HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 11-01 Corporate Income Tax
SPONSOR(S): Finance & Tax Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee	11 Y, 5 N	Aldridge	Langston

SUMMARY ANALYSIS

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida. The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes. This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year in question. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is commonly referred to as the "piggyback bill."

Last year, the federal government passed two acts that affected the Internal Revenue Code - the Small Business Jobs Act of 2010 (SBJA) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TUJA). These acts contained provisions that will reduce Florida corporate tax receipts over the next two years if adopted in Florida. Those provisions are:

- 50% first year bonus depreciation for certain new business property placed in service between January 1 and September 8, 2010.
- 100% first year bonus depreciation for certain new business property placed in service after September 8, 2010 through December 31, 2011.
- 50% first year bonus depreciation for certain new business property placed in service in 2012.
- Increase in the amount that can be immediately expensed for certain depreciable asset purchases made in 2010 and 2011, from $250,000 or $25,000, depending on the year, to $500,000.
- Increase in the amount that can be immediately expensed for certain depreciable asset purchases made in 2012, from $25,000 to $125,000.

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2011. The change will apply retroactively to January 1, 2011. However, the bill contains provisions that do not adopt the federal bonus depreciation and enhanced expensing provisions described above. The bill accomplishes this by extending current statutory provisions adopted by Florida in 2009 to decouple from similar bonus depreciation and enhanced expensing provisions enacted by Congress in 2008 and 2009.

The Revenue Estimating Conference (REC) has estimated that the bill will have an indeterminate impact on state revenues. Because of uncertainty as to the mix of affected assets owned by Florida taxpayers, the REC could not determine the direction of the indeterminate impact.

The bill is effective upon becoming law and applies retroactively to January 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida.[1] For simplicity's sake, the determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes.[2] This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. With federal taxable income as a starting point, Florida law then requires a variety of additions and subtractions to reflect Florida-specific policies to determine Florida taxable income.

Florida maintains this relationship by each year adopting the Federal Internal Revenue Code 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. The bill adopting the federal code is commonly referred to as the "piggyback bill."

Depreciation Deduction

Under federal tax law, a corporation is entitled to reduce its income over time to reflect the cost of an asset it purchases. If a corporation purchases equipment for $10,000 with an expected useful life of 5 years, it is entitled to reduce its income by annual amounts totaling $10,000 over 5 years. For example, if the corporation uses the straight-line depreciation method, it can reduce its income by $2,000 each year for 5 years.

Under Florida law, this treatment for federal tax purposes flows to the Florida tax return and reduces Florida taxable income.

Economic Stimulus Act of 2008, American Recovery and Reinvestment Act of 2009, and Florida's Response

In early 2008, Congress approved the Economic Stimulus Act of 2008. Among other things, this legislation provided two tax benefits to corporations: (1) it allowed corporations to take an additional depreciation deduction equal to 50% of the cost of property placed in service in 2008, and (2) it allowed for small businesses to expense (completely depreciate) property valued up to $250,000 (instead of $125,000) placed in service during 2008. The effect of these changes was to increase depreciation and expensing provisions in the year property is placed in service and to decrease depreciation deductions in later years.[3]

In 2009, Congress approved the American Recovery and Reinvestment Act of 2009 (ARRTA). This legislation granted a one-year extension of the bonus depreciation and additional expensing provisions adopted in 2008, discussed above. The legislation also allowed taxpayers to defer until 2014 the recognition of certain income from cancellation of indebtedness (COD) occurring during 2009 and 2010.[4]

To avoid near-term negative revenue implications in Fiscal Years 2008-09 and 2009-10, the Legislature decided to adopt the federal tax code in both 2008 and 2009, except for the provisions dealing with

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[1] Section 220.11, F.S.
[2] Sections 220.12 and 220.13, F.S.
[3] The Revenue Estimating Conference determined that these provisions would reduce state revenues by $146.8 million in FY 08-09 and $76 million in FY 09-10.
[4] The Revenue Estimating Conference estimated that the adoption of these provisions would reduce state revenues in FY 09-10 by $188.2 million.

50% bonus depreciation and the increased expensing amount provided by the Economic Stimulus Act of 2008[5], and the extension of those provisions by ARRTA[6].

SB 1112 (2009) provided a new process to account for the increased deductions provided by the Economic Stimulus Act of 2008 and ARRTA in the Florida tax return. Specifically, the bill spread out the amount of bonus depreciation or additional expensing claimed by a taxpayer on the federal return over a 7-year period on the Florida return. Thus, ultimately, the taxpayer did not lose the benefit of the deductions for Florida purposes. Rather, the benefit of the deductions was spread out over time.

SB 1112 accomplished this by providing that a taxpayer claiming bonus depreciation or additional expensing on its federal return must add the amount so claimed to Florida taxable income. In the first year and in each of the 6 subsequent taxable years, the taxpayer can subtract from taxable income one-seventh of the amount by which taxable income was increased. These adjustments to Florida taxable income are available whether the property remains with the taxpayer or is sold or otherwise disposed.

SB 1112 provided that the subtractions can be used by a surviving or acquiring entity following a merger or acquisition. Also, SB 1112 specifically provided that the additions and subtractions can change a taxpayer's net operating loss for Florida tax purposes.

Small Business Jobs Act of 2010, Tax Relief, Unemployment Insurance reauthorization, and Job Creation Act of 2010

Last year, the federal government passed two acts that affected the Internal Revenue Code - the Small Business Jobs Act of 2010 (SBJA) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TUJA). Among other things, these acts provide tax benefits to corporations that are similar to those provided with the Economic Stimulus Act of 2008 and ARRTA in 2009. The acts allow corporations to take an additional depreciation deduction equal to 50% of the cost of certain business property placed in service between January 1 and September 8, 2010, 100% of the cost of certain business property placed in service after September 8, 2010 through December 31, 2011 and 50% of the cost of certain business property placed in service 2012.

The acts also allow corporations to immediately expense (completely depreciate) certain new depreciable business property valued in total up to $500,000 (instead of $250,000) placed in service during 2010, $500,000 (instead of $25,000) in 2011 and $125,000 (instead of $25,000) in 2012. The effect of these changes is to increase depreciation and expensing provisions in the year property is placed in service and to decrease depreciation deductions in later years for federal income tax purposes.

Proposed Changes

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2011. The change will apply retroactively to January 1, 2011. However, the bill contains provisions that "decouple" the Florida income tax code from the federal bonus depreciation and enhanced s. 179 expensing provisions described above. The bill accomplishes this by extending the 7-year adjustment process adopted in SB 1112 for the federal deductions granted by the Economic Stimulus Act of 2008 and extended by SB 2504 (2009) for the federal deductions granted by AARTA to the most recent federal deductions granted by SBJA and TUJA.

The effect of these changes is to allow a taxpayer to take advantage of the deductions for federal tax purposes, but place the taxpayer in a similar position for Florida tax purposes as the taxpayer would have been had it not taken advantage of the federal provisions.

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[5] See SB 1112 (2009); Ch. 2009-18, Laws of Florida.
[6] See SB 2504 (2009); Ch. 2009-192, Laws of Florida.

The bill also grants emergency rulemaking authority to the executive director of the Department of Revenue. The bill specifies that such rules may be renewed during the pendency of procedures to adopt permanent rules.

B. SECTION DIRECTORY:

Section 1: Amends ss. 220.03(1) and (2), F.S., to update the version of the internal revenue code adopted by Chapter 220, F.S., from 2010 to 2011.

Section 2: Amends s. 220.13(1)(e), F.S., to decouple Florida's corporate income tax from federal income tax deductions allowed by SBJA and TUJA at the federal level.

Section 3: Provides emergency rulemaking authority to the executive director of the Department of Revenue.

Section 4: Provides that the bill is effective upon becoming law and operates retroactively to January 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference (REC) has estimated that the bill will have an indeterminate impact on state revenues. Because of uncertainty as to the mix of affected assets owned by Florida taxpayers, the REC could not determine the direction of the indeterminate impact.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida businesses that pay Florida corporate income tax will not be able to take advantage of the bonus depreciation and expensing provisions of SBJA and TUJA for Florida income tax purposes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES