The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 138

INTRODUCER: Senator Hukill

SUBJECT: Tax-exempt Income

DATE: January 20, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Pre-meeting**
2.			FT	
3.			AP	

I. Summary:

SB 138 increases the level of income that is exempt from the Florida corporate income tax. Florida imposes a 5.5 percent tax on the net income of corporations doing business in Florida. The first $50,000 of a corporation's income that is subject to the tax is exempt from the corporate income tax under current law. This bill increases the exemption from $50,000 to $75,000.

The Revenue Estimating Conference considered the bill at its January 16, 2015, meeting but did not reach a conclusion about the fiscal impact of the bill and held the bill for a future meeting.

This bill takes effect on January 1, 2016, and applies to taxable years beginning on or after January 1, 2016.

II. Present Situation:

Florida began imposing an income tax on corporations in 1972.[1] The initial tax rate was 5 percent, but that rate was increased to 5.5 percent in 1984.[2]

Currently, Florida's corporate income tax is comprised of two separate 5.5 percent taxes and a 3.3 percent alternative minimum tax.[3] The primary component of the tax is the 5.5 percent tax that applies to "corporations," as defined by s. 220.03, Florida Statutes.[4] The second 5.5 percent

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[1] *See* Chapter 71-984, Laws of Florida. Florida began collecting a corporate income tax after a constitutional amendment was adopted prohibiting the collection of an income tax on natural persons. *See* Art. VII, s. 5, Fla. Const.

[2] *See* s. 21, ch. 84-549, L.O.F. The Florida Constitution requires a 3/5 vote of the membership of each house of the Legislature to impose a tax in excess of 5 percent. *See* Art. VII, s. 5, Fla. Const.

[3] Only 1 of these 3 tax components can apply to a taxpayer in a given year.

[4] This component of the tax is imposed by s. 220.11(1), F.S. Sole proprietorships, partnerships, limited liability companies, and S corporations are not subject to the tax except under limited circumstances. *See* s. 220.03(1)(e), F.S.

tax is referred to as the "franchise tax" and is imposed on Florida banks and savings institutions, as defined in s. 220.62, F.S.[5]

Regardless of which 5.5 percent tax applies to a taxpayer, if the taxpayer is subject to the federal alternative minimum tax (AMT), then the taxpayer could be subject to Florida's AMT.[6] If so, the taxpayer must pay the greater of the 5.5 percent tax or the 3.3 percent AMT.[7]

Florida's corporate income tax is imposed on a taxpayer's "net income." Net income[8] is determined through the following process:

1. **Begin with Federal Taxable Income.** Rather than requiring the taxpayer to fully recalculate all of its income and deductions for Florida purposes, Florida taxpayers use their federal taxable income as the starting point for determining how much tax is owed in Florida.

2. **Make Certain Statutory Adjustments.** These adjustments are generally known as "additions and subtractions,"[9] and they relate to various items that Florida treats differently than the federal government. The income remaining after these additions and subtractions is known as "adjusted federal income."

3. **Apportion and Allocate.** Multi-state taxpayers must determine what portion of their adjusted federal income is properly taxable in Florida – a process generally referred to as "apportionment." Within this process, the taxpayer first determines what portion of its income is from business operations and what portion of its income is from non-business activities.[10] Its business income is then "apportioned"[11] among the states where it does business and its non-business income "allocated" to the state where the transactions or activities that gave rise to the non-business income occurred.[12]

   Florida generally uses a three-factor apportionment formula determined by the taxpayer's payroll, property, and sales. The formula compares the taxpayer's total payroll, sales and property in all states with the taxpayer's payroll, sales and property in Florida. The ultimate result of this calculation will be a fraction. A multi-state taxpayer's business income is then apportioned to Florida based upon that fraction.

4. **Subtract the Exemption**. Lastly, Florida grants an exemption for the first $50,000 of income that would otherwise be taxable in Florida. Accordingly, after apportionment and allocation are applied to determine a taxpayer's income that is properly taxable in Florida, the taxpayer subtracts $50,000 before applying the tax rate. The amount of income remaining after

[5] The franchise tax is imposed by s. 220.63(1), F.S.
[6] The AMT uses different rules to calculate taxable income after allowed deductions. The AMT is imposed on businesses when the businesses are believed to pay too little in tax under the "standard" rules. *See* http://taxpolicycenter.org/publications/url.cfm?ID=1000515 for a discussion of the AMT. (last accessed January 16, 2015).
[7] *See* s. 220.11(4), F.S.
[8] *See* s. 220.12, F.S.
[9] *See generally* s. 220.13, F.S.
[10] Non-business income is certain income that does not arise from transactions and activities in the regular course of business. *See* s. 220.03(1)(r), F.S.
[11] *See generally* s. 220.15, F.S.
[12] *See generally* s. 220.16, F.S.

subtraction of the $50,000 exemption is known as "net income" and is the amount subject to Florida corporate income tax.

III. Effect of Proposed Changes:

This bill increases the $50,000 exemption to $75,000 for taxable years beginning on or after January 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference considered the bill at its January 16, 2015, meeting but did not reach a conclusion about the fiscal impact of the bill and held the bill for a future meeting. In 2014, the Revenue Estimating Conference estimated that this bill language would have an $8.8 million fiscal impact and a recurring impact of $21.6 million.[13]

B. Private Sector Impact:

This bill will result in a tax reduction for some taxpayers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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[13] *See* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2014/pdf/page6-7.pdf (last accessed on January 16, 2015).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 220.14 and 220.63.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.