

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5065 PCB GEAC 08-29 Corporate Income Tax
SPONSOR(S): Government Efficiency & Accountability Council and Grant
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	13 Y, 0 N	Levin/Dykes	Cooper
1) Policy & Budget Council		Langston	Hansen
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Florida's Corporate Income Tax code follows the Federal Internal Revenue Code (IRC) by using federal rules and using federal taxable income as the starting point for the Florida Income Tax calculations. Florida Statutes define specific terms as they apply to Florida's corporate income tax code, including the term "Internal Revenue Code." This term is currently defined to mean those provisions of the United States Internal Revenue Code of 1986, as amended, in effect on January 1, 2007.

By adopting the Internal Revenue Code as in effect on January 1, 2008, the bill updates the Florida Income Tax Code to reflect most changes Congress made in 2007 to the U.S. code. The change will apply retroactively to January 1, 2008.

HB 5065 does not adopt all changes to the Internal Revenue Code made during 2007. In particular, the bill disallows sections 102 and 103 of H.R. 5140, the Economic Stimulus Act of 2008, Public Law 110-185, for purposes of calculating Florida taxable income. These federal provisions grant temporary increases in the expensing and depreciation allowances for certain capital assets put into service during 2008. Federal taxable income for many corporations is expected to be lowered as a result. The disallowance in HB 5065 prevents the federal changes from translating in to lower taxable income for Florida income tax purposes.

Florida's Corporate Income Tax code also requires corporations to make estimated payments of a portion of their annual income tax liability. Generally, the payments are to be made on or before the first day of certain months during a corporation's taxable year. For example, corporations using a calendar year taxable year must make one of their estimated tax payments on or before July 1. The bill slightly accelerates the timing of all estimated payments by requiring remittance only before the first day of the month, not on the first day. Most notably for purposes of this bill, estimated payments that would otherwise be made on July 1 of FY 2009-10 will now be made in June of FY 2008-09, representing a largely one-time speed-up of revenues collections.

The change in the timing of estimated payments is expected to increase FY 2008-09 state General Revenues by \$93.8 million (\$1.5 million annualized), according to the March 21, 2008 Revenue Estimating Impact Conference. The Revenue Estimating Conference has not addressed the revenue impact of the other provisions of the bill. The Conference adopted a positive/negative indeterminate impact on substantially similar legislation enacted by the 2007 legislature. Based on a review of federal tax legislation during 2007, staff estimates that a similar result should be expected for HB 5065.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h5065a.PBC.doc
DATE: 3/28/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes--In 2007, the United States Congress passed legislation that will reduce federal taxable income for many corporations (Sections 102 and 103 of H.R. 5140, the Economic Stimulus Act of 2008, Public Law 110-185). HB 5065 explicitly disallows the above two federal provisions in calculating taxable income for Florida Corporate Income Tax purposes.

B. EFFECT OF PROPOSED CHANGES:

Florida's Corporate Income Tax Code follows the Federal Internal Revenue Code (IRC) by using federal rules and using federal taxable income as the starting point for the Florida Income Tax calculations. Section 220.03, Florida Statutes, defines specific terms as they apply to Florida's corporate income tax code. The term "Internal Revenue Code" is currently defined to mean those provisions of the United States Internal Revenue Code of 1986, as amended, in effect on January 1, 2007.

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 during 2007, by adopting the Internal Revenue Code as in effect on January 1, 2008. The change will apply retroactively to January 1, 2008. This date change provides for "piggybacking" each change made during 2007 to the Internal Revenue Code, but only to the extent that such amendments are taken into account in computation of net taxable income (as provided in subsection (3) of s. 220.03, F.S.)

In 2007, the United States Congress passed legislation that will reduce federal taxable income for many corporations. Section 102 of H.R. 5140, the Economic Stimulus Act of 2008, Public Law 110-185 (the "Act"), provides temporary increases in section 179(b), IRC, limitations on expensing certain depreciable assets for tax years beginning in 2008. Section 103 of the Act permits an additional 50 percent depreciation under section 168(k), IRC, for assets placed in service December 31, 2007 and before January 1, 2009. HB 5065 explicitly disallows the above two federal provisions in calculating taxable income for Florida Corporate Income Tax purposes.

Sections 220.241 and 220.33, F.S., currently require corporations to make estimated payments of a portion of their annual income tax liability. Generally, the payments are to be made on or before the first day of the fifth, seventh, and tenth months of a corporation's taxable year and on or before the first day of the next taxable year. Consequently, corporations using a calendar year taxable year must make one of their estimated tax payments on or before July 1. Common practice is to make such payments on July 1. HB 5065 amends the general estimated payments schedule to disallow payments on the first of each appropriate month, instead requiring estimated payments to be made only before the first of the month. The effect is to slightly accelerate the state's receipt of all estimated payments of Corporate Income Tax. Most notably for this bill, payments normally made on July 1 will now occur in June, resulting in a speed-up of revenue collections from FY 2009-10 to FY 2008-09.

C. SECTION DIRECTORY:

Section 1: Amends s. 220.03(1)(n), (2)(c), and (3), F.S., to update references to the Internal Revenue Code and to except from the 2008 "piggyback" sections 102 and 103 of the Economic Stimulus Act of 2008, Public Law 110-185.

Section 2: Amends s. 220.13, F.S., to add back to "adjusted federal income" any reductions that might otherwise occur due to sections 102 and 103 of the Economic Stimulus Act of 2008, Public Law 110-185.

Section 3: Effective January 1, 2009, s. 220.241, F.S., is amended to conform the dates for declaring estimated tax to the date changes made elsewhere for the timing of estimated payments.

Section 4: Effective January 1, 2009, s. 220.33, F.S., is amended to change the deadlines for remitting estimated payments.

Section 5: Provides rulemaking authority to the Department of Revenue.

Section 6: Provides effective dates. Except as otherwise provided, the act will take effect upon becoming a law and shall apply retroactively to January 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference on March 21, 2008, adopted a \$93.8 million impact (cash) on state revenues for FY 2008-2009 for sections 3 and 4 of the bill relating to the timing of estimated payments.

The Revenue Estimating Conference has not addressed the revenue impact of the other provisions of the bill. The Revenue Estimating Conference adopted a positive/negative indeterminate impact on substantially similar legislation enacted by the 2007 legislature. Based on a review of federal tax legislation during 2007, staff estimates that a similar result should be expected for HB 5065.

2. Expenditures:

The Department of Revenue will be required to change corporate forms and audit instruction.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Revenue Estimating Impact Conference determined on February 22, 2008 that decoupling Florida's income tax code from the federal amendments in sections 102 and 103 of H.R. 5140, the Economic Stimulus Act of 2008, will avoid a \$146.8 million reduction in state General Revenue in FY 2008-09 and an indeterminate negative recurring impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants rule making authority to the Department of Revenue.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 26, 2008, the Government Efficiency & Accountability Council heard PCB GEAC 08–29 and adopted three technical amendments to the PCB. Amendment one clarifies that the declaration of estimated tax for those corporations meeting the minimum tax requirements of s. 220.24(1), F.S., after the third month and before the sixth month, should be filed on or before June 30; amendment two clarifies the timing for declarations and taxes when four installments are required; and amendment three conforms the effective date for the piggy back provisions so that these provisions are effective upon becoming law and operate retroactively to January 1, 2008.