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 Commerce and Tourism Committee

BILL:	SB 1506
INTRODUCER:	Senator Ring
SUBJECT:	Corporate Income Tax
DATE:	March 25, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

Florida and 46 other states use some version of a three-factor apportionment to tax business earnings of corporations that operate in more than one state. The three factors are: sales tax receipts, payroll expenditures, and value of real and tangible personal property. Even if the factors are equally weighted, businesses with large, expensive facilities or a large workforce can pay a disproportionate share of taxes, compared with smaller businesses.

The way most states address these issues is to give greater "weight" to sales tax receipts. In fact, 24 states now base their corporate income tax (CIT) calculations on "single-sales apportionment," meaning they only calculate a corporation's in-state sales tax receipts divided by its total sales tax receipts, and do not include payroll and property values in the calculations. Florida currently double-weights sales tax receipts, meaning the calculation for CIT liability gives the business' sales tax receipts value twice the weight as it gives payroll and property.

SB 1506 allows an eligible business to voluntarily have its CIT calculation based on the single-sales apportionment factor if it has:

- On or after July 1, 2013, made qualified capital expenditures in Florida of at least $250 million, and
- Maintained the same number of employees it had when it applied for permission to have its CIT calculated using the single-sales apportionment factor. The employees must have been on the payroll at least 1 year and receive an average weekly wage greater than the state average private-sector weekly wage or the local average private-sector weekly wage for the business' industry sector, whichever is less.

Eligible businesses must be the parent company with an affiliated group of corporations that file consolidated tax returns. In effect, corporations headquartered in Florida with operations in more than one state are eligible to use this method. Financial institutions are prohibited from using this methodology.

The bill sets up processes by which the Governor's Office of Tourism, Trade, and Economic Development (OTTED) will review and certify applications from corporations seeking the single-sales apportionment factor calculation and to revoke a certification. Also, the Department of Revenue (DOR) is authorized to review a certified business' documentation and to recapture credits, if necessary.

Both agencies are authorized to promulgate rules necessary to implement the provisions of this bill.

SB 1506 creates s. 220.153, F.S., and amends s. 220.131, F.S.

II. Present Situation:

Florida's corporate income tax

In response to a constitutional amendment that authorized the levy of a state corporate income tax, the 1971 Legislature adopted a 5-percent corporate income tax, which became effective on corporate incomes earned after January 1972. In 1984, the Legislature raised the state's corporate income tax rate to 5.5 percent.

Florida banks and savings institutions, as defined in s. 220.62, F.S., pay what is called a "franchise tax" that is identical to the corporate income tax.

Florida also levies an alternative minimum tax (AMT) of 3.3 percent against the net income of corporations who have elected to use that system for their federal tax computations.[1] The tax due is whichever amount is greater: the regular Florida corporate income tax or the Florida AMT.

Florida corporate income tax liability is computed using federal taxable income, modified by certain Florida adjustments, to determine adjusted federal income. A corporation doing business outside Florida may apportion its adjusted federal income for Florida tax purposes, using a three-factor formula. The formula is a weighted average, designating 25 percent each to factors for property and payroll, and 50 percent to sales.[2]

[1] More information about the AMT for corporations is available from many sources, but one of the most concise yet understandable explanations was prepared by the nonpartisan Tax Policy Center, an affiliate of The Brookings Institute. The article is available at http://www.taxpolicycenter.org/publications/url.cfm?ID=1000515. Last visited Feb. 24, 2010.

[2] Section 220.15, F.S., details the apportionment formulas for most corporations. Section 220.151, F.S., details the apportionment for entities that pay the premium insurance tax and for transportation entities. Finally, s. 220.152, F.S., sets out a process for how DOR would apportion the Florida corporate income tax liability for businesses that don't fit into the other categories; in such cases, the taxpayer is required to petition DOR to compute its apportionment and must agree to provide the agency additional documentation.

Chapter 220, F.S., is very specific about what types of businesses must file corporate income tax forms. Briefly:[3]

- Corporations and artificial entities that conduct business, or earn or receive income in Florida, including out-of-state corporations, must file a Florida corporate income tax return unless exempt. They must file a return, even if no tax is due.
- Corporations and other artificial entities, including those located in other states, that are partners in a partnership or members of a joint venture doing business in Florida must file.
- Limited liability companies (LLCs) may or may not have to file a Florida corporate income tax return, depending on certain factors:
    - An LLC classified as a corporation for Florida and federal income tax purposes, is subject to the Florida Income Tax Code and must file a Florida corporate income tax return.
    - An LLC classified as a partnership for Florida and federal income tax purposes, must file Form F-1065 if one or more of its owners is a corporation. In addition, the corporate owner of an LLC that is classified as a partnership for Florida and federal income tax purposes must file a Florida corporate income tax return.
    - A single-member LLC, disregarded for Florida and federal income tax purposes, does not have to file a separate Florida corporate income tax return. However, the income of the company is not exempt from tax if a corporation owns the company, whether directly or indirectly. In this case, the corporation must file Form F-1120 reporting its own income, and the income of the single member LLC.
- Sole proprietorships, individuals, estates of decedents, and testamentary trusts are exempted and do not have to file a return.
- "S" corporations and tax-exempt organizations usually do not have to file a Florida corporate income tax return if they do not have federal taxable income. If they have federal taxable income, however, they must then file a Florida corporate income tax return and pay any tax due.

Florida has adopted the federal definition of taxable income. A Florida corporate taxpayer's net income is its adjusted federal income, or the share of its adjusted federal income for the year that is apportioned to Florida, plus non-business income allocated to Florida, less the $5,000 exemption. Also, a Florida corporation that pays federal AMT must compute its Florida taxes under the AMT system that same tax year.[4]

In FY 2009-2010, the state collected a net $1.79 billion in corporate and franchise taxes, which were deposited into the General Fund.[5] An estimated $1.9 billion is the latest estimated net collections for FY 2010-2011.[6]

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[3] The source for this is a primer prepared by the Florida Department of Revenue. Available at http://dor.myflorida.com/dor/taxes/corporate.html. Last visited March 26, 2011.
[4] Taxpayers that chose to use the AMT system are allowed, in later years, to take a credit equal to the amount of Florida AMT paid over the amount of Florida "regular" tax that would have otherwise been due.
[5] Information available from the Florida Office of Economic and Demographic Analysis website. Report available at: http://edr.state.fl.us/Content/conferences/generalrevenue/grchng.pdf. Last visited March 25, 2011.
[6] Ibid.

Information provided by the Governor's Office in 2010 indicated that Florida has 35,820 corporate taxpayers and 630 AMT taxpayers.

Background on business earnings apportionment

Forty-seven states use some version of a three-factor apportionment to tax business earnings: sales tax receipts, payroll, and property value.[7] Even if the factors are equally weighted, businesses with large, expensive facilities or a large workforce can pay a disproportionate share of taxes, compared with smaller businesses. Complicating the taxable income calculation is how to apportion revenues for businesses that operate in more than one state.

The way most states address these issues is to give greater "weight" to sales tax receipts. At least 24 states now base their corporate income tax (CIT) calculations on "single-sales apportionment," meaning they only calculate a corporation's in-state sales tax receipts divided by its total sales tax receipts, and do not include payroll and property values in the calculations.

For most corporations, Florida double-weights sales tax receipts, meaning the calculation for CIT liability gives the business' sales tax receipts value twice the weight as it gives payroll and property values.

Very simply, the basic Florida formula might be expressed this way:

$$\text{Taxable Florida income} = \frac{2x\ (\text{FL sales receipts})}{\text{All sales receipts}} + \frac{\text{FL payroll costs}}{\text{All payroll costs}} + \frac{\text{FL property value}}{\text{All property value}}$$

Weighted apportionment has proponents and detractors among economists and tax experts.[8] In general, proponents of single-sales apportionment contend that it encourages more manufacturing facilities and businesses providing higher-wage jobs to locate in states using this formula. The loss of corporate income tax revenue is offset eventually, they say, by the increased private investment and greater employment. In general, detractors say the revenue loss to a state treasury may never recover, because some of the new business income will not be taxed and the new employment may not generate enough tax revenue.

III. Effect of Proposed Changes:

SB 1506 creates an optional mechanism for eligible corporations to have their Florida income calculated for Florida income tax purposes using the single-factor sales apportionment methodology.

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[7] Final Report and Recommendations of the Florida Task Force on the Study of Biotech Competitiveness. Published August 12, 2009. Copy on file with the Senate Commerce and Tourism Committee.

[8] A sampling of research papers includes: "A Twentieth Century Tax in the Twenty-First Century: Understanding State Corporate Tax Systems," available at http://www.taxfoundation.org/research/show/1096.html; "Single-factor Sales Apportionment Formula in Georgia: What is the Net Revenue Effect?," available at http://aysps.gsu.edu/frc/files/report55.pdf; and "The Economic Impact of Single Factor Sales Apportionment for the State of New York," available at http://www.ppinys.org/reports/2001/sglsales/sglsales.htm. A 2010 chart of how the states apportion income for corporate tax purposes is available at http://btrc.maryland.gov/BTRsub/documents/Breakdown_of_States.pdf.

Section 1: Amends s. 220.131, F.S., to add a cross-reference and make technical grammatical changes. The cross-reference adds the option for eligible corporations to have their Florida income calculated using the single sales apportionment methodology.

Section 2: Creates s. 220.153, F.S., to create the optional alternative corporate income tax calculation known as single sales apportionment. Eligible for this apportionment are corporations that:

- Are parent companies with affiliated groups of corporations that file consolidated tax returns;
- Operate in Florida and other states; and
- Which can demonstrate to OTTED that:
    - On or after July 1, 2013, it has made at least $250 million in qualified capital expenditures in Florida; and
    - Has maintained the same number of full-time employees in its Florida operations that were employed when it first notified OTTED of its intent to apply for the single-factor sales apportionment methodology. Such employees must work an average of at least 36 hours per week for an entire year and receive an average weekly wage greater than the lower of the state or local average weekly wages for the taxpayer's industry. "Full-time employee" does not include an employee who is hired to construct improvements to real property.

Prohibited from using this methodology are financial institutions defined in ss. 220.15(6) and 220.62, F.S.

SB 1506 establishes the 2-year process by which an eligible corporation applies to and is qualified by OTTED. First, the corporation must notify OTETD of its intent to submit an application to be qualified to have its adjusted federal income apportioned under the single sales apportionment methodology. Next, the corporation must submit its application for qualification within 2 years after notifying OTTED of its intent to qualify. The application must be made under oath and provide all information required by OTTED rule for determining the corporation's eligibility to apportion adjusted federal income. The corporation is responsible for affirmatively demonstrating to OTTED's satisfaction that it meets the eligibility requirements.

OTTED must acknowledge receipt of the notice, and must approve or deny the application in writing within 45 days after receipt.

After it receives OTTED approval, the corporation may elect, on its tax return, to use the single sales apportionment methodology beginning with the same taxable year when OTTED issued its approval. A corporation must file under the single-factor sales apportionment methodology for 4 years. If the corporation does not renew its election for the single sales method, then it must revert to the traditional methodology in s. 220.15, F.S., (the double-weighted sales methodology), and later reapply to apportion its adjusted federal income pursuant to this section.

In addition to its existing statutory audit authority, DOR may perform any financial and technical review and investigation, including examining the accounts, books, and records of any corporation that opted to use the single sales apportionment methodology to verify that its tax

return correctly computes and apportions adjusted federal income and to ensure compliance with ch. 220, F.S.

If a DOR audit, investigation, or examination indicates problems with a corporation's tax returns, OTTED may revoke its decision to qualify the corporation as eligible for the single sales apportionment. OTTED also may order the recalculation of apportionment factors to those applicable under s. 220.15, F.S., if, as the result of a DOR audit, investigation, or examination, it determines that information provided by the offending corporation in its application or other documents was materially false at the time it was made and that an individual acting on behalf of the corporation knew, or should have known, that the information submitted was false.

In such cases, the corporation must pay the additional taxes and interest that may be due, calculated as the difference between the taxes paid under the single sales apportionment and the double-weighted sales apportionment in s. 220.15, F.S. DOR also shall assess the corporation a penalty equal to 100 percent of the additional tax due.

OTTED must immediately notify DOR of its decision to revoke a corporation's eligibility for the single sales apportionment. At that point, the corporation must file an amended return with DOR, or any other such report that OTTED requires by rule, and pay any required tax, interest, and penalty within 60 days after receiving notification from OTTED about the revocation. If the corporation contests the revocation order, it still must file an amended return or other report within 30 days after the revocation order becomes final. A corporation that fails to pay the past tax, interest, and penalty by the due date is subject to the penalties provided in s. 220.803, F.S.[9]

SB 1506 authorizes OTTED and DOR to adopt rules to administer these provisions.

Section 3: Provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[9] This section provides for an additional 10-percent penalty if the deficiency in tax payments is a result of negligence or intentional disregard of the rules and regulations, or in the case of fraud, a penalty equal to 100 percent of the deficient amount.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference at its March 25, 2011, meeting adopted by consensus a negative fiscal impact to the state treasury of $7.6 million in FY 2013-2014, and a negative fiscal impact of $7.8 million in FY 2014-2015. The estimated impacts were based on the REC's assumption that the required per-taxpayer $250 million investment is prospective – after the corporation receives OTTED approval.

If SB 1506 is interpreted to mean that an eligible corporation has already made the $250 million investment in the 2 years prior to seeking OTTED approval – as the sponsor intends – the negative fiscal impact may shift a year earlier, beginning in FY 2012-2013.

B. Private Sector Impact:

Indeterminate, but likely positive.

C. Government Sector Impact:

DOR indicated that SB 1506 would have no fiscal impact on its staffing and operations.

VI. Technical Deficiencies:

DOR has recommended two technical amendments to SB 1506. One would define "qualified investments," and the other would give OTTED access to confidential tax information about corporations participating in the single-factor sales apportionment methodology.

VII. Related Issues:

SB 1506 specifies that a corporation must maintain at least the same number of employees during the 2-year period it first notifies OTTED of its intent to qualify for the single-factor sales apportionment and when it applies for OTTED's approval to use the apportionment method. This could be interpreted to mean that once a corporation receives that approval, it could lay off employees.

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.