HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 11-03 Economic Development
SPONSOR(S): Finance & Tax Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Emergency Excise Tax Repeal

To counteract the negative impacts on the Florida Corporate Income Tax of federal law changes in the early 1980s, a new tax called the "emergency excise tax" (EET) was created in 1982 in Chapter 221, F.S. The EET is still being remitted to the state, though in very small amounts.

The proposed committee bill would repeal the emergency excise tax effective January 1, 2012. The bill is designed so that taxpayers will not lose any unused tax credits previously accrued under the emergency excise tax.

Entertainment Industry Financial Incentive Program Revisions and Funding

The bill makes several changes to the Entertainment Industry Financial Incentive Program enacted in 2010. A geographic bonus tax credit is created. Any production that spends at least 85 percent of its expenditures within an "underutilized region" may receive an additional 5 percent tax credit. It also establishes a procedure for the Office of Film and Entertainment (OFE) to designate specific regions as underutilized. The bill also provides an additional 30 percent credit on qualified expenditures that are compensation paid to students currently enrolled in film and entertainment related programs at an accredited institution of higher learning in the Florida.

The bill limits the first priority for credits given to high impact television series within the general production queue and allows similar first priority for digital media productions under certain circumstances.

The definition of "qualified expenditures" is clarified to exclude "rebilled" goods or services provided by an in-state company from out-of-state vendors or suppliers.

The maximum amount of tax credits available for fiscal years 2012-13 through 2014-15 is increased from $38 million per year to $50 million per year.

Enterprise Zones (EZ)

The bill provides authority for a jurisdiction under certain circumstances to apply to the Governor's Office of Tourism, Trade, and Economic Development (OTTED) to expand the boundary of an EZ by up to 3 square miles. The bill also provides authority to Martin County to apply to OTTED for designation of an EZ of up to 10 square miles and to the City of Palm Bay to apply to OTTED for designation of an EZ of up to 5 square miles.

Single Sales Factor Apportionment

The bill allows corporations that make $250 million of qualified capital expenditures and maintain a specified number of employees over a two year period to apply to OTTED for approval to use single sales factor apportionment for corporate income tax purposes.

The Revenue estimating conference has estimated that the single sales factor and EZ provisions of the bill will result in a recurring $7.7 million reduction in state General Revenue, and insignificant local government impacts. Staff estimates that the entertainment industry provisions of the bill will result in non-recurring reductions in General Revenue of $11 million and non-recurring reductions of $1 million in local government revenue for each of fiscal years 2012-13, 2013-14, and 2014-15.

The bill takes effect July 1, 2011, except as otherwise provided in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Emergency Excise Tax Repeal

Current Situation

Emergency Excise Tax- Background

Florida has imposed a 5.5% tax on the taxable income of corporations doing business in Florida since 1972. 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 generally maintains this relationship by each year adopting the federal Internal Revenue Code (IRC) 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."

In the spring of 1981, then President Reagan had proposed significant changes to the IRC, many of which would have resulted in a reduction of federal taxable income. For this and other reasons, Florida did not adopt a "piggyback bill" in 1981.

In August, 1981, Congress passed the Economic Recovery Tax Act (ERTA). Included in ERTA was an Accelerated Cost Recovery System (ACRS) that allowed taxpayers, for federal income tax purposes, to depreciate certain capital items on an accelerated basis. This accelerated depreciation would therefore allow taxpayers to take larger deductions in early years of the life of these capital items, lowering their taxable income. The ACRS system, if adopted for Florida corporate income tax purposes would have resulted in significant near-term revenue losses.

To address this issue, and to address the fact that Florida had not adopted the Internal Revenue Code in 1981 as of January 1981, the Legislature in 1982 passed legislation that, among other things, created a new tax called the "emergency excise tax" (EET) in Chapter 221, F.S., and provided piggybacking options for taxpayers. The EET was intended to allow ERTA and the corresponding ACRS depreciation system to apply to Florida in a revenue neutral manner. The EET would offset the revenue loss associated with the new depreciation system. Therefore, the EET applied only to those taxpayers who elected to use the ACRS depreciation system for Florida purposes and was coupled with a tax credit granted five years after the year in which the EET was paid. The credit could be taken against EET liabilities, or if the credit exceeded the EET due, the difference could be taken against the taxpayer's corporate income tax liability. All taxpayers were required to choose one of three elections under which they would be governed for depreciable assets placed in service during specified time frames. This election had to be made by August 26, 1982, or for taxpayers filing an initial return (new taxpayers), the election had to be made upon the filing of its first return.

<u>General Rule</u>

Taxpayers not affirmatively choosing either Election A or B described below defaulted to being governed under the "general rule." Under the general rule, Florida retroactively piggybacked the IRC in effect on January 1, 1980; January 1, 1981 and January 1, 1982. General rule taxpayers were subject to the emergency excise tax on depreciable assets placed in service from January 1, 1981 through December 31, 1986. The credit provisions described in the preceding paragraph were available to such taxpayers.

Election A

Under the Election A option, Florida would piggyback all amendments to the IRC between January 1, 1980 and January 1, 1982, prospectively from January 1, 1982. The result was that Election A taxpayers were subject to emergency excise tax on depreciable assets placed in service from January 1, 1982 through December 31, 1986, with the corresponding credit provisions described above. Additionally, Election A taxpayers were required to make a depreciation adjustment in computing taxable income for depreciable assets placed in service from January 1, 1981 through December 31, 1981.

Election B

Election B taxpayers were treated as if the IRC in effect on January 1, 1980 and the 1980 Florida income tax code were in effect indefinitely. Election B taxpayers were not subject to EET. They were, however, required to make depreciation adjustments on depreciable assets placed in service from January 1, 1981 through December 31, 1986.

The initial legislation set an EET tax rate of 2 percent. This rate was increased to 2.2 percent for tax years beginning on or after September 1, 1984. In addition, the initial legislation also included a sunset date of December 31, 1984. This date was extended several times. The sunset provisions were reconsidered in 1986, and numerous changes to the law were made affecting taxpayers beginning on or after January 1, 1987. Taxpayers who paid EET were allowed to take a credit

The depreciation adjustments referred to in Elections A and B required taxpayers to essentially calculate a depreciation schedule under ACRS and another depreciation schedule using a straight-line depreciation method and treat the difference as an addition to tax or credit against tax, as the case may be, ratably over the five succeeding taxable years beginning after December 31, 1986. Any ratable portion of a credit against tax which could not be utilized in any taxable year may be carried over to subsequent taxable years until fully utilized.

Proposed Changes

The bill repeals the emergency excise tax effective January 1, 2012. The bill is designed so that taxpayers will not lose any unused tax credits previously accrued under the emergency excise tax.

These changes take effect January 1, 2012.

Entertainment Industry Financial Incentive Program

Current Situation

The Office of Film and Entertainment (“OFE”) currently administers the Entertainment Industry Financial Incentive Program, which awards transferrable tax credits for certain expenditures associated with film, television, and digital media productions. Generally, the credits are 20% of qualified expenditures, with additional amounts available in certain circumstances. Sections 288.1254 and 288.1258 govern the administration of this incentive program.

The aggregate amount of tax credits authorized is $53.5 million for fiscal year 2010-2011, $74.5 million for fiscal year 2011-2012, and $38 million for each of fiscal years 2012-2013, 2013-2014 and 2014-2015. Any portion of the maximum annual amount of tax credits that is not certified as of the end of a fiscal year shall be carried forward and made available for certification during the following 2 fiscal years. If the total amount of certified credits applied for in any particular fiscal year exceeds the aggregate amount of credits authorized, such excess must be treated as having been applied for on the first day of the next fiscal year in which credits remain available for allocation. Tax credits may not be claimed against tax liability for any tax period beginning before July 1, 2011 regardless of when the credits are awarded. Any tax credits awarded to a certified production company may be carried forward for a maximum of 5 years from the date of the award.

Relevant Terms

Production

“Production” means a theatrical or direct-to-video motion picture; a made-for-television motion picture; visual effects or digital animation sequences produced in conjunction with a motion picture; a commercial; a music video; an industrial or educational film; an infomercial; a documentary film; a television pilot program; a presentation for a television pilot program; a television series, including, but not limited to, a drama, a reality show, a comedy, a soap opera, a telenovela, a game show, an awards show, or a miniseries production; or a digital media project by the entertainment industry. Also, one season of a television series is considered one production. The term does not include a weather or market program; a sporting event; a sports show; a gala; a production that solicits funds; a home shopping program; a political program; a political documentary; political advertising; a gambling-related project or production; a concert production; or a local, regional, or Internet-distributed-only news show, current-events show, pornographic production, or current-affairs show. A production may be produced on or by film, tape, or otherwise by means of a motion picture camera; electronic camera or device; tape device; computer; any combination of the foregoing; or any other means, method, or device now used or later adopted.

Production Expenditures

Production expenditures are costs of tangible and intangible property used and services performed primarily and customarily in production, including preproduction and postproduction, excluding costs for development, marketing, and distribution.

Qualified Expenditures

Qualified expenditures are production expenditures incurred in Florida by a qualified production for goods purchased, leased from, or services, including, but not limited to, insurance costs and bonding, payroll services, and legal fees, which are provided by, a vendor or supplier in this state that is registered with the Department of State or the Department of Revenue and has a physical location with at least one legal Florida resident employed at that location.   Also included are salary, wages, and other compensation to legal residents of Florida, up to a maximum of $400,000 per resident.

Qualified Production

Means a production in Florida meeting all of the requirements of the incentive program. The term does not include a production in which, for the first 2 years of the incentive program, less than 50 percent, and thereafter, less than 60 percent, of the positions that make up its production cast and below-the-line production crew, or, in the case of digital media projects, less than 75 percent of such positions, are filled by legal residents of this state, legal residency being demonstrated by a valid Florida driver's license or other state-issued identification, or by students enrolled full-time in a film-and-entertainment-related course of study at an institution of higher education in this state. The term also does not include a production that contains obscene content.

Qualified Production Company

A qualified production company is a corporation, LLC, partnership, or other legal entity engaged in one or more productions in this state.

Application Procedure, Approval Process and Program Requirements

Program Application

A qualified production company producing a qualified production in this state may submit an application to the Office of Film and Entertainment no earlier than 6 months before the first date production expenses are incurred in Florida.

Certification

OFE is required to review the application and determine whether it contains all the required information. If so, the OFE qualifies the applicant and recommends to the Office of Tourism, Trade, and Economic Development ("OTTED") that the applicant be certified for the maximum tax credit award amount. OTTED must then reject the recommendation or certify the maximum recommended tax credit award, if any, to the applicant and to the executive director of the Department of Revenue.

Verification of Actual Qualified Expenditures

OFE will verify the actual qualified expenditures of a certified production prior to awarding tax credits. The verification process requires that:

- A certified production must submit data substantiating each qualified expenditure to an independent certified public accountant licensed in this state after production ends, and after making all of its qualified expenditures.
- The accountant must conduct a compliance audit, at the certified production's expense, to substantiate each qualified expenditure and submit the results as a report, along with the required substantiating data to OFE.
- OFE must review the accountant's submittal and report to OTTED the final verified amount of actual qualified expenditures made by the certified production.
- OTTED must determine and approve the final tax credit award amount to each certified applicant based on the final verified amount of actual qualified expenditures. The final amount of tax credit award must not exceed the maximum tax credit award amount certified by OFE.

Queues

There are currently three separate categories, or "queues" of productions eligible for the tax credit.

General Production Queue

- Ninety-four percent of tax credits authorized in any state fiscal year must go to this queue.
- A qualified production that demonstrates a minimum of $625,000 in qualified expenditures is eligible for tax credits equal to 20 percent of its actual qualified expenditures, up to a maximum of $8 million in credits.
- A qualified production spanning multiple state fiscal years may combine qualified expenditures from such fiscal years to satisfy the $625,000 threshold.
- Certain off-season productions are eligible for an additional 5-percent tax credit
- A qualified high-impact television series is allowed first position in this queue.

Commercial and Music Video Queue

- Three percent of tax credits authorized in any state fiscal year must go to this queue.
- The credit is 20% of qualified expenditures, up to a maximum of $500,000, if:
  - A minimum of $100,000 in qualified expenditures per commercial or music video; and
  - A total of $500,000 in qualified expenditures.
- Surplus tax credits remaining in this queue at the end of the fiscal year rollover into the new fiscal year under the general production queue.

Independent and Emerging Media Production Queue

- Three percent of tax credits authorized in any state fiscal year must go to this queue.
- Excludes commercials, infomercials and music videos.
- Any qualified production, excluding commercials, infomercials, or music videos, that demonstrates at least $100,000, but not more than $625,000, in total qualified expenditures is eligible for tax credits equal to 20 percent of its actual qualified expenditures.

Tax credits

Cap

The aggregate amount of tax credits currently authorized is $53.5 million for fiscal year 2010-2011, $74.5 million for fiscal year 2011-2012, and $38 million for each of fiscal years 2012-2013, 2013-2014 and 2014-2015.

Election and Distribution of Tax Credits

Upon award of a tax credit by OTTED, a certified production company must make an irrevocable election to apply the credit against sales and use taxes (ch. 212, F.S.), corporate income taxes (ch. 220, F.S.), or a combination of the both. The election is binding upon any distributee, successor, transferee, or purchaser.

Tax Credit Carryforward

Any tax credits awarded to a certified production company may be carried forward for a maximum of 5 years from the date of the award.

Transfers

A certified production company may transfer its tax credits only once. Sales tax credits can be transferred to only one entity, but corporate income tax credits can be transferred to up to four entities, in the same taxable year. The transferee is subject to the same rights and limitations as the certified production company awarded the tax credit, except that the transferee may not sell or otherwise transfer the tax credit.

Additional Credit

“Family-friendly” productions meeting certain specified criteria are eligible for an additional 5 percent tax credit. There is also an “off season” incentive program where a feature film, independent film, or television series or pilot which films 75 percent or more of its principal photography days from June 1 through November 30 is eligible for an additional 5 percent tax credit. Further, an off-season certified production that does not complete 75 percent of principal photography due to a disruption caused by a hurricane or tropical storm may not be disqualified from eligibility for the additional 5 percent credit as a result of the disruption.

Revocation or forfeiture of tax credits

OTTED may revoke or modify any written decision qualifying, certifying, or otherwise granting eligibility for tax credits if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits. A determination by the DOR, as a result of an audit by the DOR or from information received from the OFE, that an applicant received tax credits to which the applicant was not entitled is grounds for forfeiture of previously claimed and received tax credits. Tax credits purchased in good faith are not subject to forfeiture unless the transferee submitted fraudulent information in the purchase or failed to meet the requirements.

Program Results

As of March 2011, OFE had either awarded or certified $226.7 million in tax credits to 117 certified productions, out of a total of $242 million available over 5 years. Of that amount, 59 percent ($134.2 million) was awarded or certified for high impact television series. Twelve percent ($26.2 million) was to digital media projects and video games. Eighteen percent ($41.9 million) was to feature films.[1] Geographically, the majority of credits were for productions in southern Florida, with 72 percent ($163.4 million) of the credits going to productions in one of Miami-Dade, Broward, Palm Beach, St. Lucie, Monroe, or Charlotte counties.[2]

Proposed Changes

Definitions

The definition of "qualified expenditures" is clarified to exclude rebilled goods or services from out-of-state vendors.

Additional Tax Credits

The bill creates two new bonus tax credit programs.

Productions that spend at least 85 percent of their qualified expenditures in an "underutilized region" receive an additional 5 percent tax credit on their qualified expenditures. The bill subdivides Florida into five regions for the purposes of awarding this bonus: North, Central East, Central West, Southeast, and Southwest[3]. The bill provides a procedure to determine which regions are underutilized. Using data available as of the first day of each fiscal year, the Office of Film and Entertainment will calculate two ratios. A "regional tax credit ratio" is calculated for each region, which is the ratio of tax credits awarded in that region plus credits certified but not yet awarded to ongoing productions in that region to the total tax credits awarded plus credits certified but not yet awarded to ongoing productions statewide. A "regional population ratio" is calculated for each region as the ratio of the population of that region to the population of the state as a whole. Any region where the regional tax credit ratio is lower than the regional population ratio is designated as underutilized for that fiscal year. Based on current population estimates and tax credit awards and certifications to date, all regions except the Southeast would be classified as underutilized.

Additionally, the bill provides that any production can receive an additional 30 percent credit for those qualified expenditures that are wages, salary, or other compensation paid to students currently enrolled in film and entertainment related programs at an accredited institution of higher learning in the state of Florida.

General Queue Priority Treatment

The bill also makes significant changes to the queue system. Currently, high impact television series are automatically awarded first position in the general production queue. The bill broadens this preferential treatment to include digital media projects, but it also provides thresholds for when high

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[1] Office of Film and Entertainment Presentation to the Finance and Tax Committee, Florida House of Representatives, March 17, 2011

[2] Data from the Office of Film and Entertainment as of March 1, 2011. The report is on file with staff of the Finance and Tax Committee, Florida House of Representatives.

[3] With the North region consisting of Alachua, Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Oklaloosa, Putnam, Santa Rosa, St. Johns, Suwannee, Taylor, Union, Wakulla, Walton, and Washington counties.
The Central East region consisting of Brevard, Flagler, Indian River, Lake, Okeechobee, Orange, Osceola, Seminole, St. Lucie, and Volusia counties.
The Central West region consisting of Citrus, Hernando, Hillsborough, Manatee, Marion, Polk, Pasco, Pinellas, Sarasota and Sumter counties.
The Southwest region of Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, and Lee counties.
The Southeast region of Broward, Martin, Miami-Dade, Monroe, and Palm Beach counties.

impact or digital media projects are granted first position. A high impact television series will only automatically move to the front of the queue if less than 35 percent of total tax credits awarded to date plus credits certified but not yet awarded were for high impact television series. A similar provision, with the threshold at 20 percent, governs if digital media projects are granted first position. If both thresholds are met, between a high impact series granted first position and a digital media project also granted first position, queue placement will be on a first come, first served basis. These new provisions only apply to tax credits available for certification and award on or after July 1, 2011.

Funding

The maximum amount of tax credits available for fiscal years 2012-13 through 2014-15 is increased from $38 million per year to $50 million per year.

Reporting

The Office of Film and Entertainment will also be required to provide an estimate of full time equivalent positions created by each production in their annual report to the legislature.

The entertainment industry changes take effect July 1, 2011.

Enterprise Zones

Current Situation

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 59 enterprise zones.

Designation Process

Sections 290.001-290.016, F.S., authorize the creation of enterprise zones and establish criteria and goals for the program. Prior to submitting an application for an enterprise zone, a local government body must determine that an area:

- Has chronic extreme and unacceptable levels of poverty, unemployment, physical deterioration, and economic disinvestment;
- Needs rehabilitation or redevelopment for the public health, safety, and welfare of the residents in the county or municipality; and
- Can be revitalized through the inducement of the private sector.

The Governor's Office of Tourism, Trade, and Economic Development (OTTED) is responsible for approving applications for enterprise zones, and also approves changes in enterprise zone boundaries when authorized by the Florida Legislature. As part of the application process for an enterprise zone, the county or municipality in which the designation will be located also is responsible for creating an Enterprise Zone Development Agency and an enterprise zone development plan.

As outlined in s. 290.0056, F.S., an Enterprise Zone Development Agency is required to have a board of commissioners of at least eight, and no more than 13, members. The agency has the following powers and responsibilities:

- Assisting in the development, implementation and annual review of the zone and updating the strategic plan or measurable goals;
- Identifying ways to remove regulatory burdens;
- Promoting the incentives to residents and businesses;
- Recommending boundary changes;
- Working with nonprofit development organizations; and
- Ensuring the enterprise zone coordinator receives annual training and works with Enterprise Florida, Inc.

Pursuant to s. 290.0057, F.S., an enterprise zone development plan (or strategic plan) must accompany an application. At a minimum this plan must:

- Describe the community's goal in revitalizing the area;
- Describe how the community's social and human resources—transportation, housing, community development, public safety, and education and environmental concerns—will be addressed in a coordinated fashion;
- Identify key community goals and barriers;
- Outline how the community is a full partner in the process of developing and implementing this plan;
- Describe the commitment from the local governing body in enacting and maintaining local fiscal and regulatory incentives;
- Identify the amount of local and private resources available and the private/public partnerships;
- Indicate how local, state, and federal resources will all be utilized;
- Identify funding requested under any state or federal program to support the proposed development; and
- Identify baselines, methods, and benchmarks for measuring success of the plan.

Available Incentives

Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities. Examples of local incentives include: utility tax abatement, reduction of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.

Available state sales tax incentives for enterprise zones include:

- <u>Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone</u>: Provides a refund for sales taxes paid on the purchase of certain building materials, up to $5,000 or 97 percent of the tax paid.
- <u>Business Equipment Used in Enterprise Zones</u>: Provides a refund for sales taxes paid on the purchase of certain equipment, up to $5,000 or 97 percent of the tax paid.
- <u>Rural Enterprise Zone Jobs Credit against Sales Tax</u>: Provides a sales and use tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.
- <u>Urban Enterprise Zone Jobs Credit against Sales Tax</u>: Provides a sales and use tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.
- <u>Business Property Used in an Enterprise Zone</u>: Provides a refund for sales taxes paid on the purchase of certain business property, up to $5,000 or 97 percent of the tax paid per parcel of property, which is used exclusively in an enterprise zone for at least 3 years.
- <u>Community Contribution Tax Credit</u>: Provides 50 percent sales tax refund for donations made to local community development projects.
- <u>Electrical Energy Used in an Enterprise Zone</u>: Provides 50 percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy.

Available state corporate income tax incentives for enterprise zones include:

- <u>Rural Enterprise Zone Jobs Credit against Corporate Income Tax</u>: Provides a corporate income tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.
- <u>Urban Enterprise Zone Jobs Credit against Corporate Income Tax</u>: Provides a corporate income tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.
- <u>Enterprise Zone Property Tax Credit</u>: Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
- <u>Community Contribution Tax Credit</u>: Provides a 50-percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects.

OPPAGA Report on Enterprise Zones

The Office of Program Policy Analysis and Government Accountability released a report in January 2011 finding that most enterprise zone activity occurs in a few number of counties. The report also found that program participation remains relatively low in most enterprise zones, which limits the progress toward achieving the legislative goals of revitalizing distressed areas and increasing employment of area residents. The report made several recommendations related to the viability of the program, suggesting that the Legislature could:

1. Encourage more participation by lowering incentive eligibility thresholds;
2. Focus on job creation by eliminating all incentives except jobs tax credits;
3. Suspend the program for a year;
4. Repeal the program entirely; or
5. Allow it to sunset under current law in 2015.[4]

REDI and RACECS

The Rural Economic Develop Initiative (REDI) was created by the Florida Legislature to encourage and align critical state agency participation and investment around important rural issues and opportunities.[5] In order to strengthen the regional wage and tax base in rural regions of the state, the Initiative facilitates the location and expansion of major economic development projects in rural communities. The initiative is operated by OTTED and involves the participation of all state and regional agencies to assist in meeting the needs of the rural areas.

Within REDI, the Governor may designate up to three Rural Areas of Critical Economic Concern (“RACEC”)[6]. Most rural counties have been categorized into one of three RACECs: the North Central, the Northwest, and the South Central. RACECs are defined by OTTED based on measures of economic interdependence among the rural counties in each of the three geographic regions. A RACEC designation establishes each region as a priority assignment for REDI agencies and allows the Governor, through REDI, to waive criteria for certain economic development incentives including, but not limited to: the Qualified Target Industry Tax Refund Program, the Quick Response Training Program, the Rural Job Tax Credit program and certain transportation projects.[7] RACEC counties in each region also partner in creating catalyst sites that will attract key businesses.

<u>Proposed Changes</u>

The bill provides authority to a governing body of a jurisdiction which nominated an application for an enterprise zone that is no larger than 12 square miles and that includes a portion of the state designated as a RACEC to apply to OTTED to expand the boundary of the enterprise zone by up to 3 square miles. The four current enterprise zones that are potentially affected are: Columbia (EZ-1202), Pahokee (EZ-5001), South Bay (EZ-5002), and Suwannee (EZ-6101).

The bill also provides authority to Martin County to apply to OTTED for designation of an enterprise zone of up to 10 square miles. The bill requires that Martin County exclude residential condominiums from benefiting from state enterprise zone incentives unless prohibited by law. If OTTED approves the application, OTTED will determine the initial effective date of the enterprise zone.

The above changes take effect January 1, 2012.

The bill also provides authority to the City of Palm Bay to apply to OTTED for designation of an enterprise zone of up to 5 square miles. The City of Palm Bay reports it has a population of over 100,000.[8] If OTTED approves the application, OTTED determines the initial effective date of the enterprise zone. These changes take effect July 1, 2011.

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[4] Report no. 11-01-Few Businesses Take Advantage of Enterprise Zone Benefits; the Legislature Could Consider Several Options to Modify the Program, January 2011. Office of Program Policy Analysis and Government Accountability. Report on file with the Finance & Tax Committee.
[5] Section 288.0656, F.S.
[6] Section 288.0656(7)(a-c), F.S.
[7] Section 288.0656(7)(a), F.S.
[8] City of Palm Bay website, http://www.palmbayflorida.org/about/history.html (last visited 3/27/2011).

Single Sales Factor Apportionment

Current Situation

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, modified by certain Florida adjustments, to determine adjusted federal income. Corporations doing business both within Florida and outside Florida must apportion their adjusted federal income for Florida tax purposes, using a three-factor formula. The formula is a weighted average, designating 25 percent each to the factors for property and payroll, and 50 percent to sales.[9]

Background on Income Apportionment

One challenge for states imposing a corporate income tax is how to determine the portion of a corporation's income that can be fairly attributed to a given state, when the corporation is doing business in more than one state. States use formulas containing some or all of three different factors when trying to make this determination: a corporation's payroll, its property and its sales. The theory behind this approach is that the income of a business is the result of a complex set of interrelated factors. Using the payroll, property and sales of a corporation as a proxy for its presence in a given state is intended to provide a fair measure of a corporation's activities in a particular state compared to its activities everywhere.

States use a variety of formulas for determining the portion of a corporation's income that is to be subject to tax in a given state. Currently:

- Nine states equally weight the three basic factors- payroll, property and sales.
- Twelve states, including Florida, use payroll, property and sales in their formulas, with sales given twice the weight at the other two factors (commonly referred to as a "double weighted sales factor" apportionment formula).
- Twelve states currently require an apportionment formula that uses only the sales factor (commonly referred to as a "single sales factor" apportionment formula).
- Six states make using single sales factor apportionment optional.
- The remaining states with a corporate income tax use various combinations of the three factors.

Eliminating consideration of property and payroll in the apportionment formula (and thereby begin using single sales factor apportionment) eliminates or significantly reduces any adverse income tax consequences of locating more property and payroll in a state. Consequently, it may encourage corporations to expand operations in a given state, or to consider that when deciding where to locate operations.

Proposed Changes

The bill creates an optional mechanism for eligible corporations to use single sales factor apportionment (SSFA) to calculate Florida income for Florida income tax purposes.

To qualify as eligible, the taxpayer "must notify [OTTED] of its intent to submit an application to apportion its adjusted federal income in order to commence the 2-year period for measuring qualified capital expenditures."

The taxpayer must then apply and demonstrate, on or after July 1, 2013, that:

- It has made at least $250 million in qualified capital expenditures in Florida; and

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[9] Section 220.15, F.S., details the apportionment formulas for most corporations. Section 220.151, F.S., details the apportionment for entities that pay the premium insurance tax and for transportation entities. Finally, s. 220.152, F.S., sets out a process for how DOR would apportion the Florida corporate income tax liability for businesses that don't fit into the other categories; in such cases, the taxpayer is required to petition DOR to compute its apportionment and must agree to provide the agency additional documentation.

- Has maintained the same number of full-time employees in its Florida operations that were employed when it first notified OTTED of its intent to apply for the single-factor sales apportionment methodology. Such employees must work an average of at least 36 hours per week for an entire year and receive an average weekly wage greater than the lower of the state or local average weekly wages for the taxpayer's industry. "Full-time employee" does not include an employee who is hired to construct improvements to real property.

- The application must be made under oath and provide all information required by OTTED rule for determining the corporation's eligibility to apportion adjusted federal income.

- The corporation is responsible for affirmatively demonstrating to OTTED's satisfaction that it meets the eligibility requirements.

OTTED must acknowledge receipt of the notice, and must approve or deny the application in writing within 45 days after receipt.

"Commencing in the taxable year of such determination," the taxpayer may elect to use SSFA "by filing a return for the taxable year using the method provided under [ch. 220, F.S.]" Once such an election is made, the taxpayer must use SSFA for 4 years. It may renew its election by simply continuing to use SSFA when filing its return. However, if, after 4 years, the taxpayer chooses not to renew its election, by not using SSFA when filing its return, it must reapply if it wants to use SSFA again in the future.

In addition to its existing statutory audit authority, DOR may perform any financial and technical review and investigation, including examining the accounts, books, and records of any corporation that opted to use the single sales apportionment methodology to verify that its tax return correctly computes and apportions adjusted federal income and to ensure compliance with ch. 220, F.S.

Review Authority

If a DOR audit, investigation, or examination indicates problems with a corporation's tax returns, OTTED may revoke its decision to qualify the corporation as eligible for single sales factor apportionment. OTTED also may order the recalculation of apportionment factors to those applicable under s. 220.15, F.S., if, as the result of a DOR audit, investigation, or examination, it determines that information provided by the offending corporation in its application or other documents was materially false at the time it was made and that an individual acting on behalf of the corporation knew, or should have known, that the information submitted was false.

In such cases, the corporation must pay the additional taxes and interest that may be due, calculated as the difference between the taxes paid under the single sales factor apportionment and the double-weighted sales apportionment in s. 220.15, F.S. DOR also shall assess the corporation a penalty equal to 100 percent of the additional tax due.

OTTED must immediately notify DOR of its decision to revoke a corporation's eligibility for the single sales factor apportionment. At that point, the corporation must file an amended return with DOR, or any other such report that OTTED requires by rule, and pay any required tax, interest, and penalty within 60 days after receiving notification from OTTED about the revocation. If the corporation contests the revocation order, it still must file an amended return or other report within 30 days after the revocation order becomes final. A corporation that fails to pay the past tax, interest, and penalty by the due date is subject to the penalties provided in s. 220.803, F.S.[10]

The bill authorizes OTTED and DOR to adopt rules to administer these provisions.

These changes take effect July 1, 2011.

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[10] This section provides for an additional 10-percent penalty if the deficiency in tax payments is a result of negligence or intentional disregard of the rules and regulations, or in the case of fraud, a penalty equal to 100 percent of the deficient amount.

B. SECTION DIRECTORY:

Section 1: Amends s. 72.011(1)(a), F.S., to delete a reference to the EET.

Section 2: Amends s. 220.02, F.S., to change a reference from the EET credit allowed under s. 221.02, F.S., to the new credit created under s. 220.194, F.S.

Section 3: Amends s. 220.13(1)(a)6., F.S., to change a reference from the EET credit allowed under s. 221.02, F.S., to the new credit created under s. 220.194, F.S.

Section 4: Amends s. 220.131, F.S., conforming provisions to changes made by the bill.

Section 5: Creates s. 220.153, F.S., providing for the apportionment of certain taxpayer's adjusted federal income solely by the sales factor provided in s. 220.15, F.S.

Section 6: Creates s. 220.194, F.S., which provides a credit against corporate income tax.

Section 7: Amends s. 220.801(4), F.S., to delete a reference to the EET.

Section 8: Amends s. 213.05, F.S., to delete a reference to the EET.

Section 9: Amends s. 213.053(1)(m), F.S., to delete a reference to the EET.

Section 10: Amends s. 213.255(12), F.S., to delete a reference to the EET.

Section 11: Repeals ss. 221.01, 221.02, 221.04, 221.05, and 220.03(5), F.S.

Section 12: Amends s. 288.075(6)(a), F.S., to delete a reference to the EET.

Section 13: Amends s. 288.1045(2)(f), F.S., to delete a reference to the EET.

Section 14: Amends s. 288.106(3)(d), F.S., to delete a reference to the EET.

Section 15: Amends s. 288.1254, F.S., to amend various provisions of the Entertainment Industry Financial Incentive Program.

Section 16: Amends s. 288.1258, F.S., to require the Office of Film and Entertainment to report full time equivalent positions created by productions.

Section 17: Amends s. 290.0055, F.S., providing authority to a governing body to apply for the expansion of an enterprise zone.

Section 18: Creates s. 290.00726, F.S., providing Martin County with authority to apply for an enterprise zone.

Section 19: Creates s. 290.00727, F.S., providing the City of Palm Bay with authority to apply for an enterprise zone.

Section 20: Amends ss. 624.509(4) and (7), F.S., to delete a reference to the EET.

Section 21: Amends s. 624.51055(1), F.S, to delete a reference to the EET.

Section 22: Provides emergency rulemaking authority to the Department of Revenue.

Section 23: Provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Emergency Excise Tax

Based on recent collections data, staff estimates that there will be an insignificant (i.e., less than $50,000) negative impact on state General Revenue.

Entertainment Industry Financial Incentive Program

Based on 2010 estimates of similar provisions, it is likely there would be a negative impact to General Revenue of $11 million for each of fiscal years 2012-13, 2013-14, and 2014-15.

Enterprise Zones

The Revenue Estimating Conference (REC) estimates a negative insignificant impact on General Revenue and state trust fund revenue in FY 2011-12, with a recurring negative $0.2 million impact on General Revenue and a recurring negative insignificant impact on state trust fund revenue on an ongoing basis.

Single Sales Factor Apportionment

The REC estimates no cash impact on General Revenue or state trust fund revenue in FY 2011-12 but a recurring negative $7.5 million impact on an ongoing basis.

2. Expenditures:

The Department of Revenue has not yet provided an estimate of any operational impacts of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Entertainment Industry Financial Incentive Program

Based on 2010 estimates of similar provisions, it is likely there would be a negative impact to local governments of $1 million for each of fiscal years 2012-13, 2013-14, and 2014-15.

Enterprise Zones

The REC estimates a negative insignificant impact on local government revenue in FY 2011-12, and a recurring negative insignificant impact on local government revenue on an ongoing basis.

Single Sales Factor Apportionment

The Revenue Estimating Conference (REC) estimates no impact on local government revenue.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Access to additional incentive programs may increase the frequency of qualified productions in regions of Florida that are designated as underutilized. The new queue treatment for digital media projects will also create an incentive to produce more digital media within the state. Florida-based businesses may benefit due to spending that accompanies those productions. The bill may have a positive economic impact on businesses that may be located or establish themselves within the new enterprise zones, due to the incentives provided. Also, job-seekers could benefit from opportunities afforded them by businesses within the new enterprise zones. The bill would eliminate accounting and filing requirements for the remaining taxpayers who are subject to EET.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill may reduce the authority that counties and municipalities have to raise local option sales tax revenues, via the enterprise zone provisions. However an exemption may apply because the Revenue Estimating Conference estimated that the enterprise zone provisions would have an insignificant fiscal impact on local governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES