

Senate Bill No. 1112

An act relating to the corporate income tax; amending s. 220.03, F.S.; deleting certain provisions relating to federal amendments to federal law dealing with bonus depreciation for purposes of adjusted federal income and corporate income tax liability; amending s. 220.13, F.S.; deleting certain adjustments to federal income; specifying the treatment by this state of certain depreciation and expensing of assets that are allowed for federal income tax purposes; requiring the Department of Revenue to compromise certain penalties and interest under certain circumstances; specifying application; authorizing the department to adopt emergency rules for certain administrative purposes; providing for retroactive operation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 220.03, Florida Statutes, is amended to read:

220.03 Definitions.—

(3) FUTURE FEDERAL AMENDMENTS.—

(a) On or after January 1, 1972, when expressly authorized by law, any amendment to the Internal Revenue Code shall be given effect under this code in such manner and for such periods as are prescribed in the Internal Revenue Code, to the same extent as if such amendment had been adopted by the Legislature of this state. However, any such amendment shall have effect under this code only to the extent that the amended provision of the Internal Revenue Code shall be taken into account in the computation of net income subject to tax hereunder.

~~(b)1. Section 102 of Pub. L. No. 110-185 amends s. 179(b) of the Internal Revenue Code of 1986, as amended, and provides temporary increases in the limitations of expensing specified depreciable business assets for tax years beginning after December 31, 2007. The amount of such temporary increases may not be used in computing adjusted federal income for the purpose of determining corporate income tax liability in this state.~~

~~2. Section 103 of Pub. L. No. 110-185 amends s. 168(k) of the Internal Revenue Code of 1986, as amended, for specified property acquired after December 31, 2007, and before January 1, 2009. Section 103 provides an additional allowance equal to 50 percent of the adjusted basis of the qualified property entitled to a depreciation deduction by s. 167(a) for the taxable year in which such property is placed in service. The amount of such special depreciation allowances may not be used in computing adjusted federal income for the purpose of determining corporate income tax liability in this state.~~

~~3. It is the intent of the Legislature that ss. 102 and 103 of Pub. L. No. 110-185 be construed to disallow a deduction for bonus depreciation allowed under s. 168 of the Internal Revenue Code of 1986, as amended, in computing state net income. The applicable depreciation conventions and recovery periods shall be computed in the same manner as they are computed by the taxpayer in determining federal taxable income. As used in this chapter, the term "bonus depreciation" includes all amounts allowed as a special allowance under s. 168(k) of the Internal Revenue Code of 1986, as amended.~~

Section 2. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended, and paragraph (e) is added to that subsection, to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) Additions.—There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.187.

12. The amount taken as a credit for the taxable year under s. 220.192.

13. The amount taken as a credit for the taxable year under s. 220.193.

~~14. Any amount in excess of \$25,000 allowable as a deduction for federal income tax purposes under s. 179 of the Internal Revenue Code of 1986, as amended, for the taxable year.~~

~~15. Any amount allowable as a deduction for federal income tax purposes under s. 167 or s. 168 of the Internal Revenue Code of 1986, as amended, for the taxable year to the extent that such amount includes bonus depreciation allowable as deduction under s. 168(k).~~

(e) Adjustments related to the Federal Economic Stimulus Act of 2008.—Taxpayers shall be required to make the adjustments prescribed in this paragraph for Florida tax purposes in relation to certain tax benefits received pursuant to the Economic Stimulus Act of 2008.

1. There shall be added to such taxable income an amount equal to 100 percent of any amount deducted for federal income tax purposes as bonus depreciation for the taxable year pursuant to ss. 167 and 168(k) of the Internal Revenue Code of 1986, as amended by s. 103 of Pub. L. No. 110-185, for property placed in service after December 31, 2007, and before January 1, 2009. For the taxable year and for each of the 6 subsequent taxable years, there shall be subtracted from such taxable income an amount equal to one-seventh of the amount by which taxable income was increased pursuant to this subparagraph, notwithstanding any sale or other 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.

2. There shall be added to such taxable income an amount equal to 100 percent of any amount in excess of \$128,000 deducted for federal income tax purposes for the taxable year pursuant to s. 179 of the Internal Revenue Code of 1986, as amended by s. 102 of Pub. L. No. 110-185, for taxable years beginning after December 31, 2007, and before January 1, 2009. For the taxable year and for each of the 6 subsequent taxable years, there shall be subtracted from such taxable income one-seventh of the amount by which

taxable income was increased pursuant to this subparagraph, notwithstanding any sale or other 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.

3. Subtractions available under this paragraph may be transferred to the surviving or acquiring entity following a merger or acquisition and used in the same manner and with the same limitations as specified by this paragraph.

4. The additions and subtractions specified in this paragraph are intended to adjust taxable income for Florida tax purposes, and, notwithstanding any other provision of this code, such additions and subtractions shall be permitted to change a taxpayer's net operating loss for Florida tax purposes.

Section 3. The Department of Revenue shall compromise all penalties and interest imposed on taxpayers who file returns prior to the effective date of this act and subsequently file amended returns based upon this act. This section only applies to changes in tax liability directly resulting from the provisions of this act.

Section 4. The executive director of the Department of Revenue may, and all conditions are deemed met to, adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, for the purpose of implementing this act. Notwithstanding any other provision of law, such emergency rules shall remain in effect for 18 months after the date adopted and may be renewed during the pendency of any procedures to adopt rules addressing the subject of the emergency rules.

Section 5. This act shall take effect upon becoming a law, and shall operate retroactively to January 1, 2008.

Approved by the Governor March 17, 2009.

Filed in Office Secretary of State March 17, 2009.