

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 2406

INTRODUCER: Senator Webster

SUBJECT: Corporate Income Tax Trust Fund/DOR

DATE: April 3, 2006

REVISED: 04/05/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>ED</u>	<u></u>
3.	<u></u>	<u></u>	<u>EA</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill creates the Corporate Income Tax Trust Fund to be comprised of funds collected by the Department of Revenue pursuant to the corporate income tax. The bill provides that the fund is established for use as a depository for funds to be appropriated by the Legislature for any purpose other than education. The bill is related to Senate Bill 2234, which provides corporate income tax credits for donations to private scholarship organizations. Senate Bill 2234 directs that corporate income taxes, which under existing law are paid into General Revenue, be paid into the Corporate Income Tax Trust Fund, while simultaneously creating a dollar for dollar tax credit toward up to 75 percent of a corporation's state income tax liability for donations to private scholarship funding organizations.

This bill creates section 220.7015, Florida Statutes.

II. Present Situation:

Corporate Income Tax Code

The corporate income tax code is codified in ch. 220, F.S. The code imposes a tax upon all corporations, organizations, associations, and other artificial entities for the privilege of

conducting business, deriving income, or existing within this state.¹ Partnerships, proprietorships, limited liability companies which are taxed as a partnership for federal income tax purposes, and private trusts are not subject to the tax.²

Section 220.11(2), F.S., provides that the tax on corporations is 5.5 percent of their “net income” for the taxable year. If the corporation is subject to the federal alternative minimum tax provided in 26 U.S.C. s. 55, the corporation is taxed 3.3 percent of its alternative minimum net income for the taxable year.³

A corporation’s net income for taxation purposes is its adjusted federal income plus nonbusiness income allocated to Florida less an exemption.⁴ The code adds certain items back to a corporation’s federal income which were allowed as a deduction or were excluded from income under the federal or state corporate income tax credits. Items that are added back include the following:

- Deductions for state and local taxes;
- Specific interest which was excluded from federal income tax;
- Items for regulated investment companies and real estate investment trusts;
- The amount of the Florida emergency excise tax deducted under the Internal Revenue Code;
- Amounts for a guaranteed association;
- Pari-mutuel operations of a nonprofit corporation;
- Rural job tax credit and urban high crime area job tax credit;
- State housing credit; and
- Credits for contributions to nonprofit scholarship-funding organizations.⁵

In addition to adding amounts back to a corporation’s taxable income, the code also subtracts certain items from the taxpayer’s taxable income.⁶

Taxes under ch. 220, F.S., are collected by the Department of Revenue (DOR) and are paid into the General Revenue Fund.⁷

Creation and Operation of Trust Funds

A trust fund consists of monies received by the state which, under law or under trust agreement, are segregated for a purpose authorized by law (s. 215.32(2)(b)1., F.S.). Section 19(f), Art. III of the State Constitution, governs the creation of trust funds. This constitutional provision prohibits the creation by law of a trust fund of the state or other public body without a three-fifths vote of

¹ Section 220.02(1), F.S.

² *Id.*

³ Benjamin A. Jablow, Florida Bar Journal, *The ABCs of Florida Corporate Income Tax*, December 2002, p. 82-83.

⁴ *Id.*

⁵ Section 220.13(1)(a), F.S.

⁶ Section 220.13(1)(b), F.S., provides a list of the items subtracted from a corporation’s taxable income.

⁷ Section 220.701, F.S.

the membership of each house of the Legislature.⁸ This provision further specifies that a trust fund must be created in a separate bill for that purpose only.

In addition, the Legislature has established criteria governing the establishment of trust funds. Under these criteria, a law creating a trust fund must, at a minimum, specify:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund (s. 215.3207, F.S.).

The Chief Financial Officer is directed to invest all the trust funds and all agency funds of each state agency (s. 17.61, F.S.). Under current law, any balance of an appropriation for any given fiscal year that is remaining after lawful expenditures have been charged against it reverts to the fund from which the Legislature appropriated it and shall be available for reappropriation (s. 216.301(1)(b), F.S.). Any reversion of appropriations provided from the General Revenue Fund must be transferred to the General Revenue Fund within 15 days after the reversion, unless otherwise provided by federal or state law, including the General Appropriations Act (s. 216.301(1)(c), F.S.).

Termination of Trust Funds

Section 19(f)(2), Art. III of the State Constitution, specifies that trust funds created after November 4, 1992, with certain exceptions, shall terminate not more than 4 years after the effective date of the act authorizing the creation of the trust fund, unless the Legislature by law sets a shorter time period. Accordingly, a bill that creates a trust fund should specify the trust fund's date of termination, or, if the trust fund is exempt from the automatic 4-year termination requirement, the bill should declare that the trust fund is exempt from this requirement.⁹

The Legislature established a schedule and process for reviewing trust funds (ss. 215.3206 and 215.3208, F.S.). Before the regular session of the Legislature immediately before the scheduled termination date of an executive branch trust fund (or an earlier date if specified by the Legislature), the agency responsible for administration of the trust fund and the Governor must recommend to the Legislature whether the trust fund should be allowed to terminate or should be re-created (s. 215.3206(1), F.S.). Each recommendation is based on a review of the trust fund's purpose, use, and necessity. A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.

If the trust fund is terminated and not immediately re-created, all cash balances and income of the trust fund are deposited into the General Revenue Fund (s. 215.3206(2), F.S.). The agency must pay any outstanding debts of the trust fund as soon as practicable, and the Chief Financial Officer closes out and removes the trust fund from the various state accounting systems, using generally accepted accounting practices concerning outstanding warrants, assets, and liabilities.

⁸ Section 19(f)(1), Art. III of the State Constitution.

⁹ See Florida Senate, *Manual for Drafting General Bills* 82 (Sept. 1999).

III. Effect of Proposed Changes:**Corporate Income Tax Trust Fund**

This bill creates the Corporate Income Tax Trust Fund to be comprised of funds collected by the Department of Revenue pursuant to s. 220.11, F.S. The bill provides that the fund is established for use as a depository for funds to be appropriated by the Legislature for any purpose other than education. The bill is related to Senate Bill 2234, which provides corporate income tax credits for donations to private scholarship organizations. Senate Bill 2234 directs that corporate income taxes, which currently are paid into General Revenue, be paid into the Corporate Income Tax Trust Fund, while simultaneously creating a dollar for dollar tax credit toward up to 75 percent of a corporation's state income tax liability for donations to private scholarship funding organizations.

The trust fund shall be terminated on July 1, 2010, unless terminated sooner, and is subject to review under the Florida Statutes prior to its termination.

Effective Date

This act shall take effect July 1, 2006.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

This bill creates the Corporate Income Tax Trust Fund to be comprised of certain funds collected by the Department of Revenue. This bill appears to comply with s. 19(f), Art. III of the State Constitution, relating to the creation and termination of trust funds.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

This bill creates the Corporate Income Tax Trust Fund, and Senate Bill 2234 provides that corporate income taxes, which are currently paid into General Revenue, shall be deposited into this trust fund.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Funds collected under ch. 220, F.S., are currently deposited in the General Revenue Fund. This bill creates the Corporate Income Tax Trust Fund, and Senate Bill 2234 would require that the funds collected be deposited in the new trust fund instead of General Revenue. The Legislature would be restricted from appropriating funds held in the trust fund for education.

VI. Technical Deficiencies:

This bill appears to be linked to Senate Bill 2234, which amends s. 220.701, F.S., to provide that, instead of depositing corporate income tax collections into the General Revenue Fund, the Department of Revenue should deposit such collections into the Corporate Income Tax Trust Fund.¹⁰ The Corporate Income Tax Trust Fund does not currently exist; it is created by this bill. The Legislature may wish to make the effective date of this bill contingent upon the passage of Senate Bill 2234 or similar legislation providing for the change in where corporate income tax collections are deposited.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ See section 7 of Senate Bill 2234.

VIII. Summary of Amendments:

Barcode 525426 by Judiciary:

Provides that the bill becomes effective only if Senate Bill 2234 or similar legislation this legislative session becomes law. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
