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 Finance and Tax

BILL:	SB 1090
INTRODUCER:	Senator Gruters
SUBJECT:	Corporate Income Tax
DATE:	February 1, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Covin	Babin	FT	**Pre-meeting**
2.			AP	

I. Summary:

SB 1090 updates Florida's corporate Income Tax Code by adopting the federal Internal Revenue Code in effect on January 1, 2022. Additionally, the bill:

- Adopts the changes originally made in the Tax Cuts and Jobs Act of 2017 to s. 174 of the Internal Revenue Code, relating to the treatment of research and development expenditures.
- Repeals the corporate income tax refund currently scheduled for May 2022.
- Allow taxpayers to immediately use the bonus depreciation deduction for property placed in service in taxable years beginning on or after January 1, 2020.
- Revises the calculation of the business interest expense deduction for Florida tax purposes for taxable years beginning on or after January 1, 2023, to allow taxpayers to deduct the amount that would have been allowed prior to the federal Tax Cuts and Jobs Act of 2017.

The Revenue Estimating Conference estimates that the bill will increase General Revenue Fund receipts by $623.9 million in Fiscal Year 2021-2022. The bill will reduce General Revenue Fund receipts by $3.63 billion in Fiscal Year 2022-2023. The majority of the Fiscal Year 2022-2023 reduction is caused by the provisions of the bill relating to bonus depreciation; however, over the next 10 years, those provisions result in a net increase in General Revenue of $846.1 million.

Except as otherwise provided, the bill is effective upon becoming law and operates retroactively to January 1, 2022.

II. Present Situation:

Florida Corporate Income Tax

Florida imposes a tax on the taxable income of corporations and financial institutions doing business in Florida.[1] The tax rate effective January 1, 2022, is 5.5 percent of a taxpayer's net income for its taxable year (the calendar or fiscal year or period upon which its net income is computed).[2] The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes.[3] Additional adjustments are then made to determine Florida's taxable income. By starting with federal taxable income, Florida eases the administrative burden on Florida taxpayers because they receive the same treatment in Florida as is allowed in determining their federal taxable income.

Florida maintains this relationship with the federal Internal Revenue Code (IRC) each year by adopting the IRC 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.

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. 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. 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.

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. The Florida corporate income tax code currently adopts the Internal Revenue Code and other federal income tax statutes as they existed on January 1, 2021.

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.

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).[4] The TCJA made significant changes to federal income tax provisions that affect Florida

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[1] Sections 220.11 and 220.63, F.S.
[2] Sections 220.11(2) and 220.63(2), F.S.
[3] *See generally* s. 220.13(2), F.S.
[4] Pub. Law No. 115-97 (Dec. 22, 2017).

corporations. The unique structure of the TCJA resulted in corporate taxpayers generally having more income subjected to tax (higher taxable income), but ultimately paying less federal tax. This situation occurred because although the TCJA increased federal taxable income by limiting deductions and creating new items of income, the TCJA also lowered the federal corporate tax rate from 35 percent to 21 percent.

Since Florida begins its corporate income tax calculation with federal taxable income, the TCJA has resulted in an increase of Florida taxable income. However, unlike the federal tax rate reduction, Florida's tax rate was not affected by the TCJA, and thus, the TCJA has resulted in an increase in Florida's corporate income tax collections.

Automatic Refunds and Tax Rate Reduction

During the 2018 Regular Session, in an attempt to reduce the additional Corporate Income Tax revenue that Florida would receive as a result to changes made in the TCJA, the Legislature created section 220.1105, F.S. This section compares Florida's estimated revenues prior to the TCJA with actual receipts after the TCJA and requires excess revenues to be refunded to eligible corporate taxpayers. Section 220.1105, F.S. also requires a proportionate automatic downward adjustment of the corporate income tax rate, and this process was in effect in fiscal years 2018-2019 through 2020-2021.

For Fiscal Year 2018-2019, this process resulted in a refund of $543.2 million, which was paid in May 2020, and a tax rate reduction from the historic corporate income tax rate of 5.5 percent to 4.458 percent.[5] For Fiscal Year 2019-2020, this process did not result in any additional refunds or rate reduction, and for Fiscal Year 2020-2021, this process resulted in an additional refund of $623.9 million, which is scheduled to be paid in April 2022, along with a tax rate reduction from the temporary rate of 4.458 percent to 3.535 percent.[6] The temporary 3.535 percent tax rate expired on December 31, 2021; taxable years that begin on or after January 1, 2022, are now subject again to the 5.5 percent corporate income tax rate.[7]

Additions and Subtractions

To calculate the Florida corporate income tax due, the federal taxable income is adjusted by applying certain additions and subtractions.[8] These adjustments are intended to adjust taxable income for Florida tax purposes and to remove federal provisions or treatments that the state has elected not to accept. Some of the items that are added back to the federal taxable income, pursuant to s. 220.13(1), F.S., include federal deductions taken for business interest expense[9] and certain deductions taken for depreciation.[10] Section 220.13(1)(b), F.S., provides for certain items

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[5] Revenue Estimating Conference for the General Revenue Fund & Financial Outlook Statement, Aug. 14, 2019, Table 17, Corporate Income Tax, http://edr.state.fl.us/Content/conferences/generalrevenue/archives/190814gr.pdf (last accessed Jan. 6, 2022). *See* column "Refunds ($ Millions)," row "August 2019 Adj."

[6] General Revenue Consensus Estimating Conference Comparison Report, Aug. 17, 2021, Table 17, Corporate Income Tax, http://edr.state.fl.us/Content/conferences/generalrevenue/grpackage.pdf (last accessed Jan. 6, 2022). *See* column "Refunds ($ Millions)," row "August 2021 Adj."

[7] Section 220.1105(5), F.S.

[8] Section 220.13, F.S.

[9] Section 220.13(1)(e)4., F.S.

[10] Section 220.13 (1)(e)1., F.S

to be subtracted from the taxable income. Some of these items include net operating losses,[11] foreign source dividends,[12] and foreign income.[13] After the additions and subtractions are applied, the amount of adjusted federal income attributable to Florida is determined and income that is apportioned to Florida is subject to Florida corporate income tax.[14]

Bonus Depreciation

When a corporation makes a business purchase, the corporation is generally able to deduct the cost of the item from its income. If the item purchased will be consumed within a year, the corporation can fully deduct the cost in the year that it made the purchase.[15] However, if the item purchased will be used in service for longer than a year, the corporation must capitalize the cost of item and recover the cost over the useful life of the asset through annual deductions for depreciation or amortization.[16]

Since 2008, the federal government has allowed for bonus depreciation, which allows a corporation to take an enhanced depreciation deduction during the first year that certain qualified property is placed into service. Depending on the year involved, the taxpayer could deduct 50 percent or 100 percent of the cost of the item in the first year the qualified property was placed into service.

Florida has consistently "decoupled" from the federal bonus depreciation treatment. Rather than allowing those deductions to occur in the first year, Florida law requires those deductions to be added back for Florida purposes and then spread out over a 7-year period.
The TCJA continued the first year bonus depreciation deduction. The TCJA's bonus depreciation deduction was equal to 100 percent for long term assets placed in service after September 27, 2017. The act also allows bonus depreciation to be taken for purchases of both new and used property. The 100 percent deduction is scheduled to remain in effect until January 1, 2023, and will phase down in later years as follows:

- 80% for property placed in service after December 31, 2022 and before January 1, 2024.
- 60% for property placed in service after December 31, 2023 and before January 1, 2025.
- 40% for property placed in service after December 31, 2024 and before January 1, 2026.
- 20% for property placed in service after December 31, 2025 and before January 1, 2027.

After enactment of the TCJA, Florida treated TCJA bonus depreciation just as it had the bonus depreciation provisions for the prior 10 years. Corporate taxpayers are required to add-back the bonus depreciation deduction amount to the taxpayer's taxable income.[17] The taxpayer is then permitted to subtract from income one-seventh (1/7) of the deduction for the current taxable year and the following six taxable years.[18]

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[11] Section 220.13(1)(b)1., F.S.
[12] Section 220.13(1)(b)2.a., F.S.
[13] Section 220.13(1)(b)2.b., F.S.
[14] Section 220.15, F.S. Section 220.14(1), F.S, provides that the first $50,000 of net income is exempt from Florida corporate income tax.
[15] IRC s. 179.
[16] IRC ss. 167 and 263(a).
[17] Section 220.13(1)(e)1.a., F.S.
[18] Section 220.13(1)(e)1.b., F.S.

Interest Deductions

Business interest was generally deductible in the taxable year in which the interest was paid or accrued, subject to certain limitations.[19] The TCJA restricted larger businesses, those with average gross receipts of $25 million or more, from deducting interest payments in excess of 30% of their adjusted taxable income. Any interest amounts that are disallowed may be carried forward to the succeeding five taxable years. Businesses with gross receipts of less than $25 million are not subject to this limitation and may continue to deduct all of their interest payments. Adjusted taxable income for this purpose is the taxable income of the taxpayer computed without regard to (1) any item of income, gain, deduction, or loss which is not properly allocable to a trade or business; (2) any business interest or business interest income; (3) the amount of any net operating loss deduction; and (4) any deduction allowable for depreciation, amortization, or depletion.

After enactment of the TCJA, Florida adopted updates to the Internal Revenue Code as in effect on January 1, 2018.[20] This included the changes made in the TCJA. Current Florida law requires taxpayers, for taxable years beginning after December 31, 2018, and before January 1, 2021, to add-back the business interest expense deduction amount as calculated in statute to the taxpayer's taxable income.[21]

Amortization of Research and Development Expenditures

The TCJA included a provision which provided that businesses treating research or experimental (R&E) expenditures as deductible expenses will no longer be able to recover the costs in the year in which the costs are incurred.[22] Instead, R&E expenditures are required to be capitalized and amortized ratably over a five-year period, beginning with the midpoint of the taxable year in which the expenditure is paid or incurred.[23] This provision applies to amounts paid or incurred in taxable years after December 31, 2021.[24] Costs for research conducted outside of the U.S. must be amortized over a 15-year period. Expenditures for the development of software will also be treated as R&E expenditures.

III. Effect of Proposed Changes:

Section 1 amends s. 220.03, F.S., to adopt the Internal Revenue Code in effect on January 1, 2022, for use by corporations subject to Florida's Corporate Income Tax. The section adopts the changes originally made in the Tax Cuts and Jobs Act of 2017 to s. 174 of the Internal Revenue Code, relating to the treatment of research and development expenditures. The section applies retroactively to January 1, 2022.

[19] IRC s. 163.
[20] *See* HB 7093, Chapter 2018-119, Laws of Florida.
[21] Section 220.13(1)(e)4., F.S.
[22] Pub. Law No. 115-97, s. 13206 (Dec. 22, 2017).
[23] IRC s. 174.
[24] *Supra* note 31.

Section 2 amends s. 220.1105, F.S., to remove a provision that provides refunds to corporate income tax payers for Fiscal Year 2020-2021. The section revises the term "eligible taxpayer" to no longer include taxpayers whose taxable year begins between April 1, 2019 and March 31, 2020. The section operates retroactively to June 30, 2021.

Section 3 amends s. 220.13, F.S., to revise the definition of "adjusted federal income." The section provides that when adjusting a taxable income by subtracting bonus depreciation for Florida tax purposes, bonus depreciation does not apply to property placed in service in taxable years beginning on or after January 1, 2020. The section operates retroactively to January 1, 2020.

Section 4 specifies the amendment made to s. 220.13(1)(e), F.S., in section 3 of the bill applies to taxable years beginning on or after January 1, 2020.

Section 5 amends s. 220.13, F.S., effective January 1, 2023, to revise the definition of "adjusted federal income" and to decouple from the treatment of business interest expense under federal law. The section revises the calculation of business interest expense for taxable years beginning on or after January 1, 2023, and requires taxpayers to add an amount equal to the amount of business interest taken as a deduction for federal tax purposes to taxable income and to subtract the amount of business interest paid or accrued within the taxable year which would have deductible at the federal level as s. 163 of the IRC existed and applied immediately before the enactment of the TCJA. The section deletes language that was applicable for taxable years beginning after December 31, 2018, and before January 1, 2021.

Section 6 provides an effective date of upon becoming a law, except as otherwise expressly provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to pass legislation requiring counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them.[25] This bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a shared state tax. Therefore, the provisions of Article VII, section 18 of the Florida Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[25] *See* FLA. CONST., art. VII, s. 18.

D. State Tax or Fee Increases:

Laws that create or raise state taxes or fees must be passed by two-thirds vote of the membership of each house of the Legislature in a separate bill that contains no other subject.[26] The bill does not increase any taxes or fees; therefore, the increased tax or fee requirements do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates that the bill will increase General Revenue Fund receipts by $623.9 million in Fiscal Year 2021-2022. The bill will reduce General Revenue Fund receipts by $3.63 billion in Fiscal Year 2022-2023. The majority of the Fiscal Year 2022-2023 reduction is caused by the provisions of the bill relating to bonus depreciation; however, over the next 10 years, those provisions result in a net increase in General Revenue of $846.1 million.[27]

B. Private Sector Impact:

By adopting recent changes to the Internal Revenue Code, Florida provides ease of administration for Florida corporate taxpayers. The revisions to calculating bonus depreciation, business interest expense, and research and development expenditures may result in a decrease in taxable income of Florida corporate taxpayers.

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, 220.1105, and 220.13.

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[26] *See* FLA. CONST., art. VII, s. 19.

[27] The Revenue Estimating Conference, *2022 Regular Session Revenue Estimating Conference: Impact Conference Results*, p. 257-264 (Jan. 28, 2022), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2022/_pdf/Impact0128.pdf (last visited Jan. 28, 2022).

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:

None.