If original cost is determined by reference to the Airliner Price Guide “average new prices” column, the adjustments required by this paragraph shall be made by setting the acquisition date of the aircraft to be the date of the aircraft’s manufacture.

(C) (i) For mainline jets and regional aircraft, the assessor shall analyze the adjusted original cost derived pursuant to subparagraph (B), for application of an economic obsolescence allowance which shall be determined as follows:

(I) For the applicable year, the assessor shall calculate the average annual net revenue per available seat mile, the net load factor, and the yield utilizing the Airline Quarterly Financial Review published by the United States Department of Transportation, and referring to the section descriptive of the passenger airline industry, entitled “System Operations, System Pax. Majors” for the calendar year ending December 31 immediately preceding the applicable assessment date.

(II) For a 10-year benchmark, the assessor shall calculate as of December 31 for each of the 10 calendar years preceding the applicable year, the average annual net revenue per available seat mile, the net load factor, and the yield utilizing the Airline Quarterly Financial Review published by the United States Department of Transportation, and referring to the section descriptive of the passenger airline industry, entitled “System Operations, System Pax. Majors” for the calendar year ending December 31 immediately preceding the applicable assessment date.

(ii) (I) The assessor shall compare each factor calculated under subclause (I) of clause (i) with the corresponding factor calculated under subclause (II) of clause (i) to derive the percentage that each of the factors calculated under subclause (I) of clause (i) deviated from the 10-year benchmark calculated under subclause (II) of clause (i). The assessor shall then calculate a weighted average of the indicated percentage adjustments, weighted as follows:

(aa) Net revenue per available seat mile shall be weighted 35 percent.

(ab) Net load factor shall be weighted 35 percent.

(ac) Yield shall be weighted 30 percent.

(II) The assessor shall reduce the adjusted original costs derived under subparagraph (B) by the percentage adjustment calculated in subclause (I), but only if the final economic obsolescence determined under that subclause exceeds 10 percent, otherwise no economic obsolescence allowance shall be provided.

(D) (i) For production freighters, the assessor shall analyze the adjusted original cost derived under subparagraph (B), for application of an economic obsolescence allowance, as follows:

(I) For the applicable year, the assessor shall calculate the industry average of net revenue per available ton mile and the ton load factor based upon the Airline Quarterly Financial Review published by the United States Department of Transportation, and referring to the section descriptive of the cargo airline industry, entitled "System Operations, System Cargo Majors" for the calendar year ending December 31 preceding the relevant assessment date.

(II) For a 10-year benchmark, the assessor shall calculate as of December 31 for each of the 10 calendar years preceding the applicable year, the net revenue per available ton mile and the ton load factor utilizing the Airline Quarterly Financial Review published by the United States Department of Transportation and referring to the section descriptive of the cargo airline industry, entitled "System Operations, System Cargo Majors" as of December 31 for each of the 10 calendar years preceding the calendar year utilized for the subject year, for the calendar year ending December 31 immediately preceding the applicable assessment date.

(ii) (I) The ~~Assessor~~ *assessor* shall compare each factor calculated under subclause (I) of clause (i) with the corresponding factor calculated under subclause (II) of clause (i) to derive the percentage that each of the factors calculated under subclause (I) of clause (i) deviated from the 10-year benchmark calculated under subclause (II) of clause (i). The assessor shall then calculate a weighted average of the indicated percentage adjustments so that the net revenue per available ton mile is weighted 50 percent and the ton load factor is weighted 50 percent.

(II) The assessor shall reduce the adjusted original costs derived under subparagraph (B) by the percentage adjustment calculated in subclause (I), but only if the final economic obsolescence determined under that subclause exceeds 10 percent, otherwise no economic obsolescence allowance shall be provided.

(2) (A) Except as otherwise provided in subparagraph (B), for each individual mainline jet, production freighter, or regional aircraft, the assessor shall identify the value referenced in the “Used Price of Avg. Acft. Wholesale” column of the Winter edition of the Airliner Price Guide by make, model, series, and year of manufacture, and deduct 10 percent from that value for a fleet discount.

(B) For each individual mainline jet, production freighter, or regional aircraft that is less than two years old and for which the Airliner Price Guide does not list used wholesale values, the original cost determined under paragraph (1) of subparagraph (A) shall be decreased by the lesser of 5 percent or one-half of the percentage decrease between original cost and 90 percent of the value listed in the “Used Price of Avg. Acft. Wholesale” column of the Winter edition of the Airliner Price Guide for a two-year old aircraft of that same make, model, and series.

(b) ~~For the 2005-06 fiscal year to the 2010-11 fiscal year, inclusive, the~~ *The* preallocated fair market value for each make, model, and series of converted freighters that has attained situs within this state shall be determined as follows:

(1) (A) The assessor shall begin his or her appraisal of a converted freighter as of the relevant lien date by identifying the aircraft’s original cost as a passenger aircraft prior to conversion. The aircraft’s original cost as a converted freighter shall be the lesser of:

(i) Its trended original cost as a passenger aircraft prior to conversion, less a downward adjustment of 10 percent to reflect tear outs.

(ii) Its value described in the Winter edition of the Airliner Price Guide in the “Used Price of Avg. Acft. Wholesale” column in passenger configuration, less a downward adjustment of 10 percent to reflect tear-outs.

(B) The amount determined under subparagraph (A) shall be adjusted according to the following:

(i) If, on the relevant lien date, the frame of the aircraft is 15 years old or more, 50 percent of the cost to convert the aircraft to a freighter shall be added to the value determined under subparagraph (A).

(ii) If, on the relevant lien date, the frame of the aircraft is less than 15 years old, 75 percent of the cost to convert the aircraft to a freighter shall be added to the value determined under subparagraph (A).

(iii) In addition, all other improvements, including capitalized interest, to the aircraft that are not otherwise included in the aircraft's original and conversion costs shall be added at full value.

(2) The amount determined under paragraph (1) shall be adjusted from the date of the conversion of the aircraft to the lien date using the monthly United States Department of Labor Producer Price Index for aircraft and a 16-year straight-line percent-good table, however, the percent-good applied to the aircraft shall in no event be less than 15 percent.

(3) If the Airliner Price Guide "Used Price of Avg. Acft. Wholesale" is utilized under paragraph (1), only the improvements and adjusted conversion costs pertaining to the converted freighter shall be adjusted from the date of the conversion of the aircraft to the relevant lien date using the monthly United States Department of Labor Producer Price Index for aircraft and a 16-year straight-line percent-good table. In no event, however, shall the percent-good applied to the improvements and adjusted conversion costs be less than 15 percent.

(4) (A) Except as otherwise provided in subparagraph (B), the assessor shall reduce the adjusted original cost, plus improvements, and adjusted conversion costs, derived under paragraphs (1) to (3), inclusive, by the obsolescence percentage adjustment calculated for production freighters under subparagraph (D) of paragraph (1) of subdivision (a).

(B) If the Airliner Price Guide "Used Price of Avg. Acft. Wholesale" is utilized under paragraph (1), only the improvements and adjusted conversion costs pertaining to the converted freighter shall be reduced by the obsolescence percentage adjustment described in subparagraph (A).

(c) For purposes of this section, if the Airliner Price Guide ceases to be published or the format significantly changes, a guide or adjustment agreed to by commercial air carriers and the counties in which certificated aircraft have situs shall be substituted. If these parties do not agree on a guide or adjustment, the State Board of Equalization shall determine the guide or adjustment.

(d) The taxpayer shall, to the extent that information is reasonably available to the taxpayer, furnish the county assessor with an annual property statement that includes the aircraft original costs as defined in subparagraph (A) of paragraph (1) of subdivision (a). If an air carrier that has this information reasonably available to it fails to report original cost and improvements, as required by Sections 441 and 442, an assessor may in that case make an appropriate assessment pursuant to Section 501.

(e) For purposes of this section, all of the following apply:

(1) "Converted freighter" means a certificated aircraft, as defined in Section 1150, that, following its original manufacture, was used for passenger transportation, but was later converted to be used primarily for cargo transportation purposes.

(2) "Mainline jet" means a certificated aircraft, as defined in Section 1150, that is either of the following:

(A) Manufactured by Boeing, Airbus, or McDonnell Douglas.

(B) Capable of being configured with approximately 100 seats or more.

(3) "Production Freighter" means a certificated aircraft, as defined in Section 1150, that immediately following its manufacture is deployed primarily for cargo transportation purposes.

(4) "Regional aircraft" means a certificated aircraft, as defined in Section 1150, that is either of the following:

(A) Manufactured by ATR (Avions De Transport Regional), Beech, British Aerospace Jetstream, Canadair Regional Jet, Cessna, DeHaviland, Embraer, Fairchild, or Saab.

(B) Generally configured with fewer than 100 seats.

(5) "Improvements" means the cost of any modifications or capital additions that materially add to the value of or substantially prolong the useful life of the aircraft, or make it adaptable to a different use. "Improvements" include modification costs incurred during a heavy maintenance visit to the extent that they materially add to the value of or substantially prolong the useful life of the aircraft. "Improvements" do not include repair and maintenance costs incurred for the purpose of keeping the aircraft in an ordinarily efficient operating condition.

(6) "Net revenue per available seat mile" means operating revenue per available seat mile less cost per available seat mile as determined by the United States Department of Transportation.

(7) "Net load factor" means actual passenger load factor less breakeven passenger load factor, as determined by the United States Department of Transportation.

(8) "Net revenue per available ton mile" means operating revenue per ton mile less cost per available ton mile as determined by the United States Department of Transportation.

(9) "Yield" means average revenue per revenue passenger mile as determined by the United States Department of Transportation.

(10) "Ton Load Factor" means that percentage of effective use of cargo capacity as determined by the United States Department of Transportation.

SEC. 2. Section 441 of the Revenue and Taxation Code is amended to read:

441. (a) Each person owning taxable personal property, other than a manufactured home subject to Part 13 (commencing with Section 5800), having an aggregate cost of one hundred thousand dollars ($100,000) or more for any assessment year shall file a signed property statement with the assessor. Every person owning personal property that does not require the filing of a property statement or real property shall, upon request of the assessor, file a signed property statement. Failure of the assessor to request or secure the property statement does not render any assessment invalid.

(b) The property statement shall be declared to be true under the penalty of perjury and filed annually with the assessor between the lien date and 5 p.m. on April 1. The penalty provided by Section 463 applies for property statements not filed by May 7. If May 7 falls on a Saturday, Sunday, or legal holiday, a property statement that is mailed and postmarked on the next business day shall be deemed to have been filed between the lien date and 5 p.m. on May 7. If, on the dates specified in this subdivision, the county's offices are closed for the entire day, that day is considered a legal holiday for purposes of this section.

(c) The property statement may be filed with the assessor through the United States mail, properly addressed with postage prepaid. For purposes of determining the date upon which the property statement is deemed filed with the assessor, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope containing the application, shall control. This subdivision shall be applicable to every taxing agency, including, but not limited to, a chartered city and county, or chartered city.

(d) (1) At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties.

(2) (A) This subdivision shall also apply to an owner-builder or an owner-developer of new construction that is sold to a third party, is constructed on behalf of a third party, or is constructed for the purpose of selling that property to a third party.

(B) The owner-builder or owner-developer of new construction described in subparagraph (A), shall, within 45 days of receipt of a written request by the assessor for information or records, provide the assessor with all information and records regarding that property. The information and records provided to the assessor shall include the total consideration provided either by the purchaser or on behalf of the purchaser that was paid or provided either, as part of or outside of the purchase agreement, including, but not limited to, consideration paid or provided for the purchase or acquisition of upgrades, additions, or for any other additional or supplemental work performed or arranged for by the owner-builder or owner-developer on behalf of the purchaser.

(e) In the case of a corporate owner of property, the property statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign the statements on behalf of the corporation.

(f) In the case of property owned by a bank or other financial institution and leased to an entity other than a bank or other financial institution, the property statement shall be submitted by the owner bank or other financial institution.

(g) The assessor may refuse to accept any property statement he or she determines to be in error.

(h) If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of the continuance.

(i) Notwithstanding any other provision of law, every person required to file a property statement pursuant to this section shall be permitted to amend that property statement until May 31 of the year in which the property statement is due, for errors and omissions not the result of willful intent to erroneously report. The penalty authorized by Section 463 does not apply to an amended statement received prior to May 31, provided the original statement is not subject to penalty pursuant to subdivision (b). The amended property statement shall otherwise conform to the requirements of a property statement as provided in this article.

(j) This subdivision shall apply to the oil, gas, and mineral extraction industry only. Any information that is necessary to file a true, correct, and complete statement shall be made available by the assessor, upon request, to the taxpayer by mail or at the office of the assessor by February 28. For each business day beyond February 28 that the information is unavailable, the filing deadline in subdivision (b) shall be extended in that county by one business day, for those statements affected by the delay. In no case shall the filing deadline be extended beyond June 1 or the first business day thereafter.

(k) The assessor may accept the filing of a property statement by the use of electronic media. In lieu of the signature required by subdivision (a) and the declaration under penalty of perjury required by subdivision (b), property statements filed using electronic media shall be authenticated pursuant to methods specified by the assessor and approved by the board. Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, and facsimile machine.

(*l*) (1) After receiving the notice required by Section 1162, the manager in control of a fleet of fractionally owned aircraft shall file with the lead county assessor's office one signed property statement for all of its aircraft that have acquired situs in the state, as described in Section 1161.

(2) Flight data required to compute fractionally owned aircraft allocation under Section 1161 shall be segregated by airport.

(m) (1) After receiving the notice required by paragraph (5) of subdivision (b) of Section 1153.5, a commercial air carrier whose certificated aircraft is subject to Article 6 (commencing with Section 1150) of Chapter 5 shall file with the lead county assessor's office designated under Section 1153.5 one signed property statement for its personal property at all airport locations and fixtures at all airport locations.

(2) Each commercial air carrier may file one schedule for all of its certificated aircraft that have acquired situs in this state under Section 1151.

(3) Flight data required to compute certificated aircraft allocation under Section 1152 and subdivision (g) of Section 202 of Title 18 of the California Code of Regulations shall be segregated by airport location.

(4) Beginning with the 2006 assessment year, a commercial air carrier may file a statement described in this subdivision electronically by means of the California Assessor's Standard Data Record (SDR) network. If the SDR is not equipped to accept electronic filings for the 2006 assessment year, an air carrier may file a printed version of its property statement for that year with its lead county assessor's office.

~~(5) This subdivision shall remain in effect only until December 31, 2010, and as of that date is repealed.~~

SEC. 3. Section 1153.5 of the Revenue and Taxation Code is amended to read:

1153.5. (a) The Aircraft Advisory Subcommittee of the California Assessors' Association shall, after soliciting input from commercial air carriers operating in the state, do both of the following:

(1) On or before March 1, 2006, and on or before each March 1 thereafter, designate a lead county assessor's office for each commercial air carrier operating certificated aircraft in this state in that assessment year.

(2) Every third year thereafter, redesignate a lead county assessor's office for each of these air carriers, unless an air carrier and its existing lead county assessor's office concur to waive this redesignation.

(b) The lead county assessor's office described in subdivision (a) shall do all of the following:

(1) Calculate, pursuant to Section 401.17, an unallocated value of the certificated aircraft of each commercial air carrier to which he or she is designated.

(2) Electronically transmit to the assessor of each county in which the property described in paragraph (1) has situs for the assessment year the values determined by the lead county assessor's office under paragraph (1).

(3) Receive the property statement, as described in subdivision (*l*) of Section 441, of each commercial air carrier to which he or she is designated.

(4) Lead the audit team described in subdivision (d) when that team is conducting an audit of a commercial air carrier to which he or she is designated.

(5) Notify, in writing, each commercial air carrier for which he or she has been designated of this designation on or before the first March 15 that follows that designation.

(c) (1) Notwithstanding subdivision (b), the county assessor of each county in which the personal property of a commercial air carrier has situs for an assessment year is solely responsible for assessing that property, applying the allocation formula set forth in Section 1152, and enrolling the value of the property in that county, but, in determining the unallocated fleet value for each make, model, and series of certificated aircraft of a commercial air carrier, the assessor may consult with the lead county assessor's office designated for that commercial air carrier.

(2) The lead county assessor's office is subject to Section 322 of Title 18 of the California Code of Regulations and Sections 408, 451, and 1606 to the same extent as the assessor described in paragraph (1).

(d) Notwithstanding Section 469, an audit of a commercial air carrier shall be conducted once every four years on a centralized basis by an audit team of auditor-appraisers from at least one, but not more than three, counties, as determined by the Aircraft Advisory Subcommittee of the California Assessors' Association. An audit, so conducted, shall encompass all of the California Personal Property and fixtures of the air carrier and is deemed to be made on behalf of each county for which an audit would otherwise be required under Section 469.

~~(e) This section shall remain in effect only until December 31, 2010, and as of that date is repealed.~~

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

O