

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 7082

INTRODUCER: Finance and Tax Committee

SUBJECT: Corporate Income Tax

DATE: April 16, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>Babin</u> <u>Sadberry</u>	<u>AP</u>	<b>FT Submitted as Committee Bill</b> <b>Pre-meeting</b>

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**I. Summary:**

SB 7082 updates Florida's corporate income tax code by conforming it to the federal Internal Revenue Code and other United States statutes relating to federal income tax in effect on January 1, 2021. The bill adopts all amendments made to such federal statutes in the 2020 calendar year to the extent such changes affect the Florida corporate income tax, except that it does not adopt (decouples from) the changes made to the business interest expense deduction made by the Coronavirus Aid, Relief, and Economic Security (CARES) Act for taxable years beginning in 2019 and 2020. The adoption of federal income tax statutes operates retroactively to January 1, 2021.

Based on Revenue Estimating Conference estimates, the bill will reduce General Revenue Fund receipts by approximately \$211.9 million in Fiscal Year 2021-2022 with a recurring negative impact of \$108.3 million. See Section V, Fiscal Impact Statement, below for the estimated fiscal impact by specific area and for out years.

The bill is effective upon becoming a law.

**II. Present Situation:**

**Florida Corporate Income Tax**

Florida imposes a tax on the taxable income of corporations and financial institutions doing business in Florida.<sup>1</sup> The current tax rate is 4.458 percent<sup>2</sup> of a taxpayer's net income for its taxable year (the calendar or fiscal year or period upon which its net income is computed).<sup>3</sup>

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<sup>1</sup> Section 220.02, F.S.

<sup>2</sup> The tax rate was adjusted downward to 4.458 percent pursuant to s. 220.1105, F.S., for taxable years beginning on or after January 1, 2019. Pursuant to s. 220.1105(5), F.S., the rate is scheduled to return to 5.5 percent for taxable years beginning on or after January 1, 2022.

<sup>3</sup> Sections 220.11(2) and 220.63(2), F.S.

The calculation of Florida corporate income tax starts with a taxpayer's federal taxable income.<sup>4</sup> Taxable income earned by a taxpayer operating in more than one state is taxed in Florida on an apportioned basis using a formula based on 25 percent on property, 25 percent on payroll, and 50 percent on sales.<sup>5</sup> Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt, effective with taxable years beginning on or after January 1, 2013.<sup>6</sup>

Florida corporate income tax is collected by the Florida Department of Revenue (department) and all collections are paid into the General Revenue Fund.<sup>7</sup> Net collections (receipts minus refunds) of the Florida corporate income tax were \$1.67 billion in Fiscal Year 2019-2020.<sup>8</sup>

### **Conformity with Federal Income Tax Statutes**

Florida conforms to the Internal Revenue Code and other United States statutes relating to federal income taxes by adopting the same meanings of terms used in the Florida corporate income tax code as when used in a comparable context in federal income tax statutes.<sup>9</sup> This includes, as mentioned above, using federal taxable income as the starting point for calculating Florida net income. State corporate income tax systems conform to the Internal Revenue Code to varying degrees and share a large body of common concepts and doctrines.<sup>10</sup> The reasons for “piggybacking” or conforming to federal income tax statutes, rather than developing an entirely separate tax system, include substantial administrative savings, uniformity, and reduction in compliance costs.<sup>11</sup>

Florida conforms to federal income tax statutes as they exist on a certain fixed date (referred to as “static” or “fixed date” conformity), meaning that legislative action is required to incorporate any changes made to such federal statutes since the last date of conformity.<sup>12</sup> The Florida corporate income tax code currently adopts the Internal Revenue Code and other federal income tax statutes as they existed on January 1, 2020.<sup>13</sup>

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<sup>4</sup> Section 220.12, F.S.

<sup>5</sup> Section 220.15, F.S.

<sup>6</sup> Section 220.14, F.S.

<sup>7</sup> Section 220.701, F.S.

<sup>8</sup> Revenue Estimating Conference, *General Revenue Consensus Estimating Conference Comparison Report*, Dec. 21, 2020, 27, available at <http://www.edr.state.fl.us/Content/conferences/generalrevenue/grpackage.pdf> (last visited April 11, 2021).

<sup>9</sup> Section 220.03(2)(c), F.S.

<sup>10</sup> Richard D. Pomp, *State & Local Taxation*, 9th Ed. (2019), Vol. 2, at 10-8 to 10-9.

<sup>11</sup> *Id.*

<sup>12</sup> For a discussion on Florida's adoption of static conformity and the alternative proposal of automatic adoption of future federal amendments to the Internal Revenue Code (referred to as “rolling” conformity) which appears in s. 220.03(3), F.S., see Arthur J. England, Jr., “Corporate Income Taxation in Florida: Background, Scope, and Analysis,” *An Introduction to Florida Corporate Income Taxation*, (Tallahassee: Department of Office Services, The Florida State University, 1972), 10-12.

<sup>13</sup> Section 220.03(1)(n) and (2)(c), F.S.

In conforming to federal income tax statutes, a state may choose not to adopt (“decouple” from) a federal amendment because of its impact to state revenues or its inapplicability to the state tax system, and instead specify its own treatment of the issue.<sup>14</sup>

Section III, Effect of Proposed Changes, below describes the present situation and the effect of certain changes to federal income tax statutes since January 1, 2020, as adopted in the bill.<sup>15</sup>

### III. Effect of Proposed Changes:

#### The Coronavirus Aid, Relief, and Economic Security (CARES) Act

The federal CARES Act was signed into law on March 27, 2020, “to provide emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic.”<sup>16</sup> It made a number of changes to federal income tax statutes, including temporarily relaxing some restrictions on tax deductions which were imposed by the federal Tax Cuts and Jobs Act of 2017 (TCJA).<sup>17</sup>

#### *Net Operating Loss Deduction*

*Present Situation:* The net operating loss (NOL) provisions of the Internal Revenue Code provide a tax deduction for most taxpayers whose deductible expenses for a taxable year exceed their gross income, subject to certain adjustments.<sup>18</sup> When a firm has a loss (i.e., an NOL), its federal income taxes are not reduced immediately beyond zero; rather, the business owes no income tax in that taxable year and its loss is carried to other years.<sup>19</sup> An NOL is “carried back” when applied to taxable years before the loss year and “carried over” or “carried forward” when applied to taxable years after the loss year. A carryback of losses yields immediate tax reductions in the form of a refund or credit, while a carryforward reduces future tax liabilities.<sup>20</sup> The Internal Revenue Code requires that NOLs be applied starting with the earliest taxable year to which the loss may be carried.<sup>21</sup> Generally, Florida currently follows the Internal Revenue Code with respect to the computation and handling of an NOL for Florida corporate income tax purposes, except that for Florida purposes, an NOL may be carried forward only and may not be carried back to taxable years before the loss year.<sup>22</sup>

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<sup>14</sup> Pomp at 10-9. Some examples of decoupling from the Internal Revenue Code in the Florida corporate income tax code include the treatment of bonus depreciation and the Section 179 depreciation deduction, and the prohibition against the carryback of net operating losses, as discussed *infra*. See s. 220.13(1)(e)1. and 2. and (b)1., F.S.

<sup>15</sup> Changes to federal credits, such as the accelerated refundability of federal alternative minimum tax credits in the Coronavirus Aid, Relief, and Economic Security Act, are not described here because adjustments to federal credits do not significantly affect a taxpayer’s Florida taxable income. See *infra* note 74.

<sup>16</sup> Pub. L. No. 116-136 (2020).

<sup>17</sup> Pub. L. No. 115-97 (2017).

<sup>18</sup> 26 U.S.C. s. 172.

<sup>19</sup> See Congressional Research Service, *Tax Treatment of Net Operating Losses (NOLs) in the Coronavirus Aid, Relief, and Economic Security (CARES) Act* (Updated Oct. 6, 2020), available at <https://crsreports.congress.gov/product/pdf/IN/IN11296> (last visited April 11, 2021).

<sup>20</sup> *Id.*

<sup>21</sup> 26 U.S.C. s. 172(b)(2).

<sup>22</sup> Section 220.13(1)(b)1., F.S., and Fla. Admin. Code R. 12C-1.013(15)(a).

Before the enactment of the TCJA, a taxpayer could, for federal income tax purposes, use the aggregate amount of NOLs carried back or carried forward from other loss years to fully offset its taxable income for a taxable year and owe no income tax for that year.<sup>23</sup> The TCJA limited the percentage of taxable income that NOLs generated in taxable years after 2017 could offset to 80 percent of the taxable income for a taxable year.<sup>24</sup> The CARES Act temporarily suspends this limitation for taxable years beginning in 2018, 2019, and 2020, allowing a taxpayer to use NOLs to fully offset taxable income in those years.<sup>25</sup>

The TCJA generally prohibited the carryback of NOLs generated in taxable years after 2017 while allowing such NOLs to be carried forward indefinitely, a change from a general 2-year carryback period and a 20-year carryover period.<sup>26</sup> The CARES Act temporarily lifted the carryback restriction, providing a 5-year carryback period for NOLs generated in taxable years 2018, 2019, and 2020. However, the carryback change does not affect Florida because, as described above, Florida has decoupled from NOL carryback provisions and does not allow NOLs to be carried back.

*Effect of Proposed Change:* The bill adopts the CARES Act's suspension of the 80 percent NOL limitation, meaning that for taxable years beginning in 2018, 2019, and 2020, a Florida taxpayer may use NOLs to fully offset its taxable income for those years, rather than up to 80 percent. A taxpayer who claimed an NOL in a filed return in any of those years would amend such return(s) with the department for a refund or credit.

### ***Business Interest Expense Deduction***

*Present Situation:* The business interest expense (BIE) provisions of the Internal Revenue Code provide a tax deduction for interest expenses or other borrowing costs incurred in a trade or business or in the production of rental or royalty income.<sup>27</sup> The deduction is generally applied in the year the expenses are paid or accrued, depending on the taxpayer's method of accounting. Florida currently conforms to the Internal Revenue Code on the BIE deduction and does not decouple from any provision.

Before the enactment of the TCJA, taxpayers could generally fully deduct their BIE subject to some restrictions and exceptions. The TCJA limited, except for certain taxpayers<sup>28</sup>, the BIE deduction for taxable years beginning after 2017 to the sum of the taxpayer's business interest income for the taxable year, 30 percent of the taxpayer's adjusted taxable income for the taxable year, and the taxpayer's floor plan financing interest for the taxable year.<sup>29</sup> The amount of business interest not allowed as a deduction because of this limitation generally may be carried forward indefinitely.<sup>30</sup> The CARES Act has temporarily increased this limit for taxable years

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<sup>23</sup> 26 U.S.C. s. 172(a) (2016).

<sup>24</sup> 26 U.S.C. s. 172(a) (2018).

<sup>25</sup> 26 U.S.C. s. 172(a) (2021).

<sup>26</sup> 26 U.S.C. s. 172(b)(1) (2018).

<sup>27</sup> 26 U.S.C. s. 163.

<sup>28</sup> Taxpayers with average annual gross receipts in the prior three taxable years of \$25 million or less are exempted from the limitation, as well as certain trades or businesses. See 26 U.S.C. s. 163(j)(3) and (7).

<sup>29</sup> 26 U.S.C. s. 163(j).

<sup>30</sup> 26 U.S.C. s. 163(j)(2).

beginning in 2019 and 2020, raising the 30 percent limit on a taxpayer's adjusted taxable income in the above formula to 50 percent.<sup>31</sup>

*Effect of Proposed Change:* The bill decouples from the CARES Act's raised limit on a taxpayer's adjusted taxable income for the BIE deduction. The bill requires a taxpayer, for taxable years beginning in 2019 and 2020, to add back to its taxable income an amount equal to the excess, if any, of 100 percent of the amount deducted for federal income tax purposes as BIE for the taxable year pursuant to the CARES Act (the 50 percent limit), over 100 percent of the amount that would be deductible as BIE if calculated under the TCJA (the 30 percent limit). In effect, the bill limits the BIE deduction for Florida corporate income tax purposes to that under the TCJA for taxable years beginning in 2019 and 2020.

### ***Depreciation of Qualified Improvement Property ("Retail Glitch Fix")***

*Present Situation:* Generally, the Internal Revenue Code allows a depreciation deduction from taxable income, which is a reasonable allowance for the exhaustion and wear and tear (including a reasonable allowance for obsolescence) of property used in a trade or business or property held for the production of income.<sup>32</sup> An allowance is set aside each taxable year in accordance with a reasonably consistent plan, starting when the property is placed in service.<sup>33</sup> The aggregate amount of the allowances plus the salvage value, at the end of the estimated useful life of the property, should equal the cost or other specified basis of the property.<sup>34</sup> Over time, the Internal Revenue Code has adopted different systems for computing depreciation. The current system, the Modified Accelerated Cost Recovery System (MACRS), applies to most tangible property generally placed in service after 1986.<sup>35</sup> Under MACRS, the cost of eligible property is recovered over a 3-, 5-, 7-, 10-, 15-, 20-, 27.5-, 31.5-, or 39-year period, depending on the type of property, by applying statutory recovery methods and conventions.

Starting in 2001 with the federal Job Creation and Worker Assistance Act of 2002, Congress implemented, reinstated, and expanded a "bonus depreciation" allowance for qualifying property, which was created to spur increased business investment during periods of negative or sluggish economic growth by lowering the cost of capital for investment in certain assets.<sup>36</sup> Bonus depreciation allows a taxpayer to expense (or deduct as a current rather than a capital expense) up to 100 percent of the cost of the property in the taxable year it is placed in service. The bonus depreciation provision has been extended or expanded 10 times since 2002, including by the TCJA.<sup>37</sup> The TCJA generally increased the bonus rate for property acquired and placed in service after September 27, 2017, to 100 percent for property placed in service in 2017 through 2022, 80 percent in 2023, 60 percent in 2024, 40 percent in 2025, and 20 percent in 2026.<sup>38</sup>

<sup>31</sup> 26 U.S.C. s. 163(j)(10).

<sup>32</sup> 26 U.S.C. s. 167(a).

<sup>33</sup> 26 C.F.R. ss. 1.167(a)-1(a), 1.167(a)-10(b).

<sup>34</sup> 26 C.F.R. s. 1.167(a)-1(a).

<sup>35</sup> 26 U.S.C. s. 168; 26 C.F.R. 1.168(a)-1, *et seq.*

<sup>36</sup> 26 U.S.C. s. 168(k). See Congressional Research Service, *The Section 179 and Section 168(k) Expensing Allowances: Current Law and Economic Effects* (Updated May 1, 2018), available at <https://crsreports.congress.gov/product/pdf/RL/RL31852> (last visited April 11, 2021).

<sup>37</sup> *Id.* at 10.

<sup>38</sup> 26 U.S.C. s. 168(k)(6)(A).

The TCJA also made changes to the depreciation deduction of certain improvements that leaseholders or owners make to the interior space of nonresidential buildings. Improvement property can take many forms, with some examples being: installing new lighting and carpet in a leased office, adding new woodwork and windows to the dining room of a restaurant, and painting the walls and upgrading the sound system of a retail store.<sup>39</sup> Before the TCJA, the Internal Revenue Code contained four categories of such improvement property, each with different criteria and cost recovery requirements.<sup>40</sup> The TCJA combined the four categories into a single category called qualified improvement property (QIP) and set forth conditions to be satisfied for QIP treatment, which is an accelerated 15-year cost recovery period.<sup>41</sup>

Due to a drafting error, the TCJA left QIP off the list of assets eligible for a 15-year cost recovery period under the MACRS.<sup>42</sup> As a result, the cost of QIP had to be recovered over 39 years under MACRS (or 40 years under an alternative depreciation system) and was ineligible for the bonus depreciation allowance because such improvement property must have a recovery period of 20 years or less to qualify for bonus depreciation.<sup>43</sup> The CARES Act corrected the omission by designating QIP as 15-year property under the MACRS and 20-year property under the alternative depreciation system, if the qualified improvement is done by the taxpayer.<sup>44</sup> This is referred to as the “retail glitch fix.” The CARES Act provides that the retail glitch fix shall take effect as if included in the TCJA (i.e., applies retroactively).<sup>45</sup>

Florida has decoupled from federal bonus depreciation since 2008.<sup>46</sup> Since 2009, Florida requires a taxpayer to add back to its taxable income the full amount deducted for bonus depreciation for federal purposes and then apply a straight-line seven-year depreciation schedule beginning with the year of the addback.<sup>47</sup> The schedule applies notwithstanding any sale or disposition of the property that is the subject of the adjustments and regardless of whether such property remains in service in the hands of the taxpayer.<sup>48</sup>

*Effect of Proposed Change:* The bill adopts the CARES Act’s retail glitch fix to the extent that QIP is eligible for the straight-line seven-year depreciation schedule for Florida corporate income tax purposes. A Florida taxpayer who placed QIP in service in taxable years beginning in 2018, 2019, or 2020 and filed a Florida return for any of those years could amend such return(s) with the department for a refund. According to the department, a taxpayer that amends its

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<sup>39</sup> See Congressional Research Service, *Tax Depreciation of Qualified Improvement Property: Current Status and Legislative History* (updated June 24, 2020), available at <https://crsreports.congress.gov/product/pdf/IF/IF11187> (last visited April 11, 2021).

<sup>40</sup> Qualified leasehold improvement property, qualified restaurant improvement property, qualified retail improvement property, and qualified improvement property. See *id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Supra* note 39.

<sup>43</sup> *Id.*

<sup>44</sup> Pub. L. No. 116-136, s. 2307 (2020).

<sup>45</sup> Pub. L. No. 116-136, s. 2307(b) (2020).

<sup>46</sup> Ch. 2008-206, ss. 1-2, Laws of Fla.

<sup>47</sup> Section 220.13(1)(e)1., F.S.; ch. 2009-18, s. 2, Laws of Fla.

<sup>48</sup> Section 220.13(1)(e)1., F.S.

2018 federal return to take bonus depreciation for its QIP must file an amended Florida return to apply the straight-line seven-year depreciation schedule.<sup>49</sup>

***Paycheck Protection Program (Exclusion of Forgiven Loans from Gross Income)***

*Present Situation:* The Paycheck Protection Program (PPP), established by the CARES Act, is implemented by the Small Business Administration with support from the United States Department of the Treasury.<sup>50</sup> This program provides small businesses with funds to pay up to eight weeks of payroll costs including benefits.<sup>51</sup> Funds can also be used to pay interest on mortgages, rent, and utilities.<sup>52</sup> The funds were provided in the form of loans guaranteed under the federal Small Business Act, which are fully forgivable if the borrower maintains employee and compensation levels, spends loan proceeds on eligible expenses, and spends at least 60 percent of the proceeds on payroll costs.<sup>53</sup> The CARES Act provided that for purposes of the Internal Revenue Code, any amount of PPP loans which would be included as gross income of the eligible recipient by reason of forgiveness is excluded from gross income.<sup>54</sup>

*Effect of Proposed Change:* The bill adopts the CARES Act's treatment of excluding forgiven PPP loans from gross income for purposes of determining federal taxable income, and such amounts would not be subject to the Florida corporate income tax.

***Charitable Contribution Deduction***

*Present Situation:* The CARES Act raised the limitation on deductions for charitable contributions by corporations who made cash contributions in 2020, from 10 percent of taxable income to 25 percent of taxable income.<sup>55</sup> To qualify for the increased limit, contributions must be made to a public charity or private operating foundation<sup>56</sup>, but does not include contributions to a supporting organization or a donor-advised fund. In addition, the deduction limitation for certain donations of food inventory in 2020 was increased from 15 percent to 25 percent.

*Effect of Proposed Change:* The bill adopts the CARES Act's increased limitation on the charitable contribution deduction for 2020, in that any increased charitable contribution deduction taken by a taxpayer for federal income tax purposes would flow through to Florida when calculating its Florida net income.

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<sup>49</sup> Florida Department of Revenue, *Impact of the Tax Cuts and Jobs Act and Review of the Coronavirus Aid, Relief, and Economic Security Act and Consolidated Appropriations Act, 2021: A Supplemental Report*, 10, Jan. 15, 2021 (on file with the Senate Committee on Finance and Tax).

<sup>50</sup> United States Department of the Treasury, *The CARES Act Provides Assistance to Small Businesses*, available at <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses> (last visited April 11, 2021).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> United States Small Business Administration, *PPP Loan Forgiveness*, available at <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/ppp-loan-forgiveness> (last visited April 11, 2021).

<sup>54</sup> Pub. L. No. 116-136, s. 1106(i) (2020)

<sup>55</sup> Pub. L. No. 116-136, s. 2205 (2020)

<sup>56</sup> See 26 U.S.C. s. 170(b)(1)(A) for the list of eligible entities.

## **Consolidated Appropriations Act, 2021**

The federal Consolidated Appropriations Act, 2021 (CAA), was signed into law on December 27, 2020.<sup>57</sup> Provisions relating to corporate income tax included providing for the deductibility of expenses paid with PPP loans, a temporary 100 percent deduction for business meals, and the extension of various other tax incentives and provisions.

### ***Deductibility of Expenses Paid with PPP Loans***

*Present Situation:* The exclusion of forgiven PPP loans from gross income under the CARES Act, as discussed above, raised a related question as to whether a taxpayer could deduct otherwise allowable expenses that were paid with PPP loan proceeds. On May 2, 2020, the Internal Revenue Service (IRS) released a notice stating that an existing prohibition against deductions that are allocable to tax-exempt income<sup>58</sup> applied, and therefore a taxpayer could not claim the double tax benefit.<sup>59</sup>

The CAA overturned the IRS' position, expressly providing that "no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income" for both original and subsequent PPP loans,<sup>60</sup> meaning that a taxpayer may deduct PPP-funded expenses from their income.<sup>61</sup>

*Effect of Proposed Change:* The bill adopts the CAA's construction that PPP-funded expenses are deductible, so any additional deductions taken by a taxpayer for federal income tax purposes would flow through to Florida when calculating its Florida net income.

### ***Business Meal Expense Deduction***

*Present Situation:* Before the enactment of the CAA, a taxpayer was generally allowed to deduct up to 50 percent of business meal expenses (food and beverages).<sup>62</sup> To qualify for the deduction, the food or beverage expense may not be "lavish or extravagant under the circumstances" and the taxpayer or the taxpayer's employee must be present at the furnishing of the food or beverages, except under certain circumstances.<sup>63</sup>

The CAA provided that the 50 percent limitation does not apply to meal expenses for food or beverages provided by a restaurant and paid or incurred before January 1, 2023, allowing a 100 percent deduction for such expenses.<sup>64</sup>

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<sup>57</sup> Pub. L. 116-260 (2020).

<sup>58</sup> 26 U.S.C. s. 265(a)(1).

<sup>59</sup> Internal Revenue Service, Notice 2020-32, available at <https://www.irs.gov/pub/irs-drop/n-20-32.pdf> (last visited April 11, 2021). It reaffirmed its conclusion on June 29, 2020, in IRS Revenue Ruling 2020-27, available at <https://www.irs.gov/pub/irs-drop/rr-20-27.pdf> (last visited April 11, 2021).

<sup>60</sup> Pub. L. 116-260, s. 276 (2020).

<sup>61</sup> The IRS subsequently issued IRS Revenue Ruling 2021-2, obsoleting the Notice and Revenue Ruling referenced in *supra* note 59. Available at <https://www.irs.gov/pub/irs-drop/rr-21-02.pdf> (last visited April 11, 2021).

<sup>62</sup> 26 U.S.C. s. 274(n) (2018).

<sup>63</sup> 26 U.S.C. s. 274(k) (2018).

<sup>64</sup> Pub. L. 116-260, Division EE, s. 210 (2020); 26 U.S.C. s. 274(n)(2)(D) (2021).



*Effect of Proposed Change:* The bill adopts the CAA’s modification of the business meal expense deduction before 2023, in that any increased business meal expense deduction taken by a taxpayer for federal income tax purposes would flow through to Florida when calculating its Florida net income.

### ***Tax Extenders and Miscellaneous Provisions***

*Present Situation:* The CAA extended or modified a number of tax provisions relating to the federal income tax for corporations, including:

- Providing 5-year extensions for:
  - The “look-thru” treatment of dividends, interest, rents, and royalties received or accrued from related controlled foreign corporations.<sup>65</sup>
  - The 7-year recovery period for motorsports entertainment complexes.<sup>66</sup>
  - Special expensing rules for certain film, television, and live theatrical productions, which allows a taxpayer to expense the first \$15 million of production costs for qualified film and television productions and live theatrical productions (or \$20 million for productions in low-income communities or distressed areas).<sup>67</sup>
  - Empowerment zone designations under s. 1391(d) of the Internal Revenue Code.<sup>68</sup>
  - The exclusion from gross income of certain employer payments of employee student loans.<sup>69</sup>
- Providing a 1-year extension for:
  - The classification of certain race horses as 3-year property.<sup>70</sup>
  - Accelerated depreciation for business property on Indian reservations.<sup>71</sup>
  - The increased limitation on deductions for charitable contributions by corporations under the CARES Act, as discussed above.<sup>72</sup> The increased limitation applies for 2021.

The CAA also extended or modified a number of federal tax credits affecting the federal corporate income tax.<sup>73</sup>

*Effect of Proposed Changes:* The bill adopts the above extensions, except for federal tax credits,<sup>74</sup> in that they may flow through to Florida when calculating Florida net income.

<sup>65</sup> Pub. L. 116-260, Division EE, s. 111 (2020).

<sup>66</sup> Pub. L. 116-260, Division EE, s. 115 (2020).

<sup>67</sup> Pub. L. 116-260, Division EE, s. 116 (2020); 26 U.S.C. s. 181. The Revenue Estimating Conference’s estimated fiscal impact for adopting this extension is described in Section V below.

<sup>68</sup> Pub. L. 116-260, Division EE, s. 118 (2020).

<sup>69</sup> Pub. L. 116-260, Division EE, s. 120 (2020).

<sup>70</sup> Pub. L. 116-260, Division EE, s. 137 (2020).

<sup>71</sup> Pub. L. 116-260, Division EE, s. 138 (2020).

<sup>72</sup> Pub. L. 116-260, Division EE, s. 213 (2020).

<sup>73</sup> See Pub. L. 116-260, Division EE, ss. 102, 105, 112, 113, 119, 121, 131, 132, 135, 136, 139, 140, 142, 143, 144, 145, 203, 204, and 305 (2020).

<sup>74</sup> Florida does not allow any adjustment to income for federal credits unless specifically stated in the Florida Statutes. Section 220.13(1)(b)3., F.S., allows a deduction for wages and salaries paid in Florida when a federal deduction is not allowed pursuant to s. 280C(a) of the Internal Revenue Code, which was not amended by the CAA. However, for other federal credits, a Florida deduction is not included in the Florida Statutes and therefore not allowed. See, e.g., Florida Dep’t of Revenue, *Florida Corporate Income Tax, Adoption of 2020 Internal Revenue Code*, No. 20C01-01, Sept. 24, 2020, available at [https://floridarevenue.com/taxes/tips/documents/TIP-123151\\_TIP\\_20C01-01\\_Final\\_RLL.pdf](https://floridarevenue.com/taxes/tips/documents/TIP-123151_TIP_20C01-01_Final_RLL.pdf) (last visited April 11, 2021).

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of state tax shared with them. Therefore, the mandates provisions of Art. VII, s. 18 of the Florida Constitution do not apply.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

Based on Revenue Estimating Conference estimates, the bill will reduce General Revenue Fund receipts by approximately \$211.9 million in Fiscal Year 2021-2022 with a recurring negative impact of \$108.3 million. The REC adopted estimates for selected areas described above.<sup>75</sup> The following table summarizes the REC's estimates, including total impact for all changes for the out years, and the total impact without the BIE deduction impact:<sup>76</sup>

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<sup>75</sup> Revenue Estimating Conference, *Corporate Income Tax Piggyback*, March 12, 2021, available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/\\_pdf/page250-275.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page250-275.pdf) (last visited April 11, 2021).

<sup>76</sup> *Id.* at 256-257. See *id.* at 262-264 for the REC's PPP estimate, which was not included in the total impact, but was adopted to be used as a consensus adjustment to the CIT baseline.

*\$ millions*

*Numbers in parentheses indicate a negative impact*

	FY 2021-22		FY 2022-23		FY 2023-24		FY 2024-25		FY 2025-26	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
Charitable contributions and business meal expense deduction	(32.1)	0	(23.4)	0	(3.8)	0	0.2	0	0.2	0
Net operating loss deduction	(0.1)	0	0.1	0	*	0	*	0	0	0
Business interest expense deduction	(41.7)	0	20.8	0	10.4	0	10.4	0	0	0
Film and entertainment - expensing	*	(2.6)	(2.0)	(1.5)	(0.5)	0.1	0.8	1.4	1.7	2.4
Qualified improvement property - retail glitch fix	(179.6)	(105.7)	(93.2)	(105.7)	(110.6)	(105.7)	(123.6)	(105.7)	(117.9)	(105.7)
<b>Total impact including BIE CARES change</b>	<b>(253.6)</b>	<b>(108.3)</b>	<b>(97.6)</b>	<b>(107.1)</b>	<b>(104.5)</b>	<b>(105.5)</b>	<b>(112.2)</b>	<b>(104.2)</b>	<b>(116.0)</b>	<b>(103.2)</b>
<b>Total impact with BIE CARES change decoupled</b>	<b>(211.9)</b>	<b>(108.3)</b>	<b>(118.4)</b>	<b>(107.1)</b>	<b>(114.9)</b>	<b>(105.5)</b>	<b>(122.6)</b>	<b>(104.2)</b>	<b>(116.0)</b>	<b>(103.2)</b>

\*Insignificant fiscal impact

**B. Private Sector Impact:**

Taxpayers will generally use the same calculations to determine both their federal and state taxable income.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 220.03 and 220.13.

**IX. Additional Information:**

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

None.

B. **Amendments:**

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None. This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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