

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/21/2018**

Bill/Resolution No.: HB 1047

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>				\$(386,000)		
<b>Expenditures</b>						
<b>Appropriations</b>						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1047 extends the excise tax exemption for air ambulances to those aircraft that the purchaser provides under contract to a qualifying emergency medical services operator.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of HB 1047 provides an aircraft excise tax exemption for aircraft that are purchased and leased to a qualifying licensed emergency medical services operator. Section 2 allows the excise tax exemption to be retroactively applied for qualifying aircraft purchased in calendar years 2016, 2017, and 2018.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Industry officials are aware of at least six air ambulances that would qualify for the retroactive provisions contained in Section 2 of the bill. If enacted, the retroactive component of the bill is expected to reduce revenues in the aeronautics commission special fund by approximately \$336,000. The prospective provisions contained in Section 1 of the bill are estimated to impact one aircraft per biennium, at an estimated cost of \$50,000 in reduced aircraft excise tax revenues per biennium. The retroactive and prospective provisions combined are expected to reduce revenues in the aeronautics commission special fund by an estimated \$386,000 in the 2019-21 biennium.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 701,328.3402

**Date Prepared:** 01/07/2019

**2019 HOUSE FINANCE AND TAXATION**

**HB 1047**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1047  
1/8/2019  
30522

- Subcommittee  
 Conference Committee

Committee Clerk: Mary Brucker

### Explanation or reason for introduction of bill/resolution:

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A BILL relating to the excise tax exemption for air ambulances; and to provide for retroactive application.

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### Minutes:

Attachments 1-3

**Chairman Headland:** Opened hearing on HB 1047.

**Representative Meier:** Introduced bill. See attached written testimony #1. (Ended testimony at 2:27)

**Representative B. Koppelman:** What happens if a person buys an aircraft, has a five-year contract with a medical provider and when it runs out they cease using that aircraft that was then put into private corporate for-profit use? Would you see having some sort of flip where they would then owe tax or as long as they have a contract for some time they would have bought that tax free regardless of how it goes in the future?

**Representative Meier:** Currently my constituent is the only business in the state that does a third party contractor with a medical emergency hospital to do emergency transfers.

**Representative B. Koppelman:** If we give an exemption to a hospital who owns their own, who is already tax exempt under current law, the idea is that the hospital is going to own that and use it for that purpose for the entire life of the aircraft until they sell it and get rid of it. When you're on contract you might be in the business of transporting patients for this five years but the aircraft may have a 20-year life. If you don't get a renewed contract and use it for transporting executives for the next five years should tax be owed or are you good for the life of it?

**Representative Meier:** That didn't come up for consideration. My constituent uses the aircraft for air transfer only.

**Chairman Headland:** The fiscal note speaks to the fact that industry officials speak of six examples which has increased the fiscal note.

**Paul Vetter, CEO of Executive Air:** See attached written testimony #2. The language in the current law giving them an exemption doesn't give us an exemption. I don't think that was the intent of the law. The amendment will incorporate us as well.

**Chairman Headland:** You have no knowledge of the other five possible retroactive cases that the fiscal note references?

**Paul Vetter:** No. I'm aware of the other operators but I think they are owned by a hospital licensed through the state of North Dakota.

**Chairman Headland:** Apparently they haven't been exempt. We'll get to the bottom of it. Is there further testimony?

**Kyle Wanner, Executive Director of the North Dakota Aeronautics Commission:** See attached written testimony #3. (Ended testimony at 15:10)

**Chairman Headland:** It seems to me that if they were to quit they would have no further use of the aircraft and would probably sell it. They wouldn't repurpose it as some other private company may do.

**Representative B. Koppelman:** When you looked back on the implementation that was done on the hospitals when they own it, was there any retroactivity to that measure or was that just from here forward?

**Kyle Wanner:** I don't believe it was retroactive in the bill. The bill before was not just used for aircraft, it was for land (ambulances) as well. If the entities who hold a certificate purchase equipment such as an ambulance or aircraft, they would be exempt from owing that tax.

**Representative B. Koppelman:** I think of other parallels with contract arrangements with entities that are tax exempt from sales or other taxes. Do you know of any other examples where excise tax is extended with any sort of a tax exempt entity to their contractor?

**Kyle Wanner:** No, there is no exemption in current law that extends to the contractor.

**Representative Mitskog:** Are there any credits or discounts for aviation gas tax? Does the aviation gas tax come back to the aeronautical commission or where is the distribution of those?

**Kyle Wanner:** Currently, there is an 8 cents per gallon tax on aviation fuel and that directly comes through the tax department to the aeronautics commission special fund for utilization of operations and grants to give back to the airports. There are a couple exceptions for those entities who do not have to pay that tax; one is to air medical service providers and they don't have to pay aviation fuel tax or they can claim a refund for that tax.

**Chairman Headland:** Are there any other questions for anyone? We will close the hearing on HB 1047.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1047  
1/15/2019  
30829

- Subcommittee  
 Conference Committee

Committee Clerk: Mary Brucker

### Explanation or reason for introduction of bill/resolution:

A bill relating to the excise tax exemption for air ambulances; and to provide for retroactive application.

### Minutes:

Attachment 1

**Chairman Headland:** Representative Meier is here to talk about the bill.

**Representative Meier:** Distributed a proposed amendment, 19.0298.01001 dated January 15, 2019. See attachment #1. This amendment removes the retroactive pay. This amendment also allows the tax department to issue the refunds. Right now the aeronautics commission cannot issue refunds. The third thing this does is allow the tax department to collect the taxes.

**Chairman Headland:** It just puts it in the tax department and not in the aeronautics commission?

**Representative Meier:** That is correct. There is no longer any money in this. My constituent is a third party contractor so if he purchases another aircraft strictly for air ambulance and contracts with the hospital he would like to be able to have the same tax exemption we currently have in law.

**Chairman Headland:** (unable to hear as microphone was not on)

**Representative Meier:** I can't answer that.

**Representative Kading:** Do you know if the groups out there use a special purpose entity to hold the planes or do they buy the planes then the entity runs the organization or is it split off of them too? How do they structure the ownership for the planes?

**Representative Meier:** When my constituent and I worked on this bill we weren't aware there were others out there doing this.

**Chairman Headland:** How is this going to work? The minute this aircraft owner is done with his contract the tax department is going to send him a bill for the excise tax?

**Dee Wald, General Counsel for Office of Tax Commissioner:** It would be up to the aeronautics commission to get that tax. They collect and administer the tax on behalf of the tax commissioner.

**Chairman Headland:** How are they going to know?

**Dee Wald:** I'll let Tara Brandner from the Attorney General's Office answer that question.

**Tara Brandner from the Attorney General's Office:** I represent the aeronautics commission. If an aircraft transfers for some other purpose, there is no way the aeronautics commission would know. They are only notified by the FAA of purchases of aircraft so they would be unaware of any changes.

**Chairman Headland:** That creates a little bit of an issue with the amendment.

**Representative Hatlestad:** Do we end up with a pro-rated tax based on the projected lifespan of the aircraft versus how much it was used for the air ambulance?

**Dee Wald:** They would collect it on the purchase price of the plane at the time of the converted use so it would be the full tax amount.

**Chairman Headland:** The only way the aeronautics commission would know is if the owner of the plane would tell them. I don't that is very likely to happen.

**Representative Hatlestad:** My concern is if I buy the airplane and use it for 2/3 of its lifespan as an air ambulance then do something else with it, am I going to pay the full purchase price?

**Dee Wald:** Currently that's the way it would be. Fair market value could be an option but with the other option the statute is silent right now.

**Chairman Headland:** Could we write into the amendment that when the purpose changes the owner of the plane has to notify?

**Dee Wald:** Yes we can write that in.

**Chairman Headland:** When the owner knows they are subjecting themselves to a major excise tax bill would they be willing to do that or would their best option be just to sell the plane and let the next person pay the tax? I think we create more of a problem with the amendment. The amendment takes away the initial reason for the bill in the first place. I'm not sure why we would want to amend it and create a problem that is not fair.

**Representative Dockter:** I agree with what you said that if you buy a plane in the future you need to figure out the costs of the tax. There are too many things involved that I would be in favor of a do not pass.

**Representative Trottier:** It reminds me a little of the homestead credit where once a year you have to make a report on your farm income. Wouldn't it be alright if they have to verify it every year?

**Chairman Headland:** They can verify every year but how does that help us collect the tax if they change the mission?

**Representative Ertelt:** The other issue not addressed by the amendment is if the airplane is used for multiple purposes. This amendment would only clarify it if it was used solely for air ambulance then terminated at some point. I think it would still allow the operator to be claiming that credit even if they were using it for other purposes. I'm with Representative Dockter and am ready for a do not pass.

**Chairman Headland:** How does the committee want to handle the amendment?

**Representative Mitskog:** The excise tax for crop spraying is 3% so it's a different tax rate. Would that be a consideration?

**Chairman Headland:** You mean to create a different tax rate for them then subject all air ambulances to that tax rate of which they are now exempt from?

**Representative Mitskog:** That's what I'm saying. There must be some money to be made in that type of service.

**Chairman Headland:** I would suspect the cost of transporting injured people around is very expensive and probably has nice profits.

**Representative Dockter: MADE A MOTION FOR A DO NOT PASS**

**Representative Ertelt: SECONDED**

**Chairman Headland:** Is there any discussion?

**Representative Trottier:** I was going to vote in favor of this bill until I heard all this. I feel this really isn't written for the people who are sponsoring it nor for the air ambulance people.

**ROLL CALL VOTE: 12 YES 1 NO 1 ABSENT  
MOTION CARRIED**

**Representative Ertelt will carry this bill.**

Date: 1-15-19  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1047**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Dockter Seconded By Rep. Ertelt

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Eidson	✓	
Vice Chairman Grueneich	✓		Representative Mitskog	✓	
Representative Blum	✓				
Representative Dockter	✓				
Representative Ertelt	✓				
Representative Fisher	✓				
Representative Hatlestad	✓				
Representative Kading	✓				
Representative Koppelman	X				
Representative Steiner		✓			
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Ertelt

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1047: Finance and Taxation Committee (Rep. Headland, Chairman)** recommends **DO NOT PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1047 was placed on the Eleventh order on the calendar.

**2019 TESTIMONY**

**HB 1047**

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HB 1047

Good Morning ~~Thank you~~ Mr. Chairman and members of the Finance and Tax Committee.

For the record my name is Rep. Lisa Meier from District 32.

HB 1047 is a bill that I'm introducing for a constituent of mine.

What the bill will do is partner with legislation that we already have in place for a tax exemption for air craft that is used for air ambulances when purchased by the operator of an emergency medical services operation licensed under chapter 23-27.

This bill will provide for a tax exemption for a purchaser that contracts with an emergency medical service operation under chapter 23-27.

Currently my constituent Paul Vetter who owns and runs executive air of Bismarck contracts air service with Trinity Health of Minot.

Last year ~~Mr. Vetter~~ he purchased a air craft strictly for patient transfer thinking he was

Currently my constituent Paul Vetter who owns and runs executive air of Bismarck contracts air service with Trinity Health of Minot.

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Last year ~~Mr. Vetter~~ he purchased a air craft strictly for patient transfer thinking he was tax exempt from what we have in place in law already

The way the law reads he is not tax exempt!

He is using the plane 99% of the time for patient transfer so in fairness I feel he should also have a tax exemption

The cost of his air craft is \$400,000 so the price tag would be \$20,000 of tax collection.

My constituent is here today to testify and I would like him to further explain this bill and would appreciate favorable consideration.

Thank you!

## ND Emergency Medical Service Tax Exemption

- Executive Air Taxi Corp began air service in 1973 and is based at the Bismarck Municipal Airport
- In June of 2015, Executive Air collaborated with Trinity Health in Minot, ND to begin providing 24/7 Fixed Wing EMS services to the north central and western North Dakota communities
- Trinity Health is licensed by the ND Department of Health, license # 603 under the name NorthStar Criticair
- Executive Air is licensed by the FAA to conduct air service and purchased a primary aircraft in August 2015 dedicated to EMS flights
- A backup aircraft is used when the primary aircraft is out of service for maintenance etc.
- ND Century Code # 57-40.5-03 item #6 - Exemptions  
"Aircraft for use as an air ambulance, when purchased by the operator of an Emergency medical services operation licensed under chapter 23-27

The aircraft was purchased for use as an air ambulance

The aircraft was purchased by the operator - Executive Air Taxi Corp

The emergency medical service operation is licensed by Trinity Health

Trinity Health and Executive Air Taxi Corp have an agreement to operate the service as NorthStar Criticair

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TESTIMONY OF

KYLE C. WANNER

EXECUTIVE DIRECTOR, NORTH DAKOTA AERONAUTICS COMMISSION

BEFORE THE

HOUSE FINANCE AND TAXATION COMMITTEE

JANUARY 8<sup>th</sup>, 2019

HOUSE BILL 1047

Chairman Headland and members of the committee,

My name is Kyle Wanner and I am the Executive Director of the North Dakota Aeronautics Commission and will be providing testimony today regarding House Bill 1047.

Currently, state law provides for a 5% excise tax to be paid to the Aeronautics Commission for aircraft purchases, unless the aircraft will be utilized for agricultural purposes – those aircraft are currently taxed at a 3% rate. The excise tax revenue that the Aeronautics Commission receives is a critical revenue source that allows for the agency to operate and also allows the agency to provide airport infrastructure grants for airport projects throughout the state. The Federal Aviation Administration has identified almost \$470 million in North Dakota airport projects over the next 5 years and state aeronautics funds provided by aviation fuel and aircraft excise taxes are utilized to leverage federal grant dollars into the state to maintain and to grow our airport infrastructure.

In 2007, legislation was passed to provide emergency medical services operations licensed by the Department of Health an exemption to the excise tax requirement for aircraft used as an air ambulance. The specific statute is N.D.C.C. 57-40.5-03.

Over the last few years, our agency has received requests for an excise tax exemption under this provision from two entities. In consultation with the Commission's legal counsel and the Tax Department, the request for an exemption in both scenarios was denied. In order for the exemption to apply, the entity purchasing the aircraft must be an emergency medical service operation licensed by the Department of Health. In both of these scenarios, the entity purchasing the aircraft was not the holder of a license issued by the Department of Health. Instead, the entities purchased, and then subsequently leased, the aircraft to the operator of an emergency services operation that was licensed by the Department of Health.

As written, the bill would no longer require the entities in this scenario to be responsible for the aircraft excise tax. In addition, the estimated tax that would be waived or refunded if the retroactive language becomes law is estimated to affect two companies, and six different aircraft purchases for a total of \$335,758. More companies may also come forward that we are unaware of that could request a refund or waiver due to this retroactive language. The lost revenue in future biennium's is also very difficult to

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predict as it is unknown how many aircraft purchases will occur that would then be subsequently leased to an emergency medical service operation.

The more problematic piece of the proposed legislation deals with its implementation. The Aeronautics Commission receives notice of aircraft purchases that occur within the state from the Federal Aviation Administration. Once this notice is received, we then move forward to contact the aircraft owner and provide them with the information that the agency requires to complete the transaction. The purchasing entity then submits the excise tax and aircraft registration fee, or if an exemption is available, they provide the Commission with information required for the basis of the exemption.

The proposed legislation also raises significant legal questions as far as its current construction. If a company purchases an aircraft, pays the required excise tax and then years later decides to lease the aircraft to a licensed emergency medical service operation, would they receive a refund? What if an entity originally leases an aircraft to a licensed emergency medical services operation but after two years decides it no longer wants to use the aircraft for that purpose, does the entity owe an excise tax? Furthermore, if an arrangement between two entities changes, there is no requirement that they notify the Commission, thereby providing our agency with no opportunity to ensure that the excise tax is being adequately applied.

The intent of the original law was clear in that the legislature at the time felt that good tax policy was to allow for the exemption to take place when the holder of the air medical certificate was also the purchaser of the aircraft.

19.0298.01001  
Title.

Prepared by the Legislative Council staff for  
Representative Meier  
January 15, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1047

Page 1, line 1, after "Act" insert "to create and enact section 57-40.5-08.3 of the North Dakota Century Code, relating to refunds of aircraft excise tax;"

Page 1, line 2, after the semicolon insert "to provide a continuing appropriation;"

Page 1, line 7, overstrike "purchased by the operator" and insert immediately thereafter "owned by or in the possession"

Page 1, line 8, remove "or a purchaser"

Page 1, remove line 9

Page 1, line 10, remove "23-27"

Page 1, line 10, after the period insert "When an aircraft exempt from tax under this section is no longer used as an air ambulance, but continues to be registered under the laws of this state, the registered owner is subject to the tax imposed under section 57-40.5-02. The registered owner of the aircraft shall notify the director about the change in use of the aircraft no later than thirty days after use as an air ambulance terminates. When an aircraft that has previously been subject to the tax under this chapter is subsequently used as an air ambulance, tax previously paid is not eligible for refund.

**SECTION 2.** Section 57-40.5-08.3 of the North Dakota Century Code is created and enacted as follows:

**57-40.5-08.3. Aircraft excise tax refunds - Continuing appropriation.**

There is appropriated out of any moneys in the aeronautics commission special fund of the state treasury, not otherwise appropriated, as a standing and continuing appropriation to the tax commissioner, such sums as may be necessary to provide for aircraft excise tax refunds under this chapter.

Renumber accordingly