California State
Board *of* Equalization

Legislative Enrolled Bill Analysis

Legislative, Research & Statistics Division

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Revenue and Taxation Code Sections 441, 1152, 1153, 1153.5, and 1157
Effective: Upon chaptering, operative for the 2020-21 fiscal year

Summary: Related to the property taxation of commercial air carriers,[1] this bill:

- Re-establishes the local centralized administrative procedures using a "lead county" system.
- Establishes a new formula for allocating the taxable value of certificated aircraft beginning with the 2020-21 fiscal year.[2]
- Changes the representative period for measuring aircraft presence in California for value allocation purposes.

Fiscal Impact Summary: The revenue impact is unknown.

Existing Law: Under article XIII, section 1, of the California Constitution, all property is taxable and assessed at fair market value, unless otherwise provided by the California Constitution or the laws of the United States. Section 2 of article XIII authorizes the Legislature to provide for property taxation of tangible personal property. Certificated aircraft used by air carriers are tangible personal property, subject to taxation when in revenue service in California.

Until December 31, 2016, the law[3] specified an aircraft valuation methodology that assessors had to use, based on the lowest of trended acquisition cost less depreciation, wholesale prices listed in the *Airliner Price Guide* (APG), a commercially published "blue book" value guide, less 10 percent, or original price paid. In addition, assessors and commercial air carriers were allowed to streamline administrative procedures by using a "lead county" system. This allowed commercial air carriers operating in multiple California counties to file a single consolidated property statement (tax return) with a designated “lead” county. The lead county calculated the total unallocated fleet value of the air carrier’s certificated aircraft for each make, model, and series and transmitted the calculated fleet value to the other counties. To assess the aircraft, each county determined its allocated portion of the calculated fleet value based on the flight data for its particular county. The allocation process limited each county’s assessment to reflect the aircraft's physical presence in that county. The valuation methodology and the lead county administrative procedures expired on December 31, 2016.

Due to the expiration of the valuation methodology, county assessors may use any valid method (cost, income, comparable sales, published market value guides) to determine fair market value.[4]

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[1] Commercial air carriers include both passenger airlines and freight delivery services.
[2] Certificated aircraft means certificated aircraft per Revenue and Taxation Code (RTC) section 1150 and scheduled air taxi operators per RTC section 1154(a) and (b).
[3] RTC section 401.17.
[4] RTC section 110 defines "fair market value" as the "amount of cash … that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other … "

Representative Period. Related to the value allocation process, current law requires the Board of Equalization (BOE) to designate the period to measure aircraft presence in California after consulting with assessors annually.[5] Since 1997, the BOE has selected various weeks in the month of January.

California Assessors' Association Aircraft Advisory Subcommittee (CAA Subcommittee). Created in 1965,[6] this Subcommittee typically meets twice a year. Its members consist of county assessor staff with certificated aircraft assessment expertise. A BOE staff member generally attends the meetings. Additionally, the Subcommittee dedicates a portion of each meeting to confer with airlines on assessment issues.

Proposed Law:

Property Statements. This bill requires a commercial air carrier whose certificated aircraft is subject to property taxation to file with the lead county assessor's office one signed property statement for its personal property and fixtures at all airport locations. This bill also provides that each commercial air carrier may file one schedule for all of its certificated aircraft with situs in California, and requires that flight data be reported for the entire state and segregated by county and airport. Additionally, ground time at each airport must be reported on a summary basis by fleet type. *RTC section 441(m) and new section 1152(c)*

Allocation Formula. This bill provides that the current allocation formula applies to fiscal years before the 2020-21 fiscal year. *RTC section 1152*

New Allocation Formula. This bill creates a new allocation formula to be used by each assessor the proportionate amount of time, both in the air and on the ground, that certificated aircraft have spent in California during the 12-month period from January 1 – December 31 of the previous year immediately preceding the lien date. For this allocation formula, SB 791 provides the following definitions

- "Time in the air" consists of flight time and taxi time within California's borders and must be based on BOE's "California Standard Flight Times" table in the most recently published Letter To Assessors (LTA)[7] that addresses intrastate and interstate standard flight times.
- "Ground time" is all time in California that is not flight or taxi time.
- "Time allocable to each airport" is the amount of time a certificated aircraft or scheduled air taxi is on the ground at the airport, plus the airport's portion of incoming and outgoing flight time.

Aircraft Representative Period. This bill eliminates the BOE's duty to designate an aircraft representative period. *RTC section 1153*

CAA Aircraft Advisory Subcommittee. This bill requires the CAA Subcommittee to annually designate, by March 1, a lead county assessor's office for each commercial air carrier operating certificated aircraft in California. Every third year thereafter, the CAA Subcommittee must redesignate a lead county assessor's

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[5] RTC section 1153 and Property Tax Rule 202(f).
[6] In 1965, the Subcommittee was formed to decide on a method to allocate aircraft values; there was no law specific to aircraft value allocation. Assembly Revenue and Taxation Committee, Volume 4, Number 22, *A Study of Aircraft Assessment in California* (January, 1968), page 9. Effective August 13, 1968, AB 1257 (Stats. 1968, p. 2460) added Article 6 (commencing with RTC section 1150), to establish the procedure for allocating the value of certificated aircraft and air taxis to California taxing agencies.
[7] For example, see LTA No. 2018/066.

office for each of these carriers, unless an air carrier and its existing lead county assessor's office concur to waive this redesignation. *RTC section 1153.5(a)*

Lead County Requirements. This bill requires a lead county assessor's office to do the following:

- Send written notification to each commercial air carrier to which that assessor is designated.
- Receive the property statement of each commercial air carrier to which that assessor is designated.
- Calculate an unallocated value of the certificated aircraft of each commercial air carrier to which that assessor is designated.
- Electronically transmit the following:
    - To the assessor of each county in which the aircraft has situs, the unallocated values calculated for those aircraft.
    - To the assessor of each affected county, the flight data required to compute the allocation, received from commercial air carriers.
- Lead the audit team when that team is conducting an audit of a commercial air carrier to which that assessor is designated. *RTC section 1153.5(b)*

Audits. This bill requires an audit of a commercial air carrier 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 Subcommittee. An audit is to include all California personal property and fixtures of the air carrier on behalf of each county for which an audit would otherwise be required.[8] *RTC section 1153.5(d)*

Emergency Regulations. This bill requires the BOE, after consultation with the California Assessors' Association and representatives of commercial air carriers, to enact emergency regulations and produce forms and instructions necessary to implement the allocation formula. *RTC section 1157*

In General: **Business Personal Property.** All property, real and personal, is subject to property tax, unless a specific constitutional or statutory exemption applies. Generally, taxability is determined on the lien date, which is January 1 of each year. The Constitution allows the Legislature to exempt or provide for differential taxation of any personal property with a 2/3 vote.

Personal property used in a trade or business is taxable. Proposition 13's valuation limitations do not apply to business personal property. Consequently, the law requires the assessor to determine its current fair market value every year as of January 1. Mass appraisal techniques generally are necessary given the enormity of this task. To aid in the task, the law requires property owners to annually report their personal property holdings with an aggregate acquisition cost of $100,000 or more on a business property statement.[9]

The assessor determines the fair market value of most business personal property using the property's acquisition cost. The assessor multiplies acquisition cost by a price index (an inflation trending factor based on acquisition year) to estimate reproduction cost new. Next, the assessor multiplies reproduction cost new by a percent good factor (from BOE-issued percent good tables) to estimate depreciated reproduction cost (reproduction cost new less depreciation). The assessor uses the reproduction cost new

[8] RTC section 469.
[9] RTC section 441.

less depreciation value as the property's taxable value for the fiscal year. The personal property tax rate is the same as the real property tax rate, which is 1 percent plus voter approved indebtedness in the locality. The BOE's Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures*, provides more detailed guidance.

Certificated Aircraft. Certificated aircraft used by air carriers is subject to taxation when in revenue service in California. Generally, certificated aircraft are commercial aircraft operated by air carriers for passenger or freight service. California law[10] defines "certificated aircraft" as:

> [A]ircraft operated by an air carrier or foreign air carrier engaged in air transportation, as defined in Section 40102(a)(2), (5), (6), and (21) of Title 49 of the United States Code, while there is in force a certificate or permit issued by the Federal Aviation Administration, or its successor, authorizing such air carrier to engage in such transportation.

Certificated aircraft are valued under a "fleet" concept. This means that the assessed value basis is not the value of any single aircraft owned by an air carrier, but rather the value of *all* aircraft of each type that is flown into the state. Aircraft regularly fly in and out of California and the various California counties with major airports; typically no single or particular aircraft remains located in the state on a permanent basis. Under the "fleet" concept, aircraft types that have gained situs in California by their entry into revenue service in this state are valued as a fleet, while only an allocated portion of the entire fleet's value is ultimately taxed to reflect actual presence in California's counties. Under the federal Due Process and Commerce Clauses, personal property taxes on these aircraft must be fairly allocated.

Centralized System - One Return/One Audit. Prior to December 31, 2016, the law[11] allowed commercial air carriers operating in multiple California airports to file a single consolidated property statement (tax return) with a designated "lead" county. This former law outlined the process for the CAA Subcommittee, after soliciting input from the airlines, to select a lead county for each air carrier.[12] The selected county notified the air carrier it would serve as the lead county, and each air carrier filed its annual tax return with that lead county. The tax return detailed necessary information about the air carrier's property holdings (both certificated aircraft and other business personal property and fixtures) that were subject to property tax in California. The lead county transmitted return information related to non-aircraft personal property and fixtures to other relevant counties where the air carrier operates. The law required an audit team directed by the lead county to audit the air carriers. These laws were repealed on December 31, 2016.

Lead County Calculates Fleet Value. Prior to December 31, 2016, the lead county calculated the total unallocated fleet value of the air carrier's certificated aircraft for each make, model, and series, and transmitted the calculated fleet value to the other counties, as described below.[13] To assess the aircraft, each county determined its allocated portion of the calculated fleet value based on the flight data for its particular county. The allocation process limited each county's assessment to reflect the aircraft's physical presence in that county. These provisions were repealed on December 31, 2016.

Aircraft Valuation Methodology. Prior to December 31, 2016, the law required that preallocated fair market value would be the lowest of:

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[10] RTC section 1150.
[11] Subdivision (m) of RTC section 441 was repealed on December 31, 2016.
[12] RTC section 1153.5 was repealed on December 31, 2016.
[13] RTC section 401.17 was repealed on December 31, 2016.

- Trended acquisition cost less depreciation,
- Wholesale prices listed in the APG less 10 percent, or,
- Original price paid.

The resulting value was rebuttably presumed to be correct. After the 2016-17 fiscal year, these provisions were no longer effective. Currently, assessors value aircraft at the "fair market value," as generally provided under Property Tax Law, using any valid approach to value.

The Fleet Concept - Example. A hypothetical individual air carrier, Blue Sky Airlines, operates the following aircraft types in its overall fleet: Boeing 737-300s and 737-500s; Boeing 747-400s; and Boeing 767-200s and 767-300s. Each of these aircraft types (Boeing 737, 747, 767) is considered to be a fleet type. Thus, Blue Sky Airlines may have a fleet of 100 Boeing 737-500s, but only 30 of those aircraft make any contact in Sacramento County during the year. For purposes of property taxation in Sacramento County, the full cash value of all 100 of Blue Sky Airline's Boeing 737-500 aircraft is determined and then the computed allocation ratio is applied to that value.

Valuation and Allocation. For fiscal years 2005-06 to 2016-17, the law detailed the assessor's assessment methodology for determining the market value of commercial airline-owned certificated aircraft. The law provided an allocation formula to determine the frequency and the amount of time that an air carrier's aircraft makes contact and maintains situs within a county. Property Tax Rule 202 provides further explanation of the allocation procedure. The allocation ratio is made up of two components: (1) a ground and flight time factor, which accounts for 75 percent of the ratio, and (2) an arrivals-and-departures factor, which accounts for 25 percent of the ratio. The sum of these two factors yields the allocation ratio, which is applied to the full cash value of a fleet of a particular aircraft type operated by an air carrier to arrive at the assessed value calculation for that aircraft type. The sum of the assessed allocated values for each make and model used by an air carrier results in the total assessed value of the aircraft for that air carrier for a particular county.

Representative Period. Related to the value allocation process described above, the law requires the BOE to designate the period to measure aircraft presence in California after consulting with assessors annually. The law is silent regarding the details of the representative period to be designated. The law specifies that the allocation formula will be based on an air carrier's ground and flight time (i.e., "time in state") weighted 75 percent, and arrival and departures activity weighted 25 percent. Since 1997, when the lien date changed from March 1 to January 1, the BOE has selected various weeks from the month of January. Specifically, the BOE has designated the first week of January nine times, the second week five times, the third week three times, and the fourth week twice. In 1998, a week was selected that started on December 28, and included the lien date.

Background:

Settlement Agreement. Prior to January 1, 1999, California law did not specify an assessment methodology for valuing certificated aircraft, or for valuing the carrier's taxable possessory interest in the publicly owned airport in which the aircraft operated. In 1997-98, a group of counties and air carrier industry representatives met to resolve property tax issues associated with air carrier-owned and -used property. The end result was a written settlement agreement to dispose of outstanding litigation and appeals over the valuation of airport possessory interest assessments and certificated aircraft. The Legislature codified the settlement agreement in a three-piece package:

- **Aircraft Valuation Methodology and Monetary Settlement.** AB 1807 (Stats. 1998, ch. 86) outlined the valuation procedures for certificated aircraft during a six-year period and provided $50 million in tax credits against future tax liabilities, as well as extensive uncodified legislative findings and declarations.
- **Airport Possessory Interests.** AB 2318 (Stats. 1998, ch. 85) specified the assessment methodology for valuing the air carrier's taxable possessory interest in publicly-owned airports.
- **Tax Credits.** SB 30 (Stats. 1998, ch. 87) added general purpose provisions to allow counties and taxpayers to enter into written settlement agreements granting taxpayers tax credits.

Centralized System and Valuation Refinements. From January 1, 2006 to December 31, 2016, AB 964 (Stats. 2005, ch. 699) established the centralized administrative procedure for air carriers and counties using the lead county system. AB 964 also added a new valuation methodology and specified that the lead county would calculate total unallocated fleet value. The new methodology refined and built upon the first valuation methodology as follows:

- **Aircraft Types.** It distinguished between passenger aircraft (main-line jets or regional jets) and freighter aircraft (production or converted).
- **Variable Components.** It added detail for the variable components. To calculate a reproduction cost new less depreciation value indicator (i.e., the historical cost basis) each variable component was addressed; specifically: (1) acquisition cost, (2) price index, (3) percent good factor, and (4) economic obsolescence.
- ***Airliner Price Guide*.** It changed the prices used in the APG from the average of retail and wholesale prices to the wholesale price and additionally provided a 10 percent discount from the wholesale price to recognize that air carriers generally receive a fleet discount not reflected in the guide's listed wholesale prices.
- **Economic Obsolescence Adjustment.** It added detailed procedures to make economic obsolescence adjustments to capture significant market value changes (such as occurred after 9/11) due to severe airline industry economic condition changes.

Another written settlement agreement between counties and airlines accompanied AB 964. The agreement provided airlines with tax credits worth $25 million. Additionally, the parties agreed not to pursue embedded software issues until after the 2010-11 fiscal year. The agreement extended the valuation methodology for use in the 2004-05 fiscal year, a period not otherwise covered in the statute due to the sunset.

In 2009, AB 311 (Ma), as introduced, would have made the valuation methodology and centralized provisions permanent and, as amended, would have extended the effective date. However, Governor Schwarzenegger vetoed AB 311 because one airline disagreed with extending the valuation methodology, and the timing of the sunset allowed another year for all the parties to reach consensus before the provisions sunset.

In 2010, AB 384 (Stats. 2010, ch. 228) extended these provisions to the 2015-16 fiscal year and extended the repeal date provisions to December 31, 2015. In addition, AB 384 changed the valuation provisions as follows:

- **Rebuttable Presumption of Correctness.** Expressly provided that the fair market value of certificated aircraft determined using the specified assessment methodology only enjoys a *rebuttable* presumption of correctness. Previously, the methodology-produced value was deemed to be the aircraft's fair market value.

- **Evidence for Rebutting Presumption.** Specified that the preallocated aircraft fair market value produced using the delineated methodology may be rebutted by evidence including, but not limited to, appraisals, invoices, and expert testimony.
- **Original Cost - Maximum Value for Original Owner.** Provided that the value of an individual aircraft assessed to the original owner of that aircraft is not to exceed its original cost from the manufacturer.

The maximum value cap provision was added to appease the airline that opposed AB 311 in the prior year. In calculating total fleet values, this provision requires the county to substitute the original price paid when it is lower than wholesale price less 10 percent for any individual aircraft in the fleet. This reduces the total fleet value for any airline able to purchase new planes at deeper discounts.

In 2015, AB 1157 (Stats. 2015, ch. 440) extended the sunset date for one year allowing use for the 2016-17 fiscal year.

In 2016, two bills were introduced that related to the property taxation of commercial air carriers.

1. AB 2622 (Nazarian) would have extended the aircraft valuation methodology provisions and streamlined administrative procedures for counties and airlines that were due to sunset on December 31, 2016. AB 2622 died on the Senate inactive file.
2. SB 1329 (Hertzberg) would have extended for one year the aircraft valuation methodology provisions and streamlined administrative procedures for counties and airlines that were due to sunset on December 31, 2016. SB 1329 died on the Assembly inactive file.

Representative Period. In 2013, the California Assessors' Association requested that the BOE consider changing the representative period for certificated air carriers and scheduled air taxi operators. At that time, two periods were suggested: the second or third week of December or the second week of March. Air carriers were opposed to any change. BOE staff commenced the interested parties process and ultimately concluded that the representative period should not change from the week in January, as had been the process since 1999, because there wasn't a compelling reason at that time.

In 2017, the BOE restarted the interested parties process regarding the representative period. Initially, BOE staff recommended one week in October 2017 as the representative period for the 2018 lien date, based on an analysis of 32 years of data on monthly sales of jet fuel in California. After consulting with assessors and industry, BOE staff recommended that the BOE adopt a multi-year phase-in plan, concluding with a 365-day representative period. Parties were not able to come to an agreement for the representative period, and the BOE adopted the week of January 14-20, 2018 as the representative period and directed staff to initiate the interested parties process in 2018.

In 2018, the BOE continued the interested process regarding a possible transition to a 365-day representative period based on data derived from each carrier's activity in the prior year. Parties were not able to come to an agreement for the 2019 representative period, and the BOE adopted the week of January 13-19, 2019 as the representative period.

BOE State Assessment of Aircraft. In 2005, AB 964 (J. Horton) initially proposed transferring assessment responsibility for commercial air carriers from the local county assessor to the BOE. Those provisions were amended out of the bill on May 26, 2005. In 2003, SB 593 (Ackerman) also proposed transferring these assessments to the BOE. The Senate Appropriations Committee held the bill in committee. In 2004, the California Performance Review Report recommended to Governor Schwarzenegger that the BOE assess commercial airline-owned aircraft to address certain inefficiencies, which were subsequently mitigated in 2005 by AB 964's new centralized lead county system. In 2015, SB 661 (Hill) as introduced proposed transferring assessment jurisdiction for commercial air carrier personal property, including certificated aircraft, to the BOE using the existing valuation methodology for certificated aircraft. This bill was held in the Assembly.

Commentary:

1. **Certificated aircraft valuation is complex and contentious.** A statutory methodology had been in place for 17 years and helped reduce some conflict. While prior statutory methodologies had not eliminated conflict, they have narrowed its scope. As noted in the legislative findings and declarations of both AB 1807 and AB 964 (see above), the certificated aircraft assessments are a difficult and contentious property tax assessment issue that has given rise to litigation and appeals. The findings noted the Legislature's need to address the uncertainty because of the disruption to both airline industry tax planning and local government and school finance.

2. **Valuation Methodology.** The prior valuation methodology of certificated aircraft, in effect for fiscal years 2005-06 through 2016-17 and described in RTC section 401.17, was repealed on December 31, 2016. This bill does not specify a valuation methodology for certificated aircraft.

3. **How have aircraft been valued historically?**

    - **Trended Cost.** Before 1998, assessors based aircraft values on trended costs pursuant to the RTC 110 fair market value standard and Assessors' Handbook guidelines on personal property assessments.
    - **Blue Book – Average Wholesale and Retail Prices.** Between 1998 and 2004, assessors based aircraft values on the average wholesale and retail APG value pursuant to RTC section 401.15.
    - **Blue Book – Wholesale Prices Less 10 Percent.** Between 2005 and 2010, assessors based aircraft values at the lower of (1) trended cost or (2) wholesale APG value less 10 percent pursuant to RTC section 401.17.
    - **Blue Book – Wholesale Prices Less 10 Percent and Original Owner Exception.** Between 2010 and 2015, pursuant to RTC Section 401.17, assessors based aircraft values at the lowest of (1) trended cost, (2) wholesale APG value less 10 percent, or (3) original cost, but only if the aircraft was stilled owned by the original owner. Most air carriers currently have an assessment based on the wholesale price less 10 percent, as that method produces the lowest value.

~~4.~~ **New Allocation Formula.** This bill adds new section 1152 and provides a calculation in subdivision (e) that all time, both in the air and on the ground, that certificated aircraft have spent within the state prior to the aircraft's first entry into revenue service must be excluded from the time-in-state factor. However, "total time" as used in section 1152(a) is not defined. Further, the "time-in-state factor" is not explicitly defined in new section 1152.

5. **Time in Air Calculation - Technical.** This bill defines "time in air" as flight time and taxi time within California's borders. This is to be based on the BOE's "California Standard Flight Times" table as most recently published in an LTA. SB 791 states that these standard times are to be multiplied by the number of departures to and from the airports listed in the LTA.

6. **Lead-county fleet value calculation ensures statewide consistency in the base valuation of the fleet.** Before the centralized procedures, air carriers contended that although counties used the same assessment methodology, the fleet value calculations differed. Counties countered that the value discrepancies could be traced to (1) differences in the air-carrier-reported-information provided to different counties and (2) audit-related changes resulting from an individual county audit.

7. **The lead county system promotes administrative efficiency for both air carriers and counties.**
   - **One Return.** This eliminates any airline-reporting discrepancies to counties. Since air carriers may report all information to a single county, which is then distributed, all counties can receive the same information. This also reduces airline tax return compliance costs by eliminating duplicative reporting. Non-aircraft personal property must still be identified by tax rate area to ensure that local jurisdictions receive their share of property tax revenue for property located within their boundaries.
   - **One Audit.** This limits the airline to a single audit by one multi-county audit team and reduces auditing costs incurred by both counties and air carriers for duplicative audits.

8. **This bill will provide more certainty and predictability in the valuation of aircraft for both assessors and commercial air carriers.** Absent a codified allocation methodology, the values determined by each individual county assessor may be the same, higher, or lower than they would be without this bill.

Costs:
The BOE will incur absorbable costs to enact emergency regulations, amend existing regulations, and update forms, publications, and the BOE's website.

Revenue Impact:
The revenue impact of SB 791 is unknown.

Staff of the Los Angeles County Assessor's office conducted a statewide, multi-year study of certificated aircraft activity. The study concluded that the proposed change in the allocation formula may result in reduced property tax revenue; yet, repealing the designated representative period each year and replacing it with calendar year assessment may increase revenue. Assessor staff also noted other factors to consider. One aircraft now often makes several flights per day as opposed to past practices where planes made one flight per day and spent more time on the ground. In addition, airlines are currently retiring older planes, replacing them with newer planes. For all of these reasons, it is difficult to determine the revenue impact of SB 791.

Qualifying Remarks. This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.