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 Budget Subcommittee on Finance and Tax

BILL: SPB 7064

INTRODUCER: For consideration by the Budget Subcommittee on Finance and Tax

SUBJECT: Corporate Income Tax

DATE: March 9, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Babin	Diez-Arguelles		**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida. The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes. This means that a corporation paying taxes in Florida receives the same benefits from deductions allowed in determining its federal taxable income. Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is referred to as the “piggyback bill.”

Late last year, the federal government passed two acts that affected the Internal Revenue Code - the Small Business Jobs Act of 2010 (SBJA) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TUJA). These acts contained provisions that will reduce Florida corporate tax receipts over the next two years if adopted in Florida. The provisions are: 100% first year bonus depreciation for business equipment placed in service in 2011, additional first year expensing for purchases made in 2011, 50% bonus depreciation for property placed in service in 2012, and additional first year expensing for purchases made during 2012.

This bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2011. The change will apply retroactively to January 1, 2011. However, the bill contains special provisions that have the effect of not adopting the changes that reduce corporate tax receipts in FY 11-12 and FY 12-13. The bill accomplishes this by extending the special provisions for dealing with bonus depreciation and additional expensing adopted by Florida in SB 1112 (2009).

The Revenue Estimating Conference has estimated that the additional depreciation and expensing provisions in the SBJA and TUJA will reduce FY 11-12 general revenue by $561.9 Million. This bill neutralizes this impact.

The bill has an effective date of upon becoming law and applies retroactively to January 1, 2011.

The bill substantially amends ss. 220.03 and 220.13, F.S.

II. Present Situation:

Corporate Income Tax Overview

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida.[1] For simplicity's sake, the determination of taxable income for Florida tax purposes begins with the taxable income used for Federal income tax purposes.[2] This means that a corporation paying taxes in Florida receives the same benefits from deductions allowed in determining its federal taxable income. With federal taxable income as a starting point, Florida law then requires a variety of additions and subtractions to reflect Florida-specific policies.

Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is referred to as the "piggyback bill."

Depreciation Deduction

Under federal tax law, a corporation is entitled to reduce its income over time to reflect the cost of an asset it purchases. If a corporation purchases equipment for $10,000 with an expected useful life of 5 years, it is entitled to reduce its income by annual amounts totaling $10,000 over 5 years. For example, if the corporation uses the straight-line depreciation method, it can reduce its income by $2,000 each year for 5 years.

Under Florida law, this treatment for federal tax purposes flows to the Florida tax return and reduces Florida taxable income.

Economic Stimulus Act of 2008, American Recovery and Reinvestment Act of 2009, and Florida's Response

In early 2008, Congress approved the Economic Stimulus Act of 2008. Among other items, this legislation provided two tax benefits to corporations: (1) it allowed corporations to take an additional depreciation deduction equal to 50% of the cost of property placed in service in 2008, and (2) it allowed for small businesses to completely depreciate property valued up to $250,000 (instead of $128,000) placed in service during 2008. The effect of these changes was to increase

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[1] Sec. 220.11, F.S.
[2] Secs. 220.12 and 220.13, F.S.

depreciation and expensing provisions in the year property is placed in service and to decrease depreciation deductions in later years.[3]

In 2009, Congress approved the American Recovery and Reinvestment Act of 2009 (ARRTA). This legislation granted a one-year extension of the bonus depreciation and additional expensing provisions adopted in 2008, discussed above. The legislation also allowed taxpayers to defer until 2014 the recognition of certain income from cancellation of indebtedness (COD) occurring during 2009 and 2010.[4]

Due to budgetary constraints in Fiscal Years 08-09 and 09-10, the Legislature decided to adopt the federal tax code in both 2008 and 2009, except for the provisions dealing with 50% bonus depreciation and the increased expensing amount provided by the Economic Stimulus Act of 2008[5], and the extension of those provisions by ARRTA[6].

SB 1112 (2009) provided a new process to account for the increased deductions provided by the Economic Stimulus Act of 2008 and ARRTA in the Florida tax return. Specifically, the bill spread out the amount of bonus depreciation or additional expensing claimed by a taxpayer on the federal return over a 7-year period on the Florida return. Thus, ultimately, the taxpayer did not lose the benefit of the deductions for Florida purposes. Rather, the benefit of the deductions was spread out over time.

SB 1112 accomplished this by providing that a taxpayer claiming bonus depreciation or additional expensing on its federal return must add the amount so claimed to Florida taxable income. In the first year and in each of the 6 subsequent taxable years, the taxpayer can subtract from taxable income one-seventh of the amount by which taxable income was increased. These adjustments to Florida taxable income are available whether the property remains with the taxpayer or is sold or otherwise disposed.

SB 1112 provided that the subtractions can be used by a surviving or acquiring entity following a merger or acquisition. Also, SB 1112 specifically provided that the additions and subtractions can change a taxpayer's net operating loss for Florida tax purposes.

III. Effect of Proposed Changes:

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2011. The change will apply retroactively to January 1, 2011. However, the bill contains special provisions that have the effect of not adopting the changes made by SBJA and TUJA that reduce corporate tax receipts in FY 11-12 and FY 12-13. The bill accomplishes this by extending the 7-year adjustment process adopted in SB 1112 (2009) for the deductions granted by the Economic

[3] The Revenue Estimating Conference determined that these provisions would reduce state revenues by $146.8 million in FY 08-09 and $76 million in FY 09-10.
[4] The Revenue Estimating Conference estimated that the adoption of these provisions would reduce state revenues in FY 09-10 by $188.2 million.
[5] See SB 1112 (2009); Ch. 2009-18, Laws of Florida.
[6] See SB 2504 (2009); Ch. 2009-192, Laws of Florida.

Stimulus Act of 2008 and extended by SB 2504 (2009) for the deductions granted by AARTA to the most recent deductions granted by SBJA and TUJA.

The effect of these changes is to allow a taxpayer to take advantage of the deductions in the federal return, but place the taxpayer in a similar position for Florida tax purposes as the taxpayer would have been had it not taken advantage of the federal provisions.

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:

This bill maintains the link between Florida's Corporate income tax code and the current federal income tax code, except for recent increases in the deductions for depreciation and expensing granted by federal legislation passed late last year.

The Revenue Estimating Conference has not completed a fiscal impact of this bill. However, the Conference has estimated that adopting the Internal Revenue Code without the provisions of this bill that limit the effect of the additional deductions granted by SBJA and TUJA would have a significant negative impact on state revenues in FYs 11-12 ($561.9 million) and 12-13 ($4.4 million).

Staff estimates that the provisions of this bill will have an indeterminate impact on state revenues.

B. Private Sector Impact:

Florida businesses that pay Florida Corporate Income Tax will be required to add back to their income the amount of bonus depreciation and certain expenses.

C. Government Sector Impact:

None.

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.