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 Appropriations Subcommittee on Finance and Tax

BILL: CS/SB 134

INTRODUCER: Appropriations Subcommittee on Finance and Tax and Senator Hukill

SUBJECT: Tax-exempt Income

DATE: April 3, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Favorable**
2.	Babin	Diez-Arguelles	AFT	**Fav/CS**
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 134 increases the level of income that is exempt from the Florida corporate income tax. Florida imposes a 5.5 percent tax on the net income of corporations doing business in Florida. Currently, however, the first $50,000 of a corporation's income that is subject to Florida tax is exempt from the corporate income tax. This bill increases the exemption from $50,000 to $75,000.

The Revenue Estimating Conference estimates that this bill will reduce general revenue receipts by $8.8 million Fiscal Year 2014-15, with a recurring impact of $21.6 million.

II. Present Situation:

Florida began imposing an income tax on corporations in 1972.[1] The initial tax rate was 5 percent, but that rate was increased to 5.5 percent in 1984.[2]

Currently, Florida's corporate income tax is comprised of two separate 5.5 percent taxes and a 3.3 percent alternative minimum tax.[3] The primary component of the tax is the 5.5 percent tax

[1] See Chapter 71-984, Laws of Florida (L.O.F.). Florida began imposing a corporate income tax after a constitutional amendment was adopted in 1971. Currently, the Florida Constitution does not permit an income tax on natural persons. See Article VII, Section 5, Florida Constitution (Fla. Const.).

[2] See s. 21, 84-549, L.O.F. The Florida Constitution requires a 3/5 vote of the membership of each house of the Legislature in order to impose a tax in excess of 5 percent. See Art. VII, Sec. 5, Fla. Const.

[3] Only 1 of these 3 tax components can apply to a taxpayer in a given year.

that applies to "corporations," as defined by s. 220.03, Florida Statutes.[4] The second 5.5 percent tax is referred to as the "franchise tax" and is imposed on Florida banks and savings institutions, as defined in s. 220.62, F.S.[5]

Regardless of which 5.5 percent tax applies to a taxpayer, if the taxpayer is subject to the federal alternative minimum tax (AMT), then the taxpayer could be subject to Florida's AMT.[6] If so, the taxpayer must pay the greater of the 5.5 percent tax or the 3.3 percent AMT.[7]

Florida's corporate income tax is imposed on a taxpayer's "net income." Net income[8] is determined through the following process:

1. **Begin with Federal Taxable Income.** Rather than requiring the taxpayer to fully recalculate all of its income and deductions for Florida purposes, Florida taxpayers use their federal taxable income as the starting point for determining how much tax is owed Florida.

2. **Make Certain Statutory Adjustments.** These adjustments are generally known as "additions and subtractions,"[9] and they relate to various items that Florida treats differently than the federal government. The income remaining after these additions and subtractions is known as "adjusted federal income."

3. **Apportion and Allocate.** Multi-state taxpayers must determine what portion of their adjusted federal income is properly taxable in Florida – a process generally referred to as "apportionment." Within this process, the taxpayer first determines what portion of its income is from business operations and what portion of its income is from nonbusiness activities.[10] Its business income is then "apportioned"[11] among the states where it does business and its nonbusiness income "allocated" to the state where the transactions or activities that gave rise to the nonbusiness income occurred.[12]

   Florida generally uses a three-factor apportionment formula determined by the taxpayer's payroll, property, and sales. The formula compares the taxpayer's total payroll, sales and property in all states with the taxpayer's payroll, sales and property in Florida. The ultimate result of this calculation will be a fraction. A multi-state taxpayer's business income is then apportioned to Florida based upon that fraction.

---

[4] This component of the tax is imposed by s. 220.11(1), F.S. Only a fraction of total Florida businesses are considered "corporations" subject to the Florida corporate income tax. Sole proprietorships, partnerships, limited liability companies, and S corporations are not subject to the tax except under limited circumstances. See s. 220.03(1)(e), F.S.

[5] The franchise tax is imposed by s. 220.63(1), F.S.

[6] More information about the AMT for corporations is available from many sources, but a concise explanation 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 February 6, 2014.)

[7] See s. 220.11(4), F.S. Although the AMT is a lower nominal rate compared to the 5.5 percent tax, the AMT can result in a higher tax due because it uses a different definition of "taxable income."

[8] See s. 220.12, F.S.

[9] See generally s. 220.13, F.S.

[10] Nonbusiness income is certain income that does not arise from transactions and activities in the regular course of the taxpayer's trade or business. See s. 220.03(1)(r), F.S.

[11] See generally s. 220.15, F.S.

[12] See generally s. 220.16, F.S.

4. **Subtract the Exemption.** Lastly, Florida grants an exemption for the first $50,000 of income that would otherwise be taxable in Florida.[13] Accordingly, after apportionment and allocation are applied to determine a taxpayer's income that is properly taxable in Florida, the taxpayer subtracts $50,000 before applying the tax rate. The amount of income remaining after subtraction of the $50,000 exemption is known as "net income" and is the amount subject to Florida corporate income tax.

III. Effect of Proposed Changes:

For taxable years beginning on or after January 1, 2015, the bill increases the $50,000 exemption to $75,000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates that CS/SB 134 will reduce general revenue receipts by $8.8 million Fiscal Year 2014-2015, with a recurring impact of $21.6 million.[14]

B. Private Sector Impact:

There are approximately 11,501 corporate income taxpayers in Florida that have a net income over the current $50,000 exemption. The bill will completely exempt from the tax 2,163 of these taxpayers and provide a tax reduction for the remaining 9,338 taxpayers.

C. Government Sector Impact:

None.

---

[13] The Florida Constitution requires an exemption of at least $5,000. See Art. VII, Sec. 5, Fla. Const.

[14] Revenue Estimating Conference Impact Conference Results from January 9, 2014, which can be found at: http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2014/pdf/page6-7.pdf. (Last visited February 25, 2014.)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 220.14, 220.63.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Finance and Tax on April 2, 2014:
The committee substitute changes the term "tax year" to "taxable year," which is the proper statutory term.

B. Amendments:

None.