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HB 7093, Engrossed 2

2018 Legislature

1  
2 An act relating to the corporate income tax; amending  
3 s. 220.03, F.S.; adopting the 2018 version of the  
4 Internal Revenue Code; amending s. 220.13, F.S.;  
5 revising the definition of the term "adjusted federal  
6 income" relating to adjustments related to federal  
7 acts; providing legislative findings; requiring the  
8 Department of Revenue to make a certain examination,  
9 monitor guidance by the Internal Revenue Service,  
10 conduct workshops, and develop a certain process  
11 regarding the Tax Cuts and Jobs Act of 2017; requiring  
12 the department to submit a specified report to the  
13 Governor and Legislature by a certain date; requiring  
14 the department to provide certain status reports to  
15 the Legislature on specified dates; requiring the  
16 department to consult with the Revenue Estimating  
17 Conference in developing required reports; requiring  
18 the 2019 Legislature to consider the report concerning  
19 the automatic tax rate adjustment mechanism; creating  
20 s. 220.1105, F.S.; providing definitions; providing  
21 for the adjustment of the corporate tax rate based on  
22 net collections exceeding adjusted forecasted  
23 collections for fiscal years 2018-2019 through 2020-  
24 2021; specifying the treatment of net collections  
25 amounts that exceed adjusted forecasted net

ENROLLED

HB 7093, Engrossed 2

2018 Legislature

26 | collections for fiscal years 2018-2019 through 2020-  
 27 | 2021; amending s. 220.11, F.S.; revising the  
 28 | adjustment of the tax rate imposed; amending s.  
 29 | 220.63, F.S.; revising the adjustment of the franchise  
 30 | tax rate imposed on banking and savings associations;  
 31 | providing emergency rulemaking authority; providing  
 32 | for retroactive operation; providing an effective  
 33 | date.

34 |  
 35 | Be It Enacted by the Legislature of the State of Florida:  
 36 |

37 | Section 1. Paragraph (n) of subsection (1) and paragraph  
 38 | (c) of subsection (2) of section 220.03, Florida Statutes, are  
 39 | amended to read:

40 | 220.03 Definitions.—

41 | (1) SPECIFIC TERMS.—When used in this code, and when not  
 42 | otherwise distinctly expressed or manifestly incompatible with  
 43 | the intent thereof, the following terms shall have the following  
 44 | meanings:

45 | (n) "Internal Revenue Code" means the United States  
 46 | Internal Revenue Code of 1986, as amended and in effect on  
 47 | January 1, 2018 ~~2017~~, except as provided in subsection (3).

48 | (2) DEFINITIONAL RULES.—When used in this code and neither  
 49 | otherwise distinctly expressed nor manifestly incompatible with  
 50 | the intent thereof:

ENROLLED

HB 7093, Engrossed 2

2018 Legislature

51 (c) Any term used in this code has the same meaning as  
52 when used in a comparable context in the Internal Revenue Code  
53 and other statutes of the United States relating to federal  
54 income taxes, as such code and statutes are in effect on January  
55 1, 2018 ~~2017~~. However, if subsection (3) is implemented, the  
56 meaning of a term shall be taken at the time the term is applied  
57 under this code.

58 Section 2. Paragraph (e) of subsection (1) of section  
59 220.13, Florida Statutes, is amended to read:

60 220.13 "Adjusted federal income" defined.—

61 (1) The term "adjusted federal income" means an amount  
62 equal to the taxpayer's taxable income as defined in subsection  
63 (2), or such taxable income of more than one taxpayer as  
64 provided in s. 220.131, for the taxable year, adjusted as  
65 follows:

66 (e) *Adjustments related to federal acts.*—Taxpayers shall  
67 be required to make the adjustments prescribed in this paragraph  
68 for Florida tax purposes with respect to certain tax benefits  
69 received pursuant to the Economic Stimulus Act of 2008, the  
70 American Recovery and Reinvestment Act of 2009, the Small  
71 Business Jobs Act of 2010, the Tax Relief, Unemployment  
72 Insurance Reauthorization, and Job Creation Act of 2010, the  
73 American Taxpayer Relief Act of 2012, the Tax Increase  
74 Prevention Act of 2014, ~~and~~ the Consolidated Appropriations Act,  
75 2016, and the Tax Cuts and Jobs Act of 2017.

ENROLLED

HB 7093, Engrossed 2

2018 Legislature

76 | 1. There shall be added to such taxable income an amount  
 77 | equal to 100 percent of any amount deducted for federal income  
 78 | tax purposes as bonus depreciation for the taxable year pursuant  
 79 | to ss. 167 and 168(k) of the Internal Revenue Code of 1986, as  
 80 | amended by s. 103 of Pub. L. No. 110-185, s. 1201 of Pub. L. No.  
 81 | 111-5, s. 2022 of Pub. L. No. 111-240, s. 401 of Pub. L. No.  
 82 | 111-312, s. 331 of Pub. L. No. 112-240, s. 125 of Pub. L. No.  
 83 | 113-295, ~~and~~ s. 143 of Division Q of Pub. L. No. 114-113, and s.  
 84 | 13201 of Pub. L. No. 115-97, for property placed in service  
 85 | after December 31, 2007, and before January 1, 2027 ~~2021~~. For  
 86 | the taxable year and for each of the 6 subsequent taxable years,  
 87 | there shall be subtracted from such taxable income an amount  
 88 | equal to one-seventh of the amount by which taxable income was  
 89 | increased pursuant to this subparagraph, notwithstanding any  
 90 | sale or other disposition of the property that is the subject of  
 91 | the adjustments and regardless of whether such property remains  
 92 | in service in the hands of the taxpayer.

93 | 2. There shall be added to such taxable income an amount  
 94 | equal to 100 percent of any amount in excess of \$128,000  
 95 | deducted for federal income tax purposes for the taxable year  
 96 | pursuant to s. 179 of the Internal Revenue Code of 1986, as  
 97 | amended by s. 102 of Pub. L. No. 110-185, s. 1202 of Pub. L. No.  
 98 | 111-5, s. 2021 of Pub. L. No. 111-240, s. 402 of Pub. L. No.  
 99 | 111-312, s. 315 of Pub. L. No. 112-240, and s. 127 of Pub. L.  
 100 | No. 113-295, for taxable years beginning after December 31,

ENROLLED

HB 7093, Engrossed 2

2018 Legislature

101 2007, and before January 1, 2015. For the taxable year and for  
 102 each of the 6 subsequent taxable years, there shall be  
 103 subtracted from such taxable income one-seventh of the amount by  
 104 which taxable income was increased pursuant to this  
 105 subparagraph, notwithstanding any sale or other disposition of  
 106 the property that is the subject of the adjustments and  
 107 regardless of whether such property remains in service in the  
 108 hands of the taxpayer.

109 3. There shall be added to such taxable income an amount  
 110 equal to the amount of deferred income not included in such  
 111 taxable income pursuant to s. 108(i)(1) of the Internal Revenue  
 112 Code of 1986, as amended by s. 1231 of Pub. L. No. 111-5. There  
 113 shall be subtracted from such taxable income an amount equal to  
 114 the amount of deferred income included in such taxable income  
 115 pursuant to s. 108(i)(1) of the Internal Revenue Code of 1986,  
 116 as amended by s. 1231 of Pub. L. No. 111-5.

117 4. Subtractions available under this paragraph may be  
 118 transferred to the surviving or acquiring entity following a  
 119 merger or acquisition and used in the same manner and with the  
 120 same limitations as specified by this paragraph.

121 5. The additions and subtractions specified in this  
 122 paragraph are intended to adjust taxable income for Florida tax  
 123 purposes, and, notwithstanding any other provision of this code,  
 124 such additions and subtractions shall be permitted to change a  
 125 taxpayer's net operating loss for Florida tax purposes.

ENROLLED

HB 7093, Engrossed 2

2018 Legislature

126           Section 3. The Legislature recognizes that the Tax Cuts  
127 and Jobs Act of 2017 will have significant effects on the state  
128 corporate income tax and on corporate taxpayers when it is fully  
129 implemented. To better understand these effects, the Legislature  
130 finds the following actions are necessary:

131           (1) The Department of Revenue shall examine how the Tax  
132 Cuts and Jobs Act of 2017 will affect the state corporate income  
133 tax as a result of the state's adoption of the Internal Revenue  
134 Code by this act.

135           (2) The Department of Revenue shall monitor guidance  
136 provided by the Internal Revenue Service and other tax  
137 authorities and advisory groups, and shall conduct at least two  
138 public workshops to gather public input. In addition, the  
139 department shall develop a process outside of the public  
140 workshops for receiving public input regarding the Tax Cuts and  
141 Jobs Act of 2017 and its potential effects on the state  
142 corporate income tax and the businesses that pay the tax.

143           (3) By February 1, 2019, the Department of Revenue shall  
144 submit a report to the Governor, the President of the Senate,  
145 the Speaker of the House of Representatives, and the chairs of  
146 appropriate legislative committees. At a minimum, the report  
147 must include the following:

148           (a) A comprehensive discussion of the potential effects of  
149 the Tax Cuts and Jobs Act of 2017 on the state corporate income  
150 tax structure and revenues.

ENROLLED

HB 7093, Engrossed 2

2018 Legislature

151 (b) Options for changes the Legislature could make to  
152 state tax law which may be needed to integrate state law with  
153 federal law.

154 (c) An estimate of the potential fiscal impact of each  
155 option.

156 (d) A compilation of the input received from the public  
157 through the public workshops and otherwise.

158 (e) Any other information the Department of Revenue  
159 determines will assist the Legislature in evaluating the impact  
160 of the Tax Cuts and Jobs Act of 2017 on the state corporate  
161 income tax structure and revenues.

162 (4) The Department of Revenue shall submit status reports  
163 to the chairs of appropriate legislative committees on August 3,  
164 2018, and November 16, 2018. At a minimum, the status reports  
165 must include a brief description of the department's activities  
166 and any relevant guidance issued by the Internal Revenue  
167 Service.

168 (5) The Department of Revenue shall consult with the  
169 Revenue Estimating Conference on the development of the required  
170 reports.

171 (6) The 2019 Legislature shall consider the report required  
172 by subsection (3) to determine whether adjustments to the  
173 automatic tax rate adjustment mechanism under s. 220.1105,  
174 Florida Statutes, are needed.

175 Section 4. Section 220.1105, Florida Statutes, is created

ENROLLED

HB 7093, Engrossed 2

2018 Legislature

176 to read:

177 220.1105 Tax imposed; automatic refunds and downward  
 178 adjustments to tax rates.—

179 (1) As used in this section, the term:

180 (a) "Net collections" means the total amount of taxes  
 181 collected under this chapter by the department in the 2018-2019  
 182 fiscal year, including related interest and penalties, minus the  
 183 total amount of refunds of taxes levied under this chapter and  
 184 issued by the department in that fiscal year. No later than  
 185 September 1, 2019, the Office of Economic and Demographic  
 186 Research shall determine net collections for the 2018-2019  
 187 fiscal year.

188 (b) "Forecasted net collections" means the amount of net  
 189 collections forecasted for the 2018-2019 fiscal year by the  
 190 Revenue Estimating Conference on February 23, 2018.

191 (c) "Adjusted forecasted collections" means forecasted net  
 192 collections for the 2018-2019 fiscal year multiplied by 1.07.

193 (d) "Tax rate imposed" is the tax rate as defined in ss.  
 194 220.11(2) and 220.63(2) adjusted as set forth in this section.

195 (2) The tax rate imposed shall be adjusted based on net  
 196 collections in the 2018-2019 fiscal year. If the net collections  
 197 exceed the adjusted forecasted collections, the tax rate imposed  
 198 for taxable years beginning on or after January 1, 2019, shall  
 199 be the tax rate imposed for taxable years beginning on or after  
 200 January 1, 2018, multiplied by the quotient of the adjusted



ENROLLED

HB 7093, Engrossed 2

2018 Legislature

201 forecasted collections divided by the net collections. The  
 202 resulting tax rate shall be rounded to the nearest thousandth  
 203 and rounded down if the fourth digit to the right of the decimal  
 204 point is the number five.

205 (3) By October 1, 2019, the Department of Revenue shall  
 206 calculate the tax rate imposed, if it is to be adjusted pursuant  
 207 to subsection (2), and shall on that same date report the  
 208 results of such calculation to the Governor, the President of  
 209 the Senate, and the Speaker of the House of Representatives.

210 (4) Any amount by which net collections exceed adjusted  
 211 forecasted collections for the 2018-2019 fiscal year shall only  
 212 be used to provide refunds to corporate income tax payers as  
 213 follows:

214 (a) For purposes of this subsection:

215 1. "Eligible taxpayer" means a taxpayer whose taxable year  
 216 begins between April 1, 2017, and March 31, 2018, and whose  
 217 final tax liability for such taxable year is greater than zero.

218 2. "Excess collections" means the amount by which net  
 219 collections for the 2018-2019 year exceed adjusted forecasted  
 220 collections for that fiscal year.

221 3. "Final tax liability" means the taxpayer's amount of  
 222 tax due under this chapter for a taxable year, reported on a  
 223 return filed pursuant to s. 220.222, including a return filed  
 224 timely pursuant to a valid extension.

225 4. "Total eligible tax liability" means the sum of final

ENROLLED

HB 7093, Engrossed 2

2018 Legislature

226 tax liabilities of all eligible taxpayers.

227 5. "Taxpayer refund share" means an eligible taxpayer's  
 228 final tax liability as a percentage of the total eligible tax  
 229 liability.

230 6. "Taxpayer refund" means the taxpayer refund share  
 231 multiplied by the excess collections.

232 (b) No later than February 15, 2020, the department shall  
 233 determine total eligible tax liability, the taxpayer refund  
 234 share for each eligible taxpayer, and the taxpayer refund for  
 235 each eligible taxpayer.

236 (c) No later than March 1, 2020, the department shall  
 237 refund a taxpayer refund to each eligible taxpayer.

238 (5) Tax rate adjustments pursuant to this section are  
 239 repealed for taxable years beginning on or after January 1,  
 240 2020.

241 Section 5. Subsection (2) of section 220.11, Florida  
 242 Statutes, is amended to read:

243 220.11 Tax imposed.—

244 (2) (a) The tax imposed by this section shall be an amount  
 245 equal to 5 1/2 percent of the taxpayer's net income for the  
 246 taxable year, except as provided in paragraph (b).

247 (b) The tax rate imposed in paragraph (a) shall be  
 248 adjusted as provided in s. 220.1105.

249 Section 6. Subsection (2) of section 220.63, Florida  
 250 Statutes, is amended to read:

ENROLLED

HB 7093, Engrossed 2

2018 Legislature

251           220.63 Franchise tax imposed on banks and savings  
252 associations.—

253           (2) (a) The tax imposed by this section shall be an amount  
254 equal to 5 1/2 percent of the franchise tax base of the bank or  
255 savings association for the taxable year, except as provided in  
256 paragraph (b).

257           (b) The tax rate imposed in paragraph (a) shall be  
258 adjusted as provided in s. 220.1105.

259           Section 7. (1) The Department of Revenue is authorized,  
260 and all conditions are deemed to be met, to adopt emergency  
261 rules pursuant to s. 120.54(4), Florida Statutes, for the  
262 purpose of implementing this act.

263           (2) Notwithstanding any other provision of law, emergency  
264 rules adopted pursuant to subsection (1) are effective for 6  
265 months after adoption and may be renewed during the pendency of  
266 procedures to adopt permanent rules addressing the subject of  
267 the emergency rules.

268           (3) This section expires January 1, 2021.

269           Section 8. This act shall take effect upon becoming a law  
270 and operate retroactively to January 1, 2018.