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 Committee on Commerce and Tourism

BILL: CS/SB 878

INTRODUCER: Commerce and Tourism Committee and Senator Gruters

SUBJECT: Corporate Taxable Income Adjustments

DATE: March 4, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McKay	CM	**Fav/CS**
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 878 creates an exception to Florida's requirement that corporate income tax payers that take the bonus depreciation deduction under the federal Internal Revenue Code must add back the deduction and then subtract the deduction over a seven-year period for Florida Corporate Income Tax purposes. The exception created by the bill applies to motor vehicle rental or leasing companies.

The Revenue Estimating Conference has not determined the fiscal impact of the bill.

The bill takes effect upon becoming law.

II. Present Situation:

Annual Adoption of the Internal Revenue Code

Florida imposes a 5.5 percent tax on the taxable income of corporations and financial institutions doing business in Florida.[1] A corporation calculates its taxable income for Florida tax purposes by starting with its taxable income determined for federal tax purposes.[2] This means that a corporation paying taxes in Florida receives the same treatment in Florida as is allowed in determining its federal taxable income.

[1] Sections 220.11(2) and 220.63(2), F.S.

[2] *See generally* s. 220.13(2), F.S.

Bonus Depreciation

The Internal Revenue Code (IRC, or the Code) allows a taxpayer to deduct the cost of long-term business assets by deducting a portion of the cost over the useful life of the property (depreciation).[3] Since taxpayers deduct for depreciation in calculating their federal taxable income, the deduction is already included when the taxpayer begins calculating its Florida taxable income.

For the past decade, federal legislation has been granting an additional, first-year depreciation deduction (bonus depreciation).[4] The legislation has generally authorized 50 or 100 percent of the cost of qualifying property to be deducted in the first year of depreciation. Currently, some level of bonus depreciation is authorized through 2026.

Generally, the entire cost of an asset is depreciable over time. Therefore, bonus depreciation deductions do not increase the total amount that can be deducted as depreciation; bonus depreciation merely accelerates the depreciation deduction. That being said, the immediate fiscal impact of bonus depreciation can substantially reduce corporate income tax receipts in the near term. As an example, the Revenue Estimating Conference determined that bonus depreciation granted by the Tax Increase Prevention Act of 2014 would reduce Fiscal Year 2015-2016 General Revenue receipts by $180 million.[5]

Due to the near term fiscal impact that bonus depreciation deductions would have on Florida, the Legislature has chosen to "decouple" from these deductions by requiring taxpayers to add back the amount of bonus depreciation to their taxable income for Florida purposes and then subtract 1/7th of that amount over seven years.[6] This treatment has the effect of giving the taxpayer the benefit of bonus depreciation, but requiring the taxpayer to "spread" that benefit over a 7-year period.

The following chart provides a list of recent federal acts that have granted bonus depreciation and the Florida law that "decoupled" from the bonus depreciation provisions.[7]

[3] *See generally* ss. 167 and 168, IRC.
[4] *See* the Economic Stimulus Act of 2008, Pub. L. No. 110-185; the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5; the Small Business Jobs Act of 2010, Pub. L. No. 111-240; the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312; the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240; the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295; the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113; and the Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97.
[5] Revenue Impact Conference Impact Statement, Proposed Language, January 26, 2015, *available at:* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/page17-18.pdf (last visited Feb. 22, 2019).
[6] *See* chs. 2008-206, 2009-192, 2011-229, 2013-46, 2015-35, 2016-220, and 2018-119, L.O.F.
[7] In some instances, the Florida law also decoupled from increased first-year expensing provisions included in the federal act; however, first-year expensing is not directly relevant to the issue in the bill being analyzed.

<table>
<tr><th>Federal Act</th><th>Applies to Taxable Years beginning on or after January 1 of:</th><th>Bonus Depreciation Amount</th><th>Florida Law that “Decoupled”</th></tr>
<tr><td>The Economic Stimulus Act of 2008</td><td>2008</td><td>50 percent</td><td>Chapter 2008-206, L.O.F.</td></tr>
<tr><td>The American Recovery and Reinvestment Act of 2009</td><td>2009</td><td>50 percent</td><td>Chapter 2009-192, L.O.F.</td></tr>
<tr><td>The Small Business Jobs Act of 2010</td><td>2010</td><td>100 percent</td><td rowspan="3">Chapter 2011-229, L.O.F.</td></tr>
<tr><td rowspan="2">The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010</td><td>2011</td><td>50 percent</td></tr>
<tr><td>2012</td><td>50 percent</td></tr>
<tr><td>The American Taxpayer Relief Act of 2012</td><td>2013</td><td>50 percent</td><td>Chapter 2013-46, L.O.F</td></tr>
<tr><td>The Tax Increase Prevention Act of 2014</td><td>2014</td><td>50 percent</td><td>Chapter 2015-35, L.O.F.</td></tr>
<tr><td rowspan="3">The Consolidated Appropriations Act, 2016[8]</td><td>2015</td><td>50 percent</td><td rowspan="3">Chapter 2016-220, L.O.F.</td></tr>
<tr><td>2016</td><td>50 percent</td></tr>
<tr><td>2017</td><td>50 percent</td></tr>
<tr><td rowspan="10">Tax Cuts and Jobs Act of 2017</td><td>2018</td><td>100 percent</td><td rowspan="10">Chapter 2018-119, L.O.F.</td></tr>
<tr><td>2019</td><td>100 percent</td></tr>
<tr><td>2020</td><td>100 percent</td></tr>
<tr><td>2021</td><td>100 percent</td></tr>
<tr><td>2022</td><td>100 percent</td></tr>
<tr><td>2023</td><td>80 percent</td></tr>
<tr><td>2024</td><td>60 percent</td></tr>
<tr><td>2025</td><td>40 percent</td></tr>
<tr><td>2026</td><td>20 percent</td></tr>
<tr><td>2027</td><td>0 percent</td></tr>
</table>

[8] The Consolidated Appropriations Act, 2016, also provided bonus depreciation amounts for 2018 and 2019 of 40 percent and 30 percent, respectively; however, the Tax Cuts and Jobs Act increased those percentages to 100 percent for both years.

The Tax Cuts and Jobs Act of 2017

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act of 2017 (TCJA).[9] The TCJA made significant changes to federal income tax provisions related to individuals, corporations, and the treatment of foreign income. As shown in the chart above, the TCJA extended bonus depreciation through taxable years beginning before January 1, 2027.[10]

Section 1031 Exchanges

Generally, when an asset is sold, the Code requires the taxpayer to recognize as income any gain on the sale.[11] One exception to this general recognition rule is provided by section 1031 of the Code, for transactions commonly known as "like-kind exchanges" or "1031 exchanges."

Prior to the TCJA and as it relates to the provisions of the bill, s. 1031 of the Code provided that a taxpayer shall not recognize gain or loss when business property was exchanged for business property of a like kind.[12] Thus, a business that was regularly exchanging old business equipment for new business equipment might avoid having to recognize any relevant income at the federal level by exchanging the old equipment for new equipment, rather than selling the old equipment and buying new equipment in separate transactions. For example, this type of transaction could be used by a rental car company that regularly updates its rental fleet. When the income was not recognized at the federal level, that income would likewise not be recognized for Florida tax purposes.

Importantly, the TCJA amended s. 1031 of the Code to limit use of the provision to exchanges of realty. So, companies that were using s. 1031 of the Code to avoid recognizing income when business equipment was exchanged, would not be required to recognize income at the federal level. The effect of losing the ability to use s. 1031 of the Code may be mitigated at the federal level because the TCJA provides 100 percent bonus depreciation deduction on the new equipment purchase; however, for Florida tax purposes, those companies would be required to "spread" the bonus depreciation amount over seven years.

III. Effect of Proposed Changes:

Section 1 of the bill creates an exception to Florida's 7-year treatment of bonus depreciation for motor vehicle rental or leasing companies. The bill defines a "motor vehicle rental or leasing company" as:

- an assignee from a retail lessor with a majority of its lease transactions for motor vehicles to persons with no direct or indirect affiliation with the entity, or
- an entity that is engaged in the business of renting or leasing motor vehicles to the general public and that rents or leases a majority of its motor vehicles to persons with no direct or indirect affiliation with the entity.

9 Pub. Law No. 115-97 (December 22, 2017)

10 For simplicity, the chart above shows the TCJA's bonus depreciation provisions as applying to taxable years beginning January 1, 2018; however, the TCJA also applied its bonus depreciation provisions to qualifying property acquired after September 27, 2017. *See* Tax Cuts and Jobs Act of 2017, s. 13201, Pub. L. No. 115-97.

11 *See* s. 62(a)(3), IRC

12 *See* s. 1031(a)(1), IRC (2016)

Section 2 of the bill applies the changes made by the bill retroactively to taxable years beginning on or after January 1, 2018.

Section 3 of the bill provides the Department of Revenue with the authority to adopt emergency rules to administer the provisions of the bill.

Section 4 of the bill provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conferences has not yet determined the fiscal impact of the bill.

B. Private Sector Impact:

Some motor vehicle rental or leasing companies may incur lower Florida taxes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 220.13 of the Florida Statutes.

IX. Additional Information:

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

CS by Commerce and Tourism on March 4, 2019:
The committee substitute provides that an assignee from a retail motor vehicle lessor with a majority of its lease transactions for motor vehicles to persons with no direct or indirect affiliation with the entity is also eligible for the exception created in the bill.

B. Amendments:

None.