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 Finance and Tax Committee

BILL: SB 1112

INTRODUCER: Senator Altman

SUBJECT: Corporate Income Tax

DATE: January 30, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	ODonnell	McKee	FT	**Favorable**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Each year Florida adopts changes to the Federal Internal Revenue Code as it exists on January 1 of that year. This maintains the relationship between Florida and federal taxable income. The enactment is commonly referred to as the "piggy-back" bill. In 2008, due to budgetary considerations, the Legislature adopted the federal tax code with the exception of two temporary federal income deductions.

This bill replaces provisions of the 2008 "piggy-back" bill - Chapter 2008-206, Laws of Florida. It provides a new method to exclude the temporary federal deductions from Florida income tax calculations that largely eliminates the unintended negative impact of Chapter 2008-206, Laws of Florida, on the depreciation and additional expensing deductions available to Florida taxpayers. Specifically, the bill provides for a Florida subtraction for the bonus depreciation or additional expensing deduction claimed by a taxpayer on their federal return. The bill requires a taxpayer claiming bonus depreciation or additional expensing on its federal return to add 80% of the amount so claimed to its 2008 Florida taxable income. The taxpayer can then subtract 25 percent of the amount by which taxable income was increased in each of the 4 subsequent tax years

This bill amends Sections 220.03 and 220.13, Florida Statutes.

II. Present Situation:

Section 220.11, Florida Statutes, imposes tax on the taxable income of corporations doing business in Florida at a 5.5% rate. Florida's corporate income tax code uses federal taxable income as the starting point to determine Florida corporate income tax. Federal taxable income is established by federal law. Changes that are made to federal law that affect federal taxable income are typically adopted by Florida each year when it passes a law to "piggy-back" those changes.

To stimulate the economy, the federal code was changed for calendar year 2008 by the Economic Stimulus Act to provide a depreciation deduction speed-up of 50% (bonus depreciation) for property purchased during the 2008 calendar year. The 50% speed-up automatically reduces federal taxable income for corporations in 2008 unless they elect not to use it when they file their federal tax return. The Act also allowed for accelerated expensing. Small businesses could fully expense property valued up to $250,000 (up from $128,000) that was placed in service during 2008.

Anticipated budgetary restraints in FY 2008-09 caused the Legislature to adopt the 2008 year Income Tax Code with an exception for the federal deductions for bonus depreciation and accelerated expensing. Chapter 2008-206, Laws of Florida, accomplished this by requiring that the federal deductions be added to a corporations' Florida taxable income. This was done with the understanding that a taxpayer would not be put in a different position for Florida tax purposes depending on whether or not it took the federal deductions.

When Florida adopts the federal income tax code, it adopts all of the underlying calculations used to determine federal taxable income, including rules that determine a capital asset's cost basis. If a federal deduction is accelerated and taken on a 2008 federal return, the taxpayer's federal cost basis in a capital asset is reduced by the deduction. As a result, future deductions to federal taxable income based on the asset's cost basis are reduced.

Florida law requires a taxpayer to add back the entire federal deduction to its 2008 federal taxable income when determining its Florida taxable income. This increases the amount subject to tax on the 2008 Florida return. However, Florida law never permits the taxpayer to subtract the accelerated portion of the federal deduction, or to adjust the asset's cost basis. So, a taxpayer using the federal deduction on a capital asset purchased in 2008 would permanently give up 50 percent of the benefit of the depreciation deduction on that asset in Florida.

The unintentional effect of not allowing a Florida adjustment to recapture the federal taxable income deduction is depicted by the following simplified example using a $10,000 cost basis and 5-year straight-line depreciation schedule.

Florida Decoupled from Fed 50% Speed-up						Difference
Year	2008	2009	2010	2011	2012	
Fed Cost Basis for Depreciation	10,000	4,000	3,000	2,000	1,000	
Total Federal Depreciation	**6,000**	**1,000**	**1,000**	**1,000**	**1,000**	**$10,000**
Florida 50% Depreciation Add Back	5,000					
Florida Depreciation Benefit	**1,000**	**1,000**	**1,000**	**1,000**	**1,000**	**$5,000**

The unintended outcome of the 2008 legislation was to created significant uncertainty for Florida corporate taxpayers faced with decisions about whether to take advantage of the federal stimulus bill, how to calculate estimated payments and how to account for the decisions on company financial reports.

On November 26, 2008, the Department of Revenue published a Technical Assistance Advisement (TAA) titled "Federal Bonus Depreciation and Expensing – Anticipation of Further Legislative Action." The TAA acknowledge receipt of a letter from the legislature indicating that Chapter 2008-206, Laws of Florida, may not have accomplished the legislative intent, was causing uncertainty for corporate taxpayers and would be reconsidered.

On December 10, 2008, the Department of Revenue adopted Emergency Rule 12CER08-31, Florida Administrative Code. The emergency rule was premised, in part, on the expressions of legislative intent and it provided a method for taxpayers taking the federal deductions to avoid the unintended outcome. That rule expires on March 10, 2009.

III. Effect of Proposed Changes:

The bill prescribes a method to account for the federal deductions on Florida tax returns. The bill requires corporations taking federal bonus depreciation or expensing deductions on their 2008 federal returns to add back 80% of the deduction to that tax year's Florida tax return. It provides a 25% subtraction for the remainder of the deduction amount to be taken on their Florida returns over the next four years.

These adjustments can be made whether or not the property subject to the adjustment has been sold, disposed of, or remains in service and they may be used by a surviving or acquiring entity following a merger or acquisition. The additions and subtraction are permitted to change a corporations net operating loss for Florida tax purposes.

The bill requires the Department of Revenue to compromise penalty and interest imposed on taxpayers who filed a return prior to the bill's effective date who then file an amended return. These amendments apply retroactively to January 1, 2008. The Department is authorized to adopt emergency rules to implement the act.

Other Potential Implications:

None.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has not determined the revenue impact of the bill. Staff is of the opinion that the impact is indeterminable.

In 2008, the Revenue Estimating Conference determined that adopting the two temporary federal income deductions provided in the federal Economic Stimulus Act would reduce state revenue in FY 2008-09 and FY 2009-10 and that the decline would be offset in later years. The estimate of the 2008 Florida legislation assumed that the methodology accomplished the legislative intent. However, as written, the impact of the 2008 legislation was likely positive, but indeterminate. There is no information available to provide the basis for an estimate of the economic impact of changes in taxpayer behavior had they known of the potential loss of the benefit of those deductions in Florida. When compared to the 2008 legislation, the fiscal impact of this bill is likely negative, but indeterminate. The impact of the bill cannot be determined because information regarding variables necessary for arriving at an estimate are not known and cannot be fairly inferred from available secondary information.

B. Private Sector Impact:

Florida corporations utilizing the temporary federal Economic Stimulus Act deductions will not lose the benefit of those expensing and depreciation deductions in Florida.

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.