

**SB**

**261**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 2/28/94

FURTHER:

DATE TURNED INTO OFFICE: 3-12-94

The Finance Committee considered **SENATE BILL NO. 261**

"An Act relating to municipal sales and use taxes involving air carriers; and providing for an effective date."

and recommends:

replace with CS 5B 261 (FINANCE)  
 or  adopt previous CS (        )  
 attaches amendment(s)

same title  
 new title  
 technical title change (HB only)

adopts SFC Letter of Intent

further referral to the         

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTES**

Department	Date	Zero	Fiscal
DCRA	1-31-94	0	
DOTPE	2-8-94	0	
DCRA-Municipal	2-2-94	minimal loss	

Appropriation No Fiscal Note

**DO PASS:**

Ben Murphy

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1. Donna Kelly x10 Rec  
 Co-Chair: Signature/Recommendation

**OTHER RECOMMENDATIONS:**

Respectfully NO NITRAK  
Thin Kelly - No Rec  
J. Kirtland - NO Rec  
Steve Page - No Recommendation

2. Frank Conner - NO Rec  
 Co-Chair: Signature/Recommendation

**Municipal Fiscal Impact Note**  
(AS 24.08.035(e))

No. 3  
 Bill Version: CSSB 261 (CRA)  
 (S) Publish Date: 2-28-94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

BILL NO.  
 Version:

Revision Date: 1/26/94 Municipalities Affected: All  
 Title: Taxes involving Air Carriers  
 Requested By: \_\_\_\_\_  
 Sponsor: Senator Sharp

**Municipal Costs: (Thousands of Dollars)**

	FY95	FY96	FY97	FY98	FY99	FY2000
Operating						
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>Total Operating</b>						

Capital						
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**Funding (Thousands of Dollars)**

	FY95	FY96	FY97	FY98	FY99	FY2000
Property Taxes						
Sales Taxes	(minimal loss)					
User Fees						
Federal Receipts						
State Receipts						
Other						
<b>Total</b>						

**Positions**

	FY95	FY96	FY97	FY98	FY99	FY2000
Full-Time						
Part-Time						

**Analysis:**

SE 261 would exempt all air carrier from sales tax for activities involving carrying of passengers or freight. There are currently 98 municipal governments which levy a sales tax. Of these, 6 are boroughs or unified municipalities, including Haines Borough, City & Borough of Juneau, Kenai Peninsula Borough, Ketchikan Gateway Borough, City & Borough of Sitka, and the City & Borough of Yakutat.

A phone survey of municipalities on 1/28/94 by the Office of the State Assessor found that very few municipalities levy a sales tax against air carriers for this activity. This is partially due to the fact that the federal government levies a tax against passenger service precluding any local taxation. At the present time, the Kenai Peninsula Borough is in court on this specific issue.

Continues on attached page.

Prepared by: Michael Cushing, Research Analyst  
 Division: Municipal and Regional Assistance Division  
 Approved by: [Signature] DEPUTY COMMISSIONER  
 Commissioner:  
 Agency: Department of Community and Regional Affairs

Phone: 465-4751  
 Date: 1/31/94  
 Date: 2/2/94

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BILL NO. SB 261

In addition to Kenai, Sitka and Cordova currently levy a tax on passenger service, however, with little revenue generated. The cities of Haines, Ketchikan and Nenana levy a sales tax on freight. The taxes received are also minimal. Dillingham, Juneau, Kodiak, Palmer, Petersburg and Yakutat do not levy any type of sales tax against air carriers, although they do levy a general sales tax.

Based on the survey by the State Assessor's Office, it appears that passage of this legislation will have minimal fiscal impact on municipalities, partially because federal law appears to exempt passenger service already.

In summary, this bill would probably have little fiscal impact on local governments. At the state level, passage of this bill would certainly address the legal question of whether or not local governments can impose a sales tax on air carrier passenger service. At any rate, parts of this question may be answered by the courts shortly.

**FISCAL NOTE**

Revision Date:  
Title: No Municipal Sales Taxes on Air Carriers

Department Affected: DOT&PF  
BRU:

Sponsor: Sharp  
Requestor:

Component:  
Component Serial Number:

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING:</b>	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL FUNDING:</b>	0	0	0	0	0	0

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: \$ \_\_\_\_\_

**ANALYSIS: (Attach a separate page if necessary)**

This bill will not directly affect any state programs; however, it will result in transportation cost savings in that an additional potential tax would be clearly prohibited.

Prepared by: Jonathan A. Widdis, Director

Phone: 266-1460

Division: Statewide Aviation

Date: February 3, 1994

Approved by Commissioner: 

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: February 8, 1994

No. 1

Bill Version: SB 261

(S) Publish Date: 2-2-94

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
Title: \*An Act relating to municipal sales and use BRU: \_\_\_\_\_  
taxes involving air carriers: . . . Component: \_\_\_\_\_  
Sponsor: Senator Sharp  
Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current (FY94) Impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Changes in <u>CS SB 261 (CRA)</u> have no fiscal impact. This fiscal note is appropriate. <u>2/24/94</u> date <u>Shirley [initials]</u> Comte Aide (initial)	Changes in <u>CS SB 261 (TRA)</u> have no fiscal impact. This fiscal note is appropriate. <u>2/1/94</u> date <u>R.A.S.</u> Comte Aide (initial)
---	--

Prepared by: Kimond Henderson Director Phone: 465-4708  
 Division: Administrative Services Date: 1/31/94  
 Approved by Commissioner: [Signature] Deputy Commissioner Date: 1/31/94  
 Agency: Community & Regional Affairs

3-12-94  
B5 3  
Adopted

LETTER OF INTENT: SENATE BILL 261: SENATE FINANCE

It is the intent of the Legislature to define the powers of municipalities to tax commercial aviation activities in a manner consistent with federal aviation law.

Municipalities may not levy taxes, directly or indirectly, on passengers and air freight carried by commercial air service companies holding Federal Aviation Administration certificates.

Municipalities may levy other taxes, currently permitted under federal law, such as landing taxes, fuel flowage fees, property taxes, and taxes on the sale of goods and services which are incidental to air transportation such as food provided to airline passengers.

Federal taxes on passengers and air freight, paid by airport users, are returned to the States through the Airport and Airways Trust Fund for the construction of new airport facilities . This was one reason for federal limitation on the rights of states and municipalities to tax air transportation.

Sen. Sharp

3-12-94  
BS

WORK DRAFT

WORK DRAFT

WORK DRAFT

8-LS1560R  
Cook  
3/11/94

Adopted  
Called  
12:40pm

CS FOR SENATE BILL NO. 261( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR SHARP

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to municipal taxes and fees on the air transportation of  
2 individuals or goods by federally certificated air carriers; and providing for an  
3 effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

6 (53) AS 29.47.470 (air carriers).

7 \* Sec. 2. AS 29.47 is amended by adding a new section to read:

8 Sec. 29.47.470. TAXES OR FEES ON TRANSPORTATION BY CERTAIN  
9 AIR CARRIERS PROHIBITED. Notwithstanding other provisions of law, a  
10 municipality may not levy or collect a tax or fee on the air transportation of  
11 individuals or goods by a federally certificated air carrier other than a tax or fee  
12 authorized under 49 U.S.C. App 1513(b) or (e). This section applies to home rule and  
13 general law municipalities.

14 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).



U.S. Department of  
Transportation

General Counsel

400 Seventh St., S.W.  
Washington, D.C. 20590

OCT - 3 1986

RECEIVED  
OCT 06 1986

Ms. D. Elizabeth Cuadra  
Robertson, Monagle, Eastaugh  
Attorneys at Law  
Post Office Box 1211  
Juneau, Alaska 99802-1211

Robertson, Monagle & Eastaugh, P.C.  
Juneau, Alaska

Re: Municipal Taxation of  
Air Commerce

Dear Ms. Cuadra:

I appreciate the opportunity to respond to your questions to the Department concerning the legitimacy of municipal taxation on airline ticket sales. You state that your municipal clients assess or wish to assess sales taxes on the sale of transportation by air. It is my opinion that, to the extent these ordinances tax the sale of passenger transportation by air - whether intrastate, interstate, overseas, or foreign transportation - they are preempted by Section 1113 of the Federal Aviation Act of 1958, as amended (49 U.S.C. Section 1513). Sales taxes on the intrastate air carriage of property are permissible.

As the General Counsel explained in his December 18, 1985 letter to Riggs Air Service, these ordinances would largely fall within the plain prohibitions of Section 1113(a):

"No State (or political subdivision thereof...) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom..."

By taxing the air fare at the point of sale to the consumer, the municipalities are, in effect, taxing "persons traveling in air commerce." Section 1113(a) clearly preempts such a tax.

Congress intended, by including this provision in the 1973 Airport Development Acceleration Act, to preclude not only head taxes but also to prevent states or municipalities from burdening interstate commerce by assessing various other taxes on air transportation. <sup>1/</sup>

<sup>1/</sup> See especially 119 Cong. Rec. Part 3, p. 3349, (statement of Mr. Cannon, introducing S. 38); and 3350 (statement of Mr. Pearson.)

Ms. D. Elizabeth Cuadra

(2)

As you note, Congress, in Section 1113(b), excepted several types of taxes from the general prohibition, including as most relevant here "sales and use taxes on the sale of goods or services." However, given the language of Section 1113(a), this exception hardly can be read as allowing a "sales tax" which is imposed, directly or indirectly, upon "persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation...." Otherwise, the exception would wholly swallow the rule.<sup>2/</sup> Rather, we believe Congress intended in (b) to permit States and municipalities to maintain taxes on the sale of goods and services which are incidental to air transportation, such as the sale to the airline of aviation fuel or of food to be provided to the airline passenger.

This view is in full accord both with Congressional intent and the results obtained in court cases. The inclusion of (b) was intended to allow States and localities to retain traditional sources of revenues, and they had historically imposed sales and use taxes on goods and services supplied in connection with airline operations.<sup>3/</sup> This interpretation is also consistent with the results obtained in the two cases most relevant to the issue, Air Jamaica, Ltd. v. State Department of Revenue, 374 So. 2d 575 (Fla. App. 1979), cert. den. 392 So. 2d 1371 (Fla. 1980), which you cite, and Wardair Canada v. Florida Department of Revenue, 106 S. Ct. 2369, (1986), 1. Ed. 2d 1, 14-15 (Burger, C. J., concurring) (June 18, 1986). Air Jamaica found lawful a sales tax on packaged meals purchased by airlines and served to their passengers, while Wardair upheld a State sales tax on jet fuel. Both are taxes imposed on airlines for goods or services incidental to their provision of air transportation.

Accordingly, in response to the specific situations you raised in your letter of February 20th, local sales taxes would not be permissible with regard to (a) sightseeing tours by helicopter or light plane; (b) air taxi or charter fishing trips; (c) nonscheduled air taxi operators; (d) scheduled interstate commuter airline trips, regardless of the passenger's ultimate destination; and (e) airline tickets sold, regardless of the passenger's routing. This is because the preemption extends to all carriers regulated by the FAA (including helicopters, etc.) as well as to all passenger transportation involving air commerce.

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<sup>2/</sup> See also State v. Cochise Airlines, 626 P.2d. 596, 601 (Ariz. App., 1981), observing that the "sales taxes referred to in [§1113(b)] on the sales of goods and services cannot logically include sales of air transportation or sales directly connected with the carriage of persons in air commerce. If [§1113] were interpreted otherwise, it would be self-contradictory."

<sup>3/</sup> See Hearings on H.R. 2337 et al. before the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce, 92d Cong. 2d Sess. at 91 (1972). Compare H.R. 2337, 92d Cong. 1st Sess. (1971) and S. 3611, 92d Cong. 2d Sess. (1972), which, without any exceptions, prohibited State or local taxes, fees, etc. on the carriage of persons in air transportation, with Pub. L. 93-44, 93d Cong. 1st Sess. §7 (1973) as ultimately enacted.

Ms. D. Elizabeth Cuadra

(3)

With regard to the transportation of property by air, however, I believe Section 1113 preempts state or local sales taxes on interstate air transportation only. The operative statutory provision precludes a "tax...on the sale of air transportation". This excludes taxes on the sale of intrastate air transport of property, cf. 49 U.S.C. § 1301(10). Accordingly, to the extent the municipal ordinances assess sales taxes on the intrastate transportation by air of property, they are not preempted by Section 1113. 4/

Sincerely,



Rosalind Knapp  
Deputy General Counsel

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4/ Accord, State v. Cochise Airlines, supra at 601.

FEB 17 1994 08:35 AM ALASKA AIR (907) 276-1287

F.1

# BOGLE & GATES

LAW OFFICES

Edmond W. Burke

1031 West 4th Avenue, Suite 600  
Anchorage, Alaska 99501

Main Office: (907) 276-4557  
Telex Int'l: 98-1751  
Telex USA: 620-42-430  
Facsimile: (907) 276-4152  
Direct Dial: (907) 257-7811

Seattle  
Bellevue  
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Washington, D.C.  
Yakima

February 16, 1994

Mr. Robert J. Hallford  
Vice President  
Postal Operations and  
External Affairs  
Northern Air Cargo  
1900 West International Airport Road  
Anchorage, Alaska 99502

Re: City of St. Mary's Sales Tax

Dear Mr. Hallford:

We have been asked whether the City of St. Mary's is free to tax the sale of air transportation services by Northern Air Cargo.

By city ordinance, the City of St. Mary's purports to levy a sales tax "upon all sales, rents and services provided in the city." Code of Ordinances for the City of St. Mary's, title IV, ch. 45, sec. 1A. Among other things, the ordinance places "[t]he burden of [paying] the . . . tax . . . upon the buyer," and provides that "[t]he tax is to be collected by the seller." Ord., sec. 1B.

By letter dated December 23, 1993, attorneys representing the City of St. Mary's sent the follow demand to Northern Air Cargo:

The City of St. Mary's demands a full account of the reserves subject to the [city's sales] tax [on your operation] and payment by January 14, 1994. Failing such steps and indication that appropriate payment shall be forthcoming, we shall take such further action as the city Council may direct to enforce collection of the tax.

Mr. Robert J. Hallford  
February 16, 1994  
Page 2

The city's attorneys have been informed, by Jim Reeves of this office, that the tax is invalid, partly because federal law prohibits any state or local law "relating to [Northern Air Cargo's] rates, routes, or services." I concur in Mr. Reeves' analysis.

Section 1305 of the Airline Deregulation Act of 1978, 49 U.S.C.A. § 1301 et seq., provides, partly:

[N]o State or political subdivision thereof . . . shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under subchapter IV of this chapter to provide air transportation.

49 App. U.S.C.A. § 1305(a)(1) (emphasis added). The City of St. Mary's is a political subdivision of the State of Alaska, and Northern Air Cargo is an "air carrier" authorized under subchapter IV to provide air transportation. The key question is, therefore, whether the city's tax ordinance is a "law relating to [Northern Air Cargo's] rates, routes, or services." within the meaning of the federal preemption provision. Id.

Congress intended § 1305 to operate broadly. Morales v. Trans World Airlines, \_\_\_ U.S. \_\_\_, 112 S.Ct. 2031, 2040, 119 L.Ed.2d 157 (1992). Thus, state and local laws affecting airline rates, routes, and services will be tolerated only when it appears that their influence in these categories is so "tenuous, remote, or peripheral" that federal preemption is not indicated. Id., \_\_\_ U.S. at \_\_\_, 112 S. Ct. at 2040, 119 L.Ed.2d at \_\_\_; see, e.g., Bayne v. Adventure Tours USA, Inc., 1994 WL 9531 (N.D.Tex.)

In this case, it is quite obvious that the city's sales tax will directly and significantly affect Northern Air Cargo's rates and services. First, its customers will be required to pay an increased rate for air transportation. Second, the carrier will be required to collect, account for, and remit the amount collected for taxes to the city. The relationship between the tax and the carriers' rates and services is, therefore, anything but "tenuous, remote or peripheral." Quite the opposite, the tax is directly connected to rates and service, and its effect upon those rates and services will necessarily be substantial. The city's sales tax ordinance must, therefore, be viewed as a "law relating to [Northern Air Cargo's] rates . . . and services." 49 App. U.S.C.A. § 1305(a)(1).

BOGLE & GATES

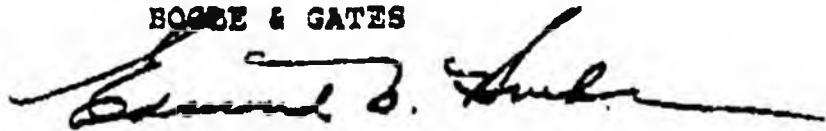
Mr. Robert J. Hallford  
February 16, 1994  
Page 3

The federal supremacy clause, U.S. Const. art VI, cl. 2, invalidates any exercise of state power that unduly frustrates or obstructs the objectives of a legitimate national policy. San Diego Unified Port District v. Gianturco, 61 F.2d 1306 (9th Cir. 1981). Even where federal preemption is not explicit, state authority may still be displaced, where Congress' intent to displace is implicit in the structure and purpose of the statute that it has enacted. *Id.* Here, there is no need to speculate: the intent of Congress is explicit, and preemption is clearly indicated.

For these reasons, I believe the federal preemption statute, 49 App. U.S.C.A. § 1305(a)(1), renders the city's sales tax ordinance invalid and unenforceable with regard to transportation services sold and provided by Northern Air Cargo and other air carriers similarly situated. Having reached this conclusion, I do not address any other legal argument that might be raised regarding the validity of the city's sales tax ordinance.

Very truly yours,

BOGGE & GATES



Edmond W. Burke

BOGGE & GATES



**DOUGLAS TO INTENSIFY MARKETING OF TWIN PROPFAN**

Douglas Aircraft early next year will "intensify" its marketing efforts with airlines for a propfan derivative of its MD-80 series, despite a Boeing decision this week to delay indefinitely its 7J7 propfan project (DAILY, Dec. 16). Boeing said it is consolidating its product development activities, including studies of the 7J7, into a new Advanced Programs Organization.

A Douglas spokesman said that the company is "moving ahead" with its propfan flight tests on testbed aircraft and has completed 110 flight tests. "We will be out heavily after the start of the new year talking to airlines. We are trying to get enough interest to launch. We have encountered a lot of interest." Douglas will be trying to determine the size of aircraft to offer, which is one reason why Boeing backed off a 1993 introduction of the 7J7. Boeing said airlines wanted the 7J7 in sizes of 130 to 180 seats. "The 7J7 was visualized initially as 150 seats," a Boeing spokesman said. Douglas could offer the 130-seat MD-91, the MD-87 equivalent, or the larger MD-97, which is based on an aircraft the size of the MD-80.

The Boeing decision could put the proposed 7J7 into a mid-1990s timeframe, which is when Airbus Industrie had predicted propfan technology would become feasible for use on transport aircraft. Airbus said it believes its A320 "in any event" will be a competitive aircraft to either U.S. offering. "We do not think technologically it will be superseded for the foreseeable future."

Alan Mulally, former director of engineering for the 7J7, was named general manager of the new Advanced Programs Organization, which Boeing said will have responsibility for development of its advanced technology and design and new airplane programs. Reporting to Mulally will be Ardell Anderson, director of new product development; Robert Mathis, director of finance; Murray Booth, director of 7J7 engineering, and Roy Phillips, manager of the 7J7 joint venture management.

Concerning Japanese participation on the 7J7 program, Michio Daibo of Japan Aircraft Development Corp. will coordinate with Mulally, and similar relationships will exist between Akira Ikeda and Murray Booth and Norio Yamanouchi and Roy Phillips. Boeing said that because of the major air traffic growth expected by the year 2000, the new organization structure "will ensure a synergistic approach to development and implementation of technical advances in all new and derivative products, including the high-speed commercial transport under study."

It said the reorganization resulted from a decision earlier this year to delay program timing of the 7J7 until a "more defined requirement of airplane and engine size can be obtained from key customers."

**NEW MEXICAN CARRIER ORDERS AIRBUS A300-600**

Latur, a new Mexican charter carrier venture started by the Mexican pilots association through its pension fund and Promotora Mexicana de Hoteles, has ordered an A300-600, making it the first Mexican customer for an Airbus product. Engine selection is yet to be made for the aircraft, which is to be delivered in July 1989 and used on routes between the U.S. East Coast and Mexican resorts.

**FAA EXTENDS DEADLINE FOR SPECIAL FLIGHT AUTHORIZATIONS**

FAA has extended until Dec. 31, 1989, a special authorization for non-revenue flights of Stage 1 aircraft if permission is submitted five days before the flight, but the agency says it does not intend to extend the authorization beyond that date (DAILY, Dec. 16). Current rule authorizing such flights expires Dec. 31, 1987. FAA began allowing the flights following the Jan. 1, 1985 deadline, which prohibits the operation of aircraft that do not comply with Stage 2 or 3 noise levels. Agency said that extension of the rule is not necessary beyond Dec. 31, 1989, because "most non-complying Stage 1 aircraft will either have been modified to meet Stage 2 noise standards or be out of service."

**\* FLORIDA COURT STRIKES DOWN SERVICE TAX ON AIR FREIGHT**

Circuit Court for Leon County, Fla., has struck down Florida's tax on services as it applies to air freight, the Air Transport Association said. Judge Charles Miner, who wrote the opinion for the court, said Section 1113 of the Federal Aviation Act which prohibits states from taxing air transportation also applies to cargo. Since the tax went into effect July 1 Florida has assessed a 5% tax on intrastate air freight and a 2.5% tax on intrastate shipments. The ruling was in response to a suit filed Aug. 18 against the state by ATA and DHL Airways. The Florida Department of Revenue had tried to get the suit dismissed on grounds the federal act prohibits states from establishing head taxes but did not apply to axes on property moved by air.

¶ 1572] STATE TAXATION OF AIR  
COMMERCE

Sec. 1113 [49 App. U. S. Code § 1513] (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom; except as provided in subsection (e) except that any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until December 31, 1973.

(b) Except as provided in subsection (d) of this section, nothing in this section shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sale or use taxes on the sale of goods or services; and nothing in this section shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, or other service charges from aircraft operators for the use of airport facilities.

(c) In the case of any airport operating authority which—

(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

(2) is collecting without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

(3) has no authority to collect any other type of tax to repay such loan or loans, the provisions of subsection (a) shall not apply to such authority until December 31, 1973.

(d)(1) The following acts unreasonably burden and discriminate against interstate commerce and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(A) assess air carrier transportation property at a value that has a higher ratio to the true market value of the air carrier transportation property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property;

(B) levy or collect a tax on an assessment that may not be made under subparagraph (A) of this paragraph; or

(C) levy or collect an ad valorem property tax on air carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(2) In this subsection—

(A) "assessment" means valuation for a property tax levied by a taxing district;

(B) "assessment jurisdiction" means a geographical area in a state used in determining the assessed value of property for ad valorem taxation;

(C) "air carrier transportation property" means property, as defined by the Civil Aeronautics Board, owned or used by an air carrier providing air transportation;

(D) "commercial and industrial property" means property, other than transportation property and land used primarily for agricultural purposes or timber.

Aviation Law Reports

§ 1113(d) ¶ 1572

↓ [The rest is not relevant]

09-23-93 12:15 X

TO 99074803144

P003/009

Mr. Robert Petersen  
Director, Operations  
Gulf Air Taxi, Inc.  
Box 367  
Yakutat, Alaska 99689

FEB. 5 1993

Re: Aviation Sales Tax

Dear Mr. Peterson:

Thank you for your inquiry regarding the recent enactment by the City and Borough of Yakutat of sales tax ordinance No. 92-04, imposing a consumer sales tax at the rate of three percent of the gross sales price on businesses within the boundaries of the City and Borough. You asked whether the Yakutat tax may permissibly be levied on air charter service sales.

It is our opinion that the sale of intrastate, interstate or foreign passenger transportation by air, or interstate or foreign transportation by air of property are exempt from the Yakutat tax pursuant to section 6.40.030 G of the ordinance, due to the prohibition of State taxation of air commerce contained in the Federal Aviation Act. Section 1113(a) of the Federal Aviation Act, Title 49 U.S. Code Appendix, section 1513(a), states:

No State (or political subdivision thereof...) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom...

A State tax, however, may be levied on the intrastate transportation by air of property.

I am enclosing opinion letters which our Office of General Counsel has previously issued regarding consumer sales taxes ordinances enacted by the cities of Craig and Skagway, and by the cities and boroughs of Juneau and Sitka. Each of these municipalities (with the exception of Skagway) had imposed consumer sales taxes of either three or four percent on the sale of transportation by air, which we found to be largely preempted by the Federal statute, and therefore invalid. (Municipalities are, however, not preempted from assessing and collecting sales taxes on the intrastate transportation by air of property). The letters dated October 3, 1986 from our Deputy General Counsel to counsel for Craig and Skagway and our letter dated December 18, 1985 from our former General Counsel to Riggs Air Service in Sitka fully explain our reasoning.

P-24-93 FRI 10:39 Melvin M. Steffens

-23-93 12:55PM

TO 95074863144

P004/009

These opinions remain valid today; the only change to the prohibition of State taxation of air commerce has been the 1990 passage of legislation allowing the passenger facility charge (PFC) program. (Section 1113(e) of the Federal Aviation Act, Title 49 U.S. Code Appendix, section 1513(3)). Passenger facility charges, in amounts of \$1, \$2, or \$3 per passenger, when imposed by a public agency controlling an airport to finance eligible airport-related projects are permissible upon approval by the Secretary of the Department of Transportation. Obviously, the Yakutat ordinance is not a PFC. Rather, it appears to be an impermissible tax on persons traveling in air commerce and on the sale of air transportation.

Please contact me should you have any further questions.

Sincerely,

Original Signed  
By

Roberta Gabel  
Assistant General Counsel for  
Environmental, Civil Rights and  
and General Law

Enclosures (2)

NKessler: C-10:69154:1-25-93  
Head Tax, Yakutat: File: FAAct, Head Tax

# Alaska State Legislature

SENATOR  
**BERT SHARP**

DISTRICT P

CHAIRMAN  
TRANSPORTATION COMMITTEE

MEMBER  
FINANCE COMMITTEE  
LEGISLATIVE BUDGET & AUDIT COMMITTEE  
HEALTH & SOCIAL SERVICES



Senate

## FAIRBANKS

DENALI BANK BUILDING  
119 N. CUSHMAN, SUITE 201  
FAIRBANKS, ALASKA 99701  
(907) 452-7885/7886

## SESSION ADDRESS

STATE CAPITOL, ROOM 514  
JUNEAU, ALASKA 99901-1182  
(907) 465-3004/4921

## SPONSOR STATEMENT

### **SB 261 - "An Act relating to municipal sales and use taxes involving air carriers; and providing for an effective date."**

**SB 261** reinforces the Federal Preemption Provision of the Federal Aviation Act of 1958 which reserves to the federal government the power to regulate and tax air carriers engaged in air transportation or air commerce. The law explicitly states that no state or political subdivision may enact laws that affect the rates, routes or services of an air carrier engaged in air transportation. Despite the provision, several communities in Alaska have proposed sales and use taxes of this sort. Allowing such provincial taxing authority could soon strangle even the most effective transportation networks. Substantial case law demonstrates that this practice violates the Act, but communities, believing they have found yet another loophole in the law, periodically test the waters with a new tax. This has resulted in confrontation and costly litigation between the aviation community and the municipalities. SB 261 eliminates the illusions on which past efforts have been based and restates federal intent in the preemption provision.



REPRESENTING  
GOLDEN HEART  
OF ALASKA



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

March 2, 1994

TO: Bill Miles, Aide to Senator Pearce  
Senate Finance Committee

FROM: Chrystal Smith

RE: AML Opposition to SB 261

As we discussed late last week, the Alaska Municipal League opposes SB 261 (and its current version, CS SB 261 (CRA)), which was recently referred to the Senate Finance Committee.

I have enclosed AML's position paper on the bill for your reference. I can provide additional information, including the opinions of Judge Link and the Office of General Counsel, federal Department of Transportation, if you like. Please call me at 586-1325 if I can be of assistance.

You should know that the companion bill in the House (HB 406) is being considered by a House Finance subcommittee at the present time and is scheduled for action by the full committee on Friday. AML and concerned municipalities will continue to fight it in the House as well as the Senate.

Many thanks for your consideration -- I appreciate any help you can provide.

Enclosure

94LEGIS::miles.3-2



## **AML Position Paper**

### **CS SB 261 (CRA) - Exempting air carriers from municipal sales and use tax**

The Alaska Municipal League opposes **CS SB 261 (CRA) - Exempting air carriers from municipal sales and use taxes** for a number of reasons.

**First**, the bill is yet another restriction on the ability of municipalities to raise local revenues, revenues that are badly needed in light of cutbacks in state aid and the increasing number of unfunded mandates imposed by the state and local governments.

**Second**, according to its sponsors, the bill is intended to restate federal law, law that they say is clear already. If the federal law is clear, there is no reason to restate it in state statutes. In fact, however, CS SB 261 (CRA) goes beyond federal law by prohibiting municipalities from levying sales taxes on the carriage of intrastate freight.

Opinions rendered by Alaska Superior Court Judge Jonathan M. Link in the *Homer Air v. Kenai Peninsula Borough et al.* case and by the Deputy General Counsel of the federal Department of Transportation confirm AML's position that taxation of intrastate freight by municipalities is allowable. Judge Link, in a May 1993 ruling on a motion for partial summary judgment in the case mentioned above, said:

Finally, it is appropriate to note that the court's analysis in this decision is limited solely to the carriage of persons. *Homer Air* has not asked the court to address the question of freight. The court notes in passing that the doctrine of preemption is one that is generally limited by specific legislation. Section 1513 as enacted relates only to the carriage of "persons" and, accordingly, does not prohibit sales taxes on the transportation of freight.

**Third**, with regard to the issue of taxation of passengers, it is the League's understanding that at the present time the issue of taxing passengers in certain types of circumstances, e.g., local flightseeing, is still in dispute and is, in fact, the focus of the *Homer Air* case, which is yet to be decided in the court. AML asks that the legislature wait for the courts to decide the issue, not preclude this local option by legislation. Municipalities understand the federal prohibition on the taxation of passengers "in air commerce," but they oppose broad state statutes that would extend the intent of the federal statute to cover such things as flightseeing.

At a minimum, the bill should be amended to limit the prohibition on municipal taxation to "a sales tax on the carriage of passengers from a point of origin to a different point of destination." This would clearly restate the intent of the federal law without superceding the ability of the court to decide the issue and without placing undue restrictions on municipalities.

Finally, CS SB 261 (CRA) has a retroactive effective date, which should be deleted if the bill is passed from committee. If the legislature does decide to preclude municipalities from raising additional revenues locally through this means, the bill should be amended

CS SB 261 (CRA) Position Paper  
page 2

to change the effective date to January 1, 1995, to give those municipalities that do collect taxes of this type to plan for reduced revenues in their budget cycle. It is unreasonable to prohibit a tax retroactively.

**In conclusion, the Alaska Municipal League opposes CS SB 261 (CRA) as an unnecessary piece of legislation and one that will place unfair restrictions on the ability of municipalities to raise local revenues in a time when state-shared revenues are being cut and the impact of unfunded mandates and handed-down responsibilities is increasing.**

March 2, 1994

LEGIS94:possb261.3-2



**HAINES BOROUGH** Box 1209, Haines, Alaska 99827 (907) 766-2711 FAX 766-2716

March 11, 1994

Senators Drue Pierce and  
Steve Frank  
Senate Finance Committee  
Alaska State Legislature  
Juneau, AK 99811

Dear Senators:

I understand there will be a Senate Finance Committee meeting tomorrow (March 12) and Senate Bill 261 will be discussed. I would like this letter to serve as comment on that bill.

You may not be aware that the City of Haines and the Haines Borough both receive sales tax from the intrastate movement of freight by our local airlines. We do so because we have a local sales tax and the Federal Aviation Act of 1958 does not prohibit municipalities from assessing this tax.

Considering that State revenue sharing and municipal assistance continues to decline, I would hope the Legislature would support municipalities in their attempts to generate local revenue. It seems as if this exemption would give airlines an unfair advantage over ways to ship freight.

I request that you consider carefully all the ramifications of this proposed bill.

Thank you,

*Becky Palmer*  
Becky Palmer  
Borough Clerk

Post-It™ brand fax transmittal memo 7571		# of pages >
To <i>Bill Miles</i>	From <i>Becky Palmer</i>	
Co.	Co.	
Dept.	Phone # <i>766-2711</i>	
Fax # <i>465-2872</i>	Fax # <i>766-2714</i>	

SENATE COMMITTEE REPORT

DATE: 2/2/94

FURTHER: Finance

DATE TURNED INTO OFFICE: 2-25-94

*fund*

CRA Committee considered SENATE BILL NO. 261

"An Act relating to municipal sales and use taxes involving air carriers and providing for an effective date."

and recommends:

and recommends it be replaced with

- replace with \_\_\_\_\_ CS SB261 (CRA)
- or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attaches amendment(s) *a mg report is back w/*

- same title
- new title
- technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent *NO REC*

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

*30/50*

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
<i>DCRA</i>	<i>1/31/94</i>	<i>0</i>	
<i>DOTPF</i>	<i>2/8/94</i>	<i>0</i>	
<i>DCRA-Muni</i>	<i>2/2/94</i>	<i>0</i>	

*Previous new for CS*

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

\_\_\_\_\_ *Forew A Luman No Rec*

\_\_\_\_\_ *Robin L. Taylor NO Rec*

\_\_\_\_\_

\_\_\_\_\_

*1* Paul E. [Signature] No Rec

Chair: Signature and Recommendation

**SENATE COMMITTEE REPORT**  
FIRST COMMITTEE OF REFERRAL

*Handwritten initials*

DATE: 1/26/94

FURTHER: CRA  
Finance

Date of 5-Day Notice: 1/26/94  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-2-94

Transportation Committee considered SB 261

"An Act relating to municipal sales and use taxes involving air carriers; and providing for an effective date."

and recommends: and a majority of the committee recommends it be replaced with

replace with CS. SB 261 (TRA)

same title  
 new title  
 technical title change (HB only)

attaches amendment(s)

and do pass

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

*Handwritten initials*

**FISCAL NOTE INFORMATION**

Department	Date	Zero	Fiscal
DCRA-SBPCS	1/31/94	X	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

*Tim Kelly Kelly*  *Pass* *No Rec.*  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

*Bob Mays*  
Chair: Signature and Recommendation