HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7099 (PCB FTSC 13-04) Corporate Income Tax
SPONSOR(S): Finance & Tax Subcommittee; Workman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1516

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee	15 Y, 0 N	Aldridge	Langston
1) Appropriations Committee	24 Y, 0 N	Aldridge	Leznoff

SUMMARY ANALYSIS

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 generally 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 in question. 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 commonly referred to as the "piggyback bill."

In January 2013, the federal government passed an act that affected the Internal Revenue Code - the American Taxpayer Relief Act of 2012. This act contained provisions that will reduce Florida corporate tax receipts over the next two years if adopted in Florida. Those provisions are:

- 50% first year bonus depreciation for certain new business property placed in service in 2013.
- Increase in the amount that can be immediately expensed for certain depreciable asset purchases made in 2012, from $250,000 to $500,000.
- Increase in the amount that can be immediately expensed for certain depreciable asset purchases made in 2013, from $25,000 to $500,000.

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, 2013. The change will apply retroactively to January 1, 2013. However, the bill contains provisions that do not adopt the federal bonus depreciation and enhanced expensing provisions described above. The bill accomplishes this by extending current statutory provisions adopted by Florida in both 2009 and 2011 to decouple from similar bonus depreciation and enhanced expensing provisions enacted by Congress in 2008, 2009 and 2010.

The Revenue Estimating Conference (REC) has estimated that the bill will have an indeterminate impact on state revenues. Because of uncertainty as to the mix of affected assets owned by Florida taxpayers, the REC could not determine the direction of the indeterminate impact.

The bill is effective upon becoming law and applies retroactively to January 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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 generally 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 to determine Florida 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 commonly 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.

Bonus Depreciation

Bonus depreciation essentially allows a corporation to take an enhanced depreciation deduction in the first year that certain property is placed into service. Congress in recent years[3] has allowed bonus depreciation of either 50% or 100% of the cost of the business property during various timeframes from 2008 through 2012. For example, corporations could take an additional depreciation deduction equal to 50% of the cost of certain business property placed in service between January 1 and September 8, 2010 and 100% of the cost of certain business property placed in service after September 8, 2010 through December 31, 2011.

Section 179 "Expensing"

Section 179 of the Internal Revenue Code generally allows small businesses that purchase certain depreciable business property to expense (completely depreciate) that property valued up to certain limits in the year the property is placed into service. Before 2008, the amount allowed to be "expensed" was $25,000. However, in recent years, Congress has increased this amount to varying degrees, including setting the amount at $125,000, $250,000 and $500,000 for various timeframes from 2008 through 2012.

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[1] Section 220.11, F.S.
[2] Sections 220.12 and 220.13, F.S.
[3] With the Economic Stimulus Act of 2008, American Recovery and Reinvestment Act of 2009, Small Business Jobs Act of 2010, Tax Relief, Unemployment Insurance reauthorization, and Job Creation Act of 2010

Florida's Response to Federal Bonus Depreciation and Enhanced Sec. 179 "Expensing"

To avoid the near-term negative revenue consequences to Florida, the Legislature in 2009[4,5] and 2011,[6] adopted a process to account for the increased depreciation deductions in the Florida tax return. Specifically, the Legislature 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.

This was accomplished 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 could subtract from taxable income one-seventh of the amount by which taxable income was increased. These adjustments to Florida taxable income were available whether the property remained with the taxpayer or was sold or otherwise disposed.

American Taxpayer Relief Act of 2012

In January 2013, the federal government passed an act that affected the Internal Revenue Code - the American Taxpayer Relief Act (ATRA) of 2012. Among other things, this act provides tax benefits to corporations that are similar to those provided with the Economic Stimulus Act of 2008, American Recovery and Reinvestment Act of 2009, Small Business Jobs Act of 2010, Tax Relief, Unemployment Insurance reauthorization, and Job Creation Act of 2010. The ATRA allows corporations to take an additional depreciation deduction equal to 50% of the cost of certain business property placed in service in 2012. The ATRA also allowed corporations to immediately expense (completely depreciate) certain new depreciable business property valued in total up to $500,000 (instead of $250,000) placed in service during 2012 and $500,000 (instead of $25,000) in 2013. The effect of these changes was to increase depreciation and expensing provisions in the year property is placed in service and to decrease depreciation deductions in later years for federal income tax purposes.

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, 2013. The change will apply retroactively to January 1, 2013. However, the bill contains provisions that "decouple" the Florida income tax code from the federal bonus depreciation and enhanced s. 179 expensing provisions described above. The bill accomplishes this by extending the 7-year adjustment process adopted in 2009 and 2011 for the relevant enhanced federal depreciation deductions authorized by Congress in 2008, 2009 and 2010.[7]

The effect of these changes is to allow a taxpayer to take advantage of the deductions for federal tax purposes, 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.

The bill also grants emergency rulemaking authority to the executive director of the Department of Revenue. The bill specifies that such rules may be renewed during the pendency of procedures to adopt permanent rules.

B. SECTION DIRECTORY:

Section 1: Amends ss. 220.03(1) and (2), F.S., to update the version of the internal revenue code adopted by Chapter 220, F.S., from 2012 to 2013.

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[4] See SB 1112 (2009); Ch. 2009-18, Laws of Florida.
[5] See SB 2504 (2009); Ch. 2009-192, Laws of Florida.
[6] See CS/HB 7185 (2011); Ch. 2011-229, Laws of Florida.
[7] With the Economic Stimulus Act of 2008, American Recovery and Reinvestment Act of 2009, Small Business Jobs Act of 2010, Tax Relief, Unemployment Insurance reauthorization, and Job Creation Act of 2010.

Section 2: Amends s. 220.13(1)(e), F.S., to decouple Florida's corporate income tax from federal income tax deductions allowed by the American Taxpayer Relief Act of 2012 at the federal level.

Section 3: Provides emergency rulemaking authority to the executive director of the Department of Revenue.

Section 4: Provides that the bill is effective upon becoming law and operates retroactively to January 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference (REC) has estimated that the bill will have an indeterminate impact on state revenues. Because of uncertainty as to the mix of affected assets owned by Florida taxpayers, the REC could not determine the direction of the indeterminate impact.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida businesses that pay Florida corporate income tax will not be able to take advantage of the bonus depreciation and expensing provisions of the American Taxpayer Relief Act of 2012 for Florida income tax purposes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES