

## CHAPTER 2018-119

### House Bill No. 7093

An act relating to the corporate income tax; amending s. 220.03, F.S.; adopting the 2018 version of the Internal Revenue Code; amending s. 220.13, F.S.; revising the definition of the term “adjusted federal income” relating to adjustments related to federal acts; providing legislative findings; requiring the Department of Revenue to make a certain examination, monitor guidance by the Internal Revenue Service, conduct workshops, and develop a certain process regarding the Tax Cuts and Jobs Act of 2017; requiring the department to submit a specified report to the Governor and Legislature by a certain date; requiring the department to provide certain status reports to the Legislature on specified dates; requiring the department to consult with the Revenue Estimating Conference in developing required reports; requiring the 2019 Legislature to consider the report concerning the automatic tax rate adjustment mechanism; creating s. 220.1105, F.S.; providing definitions; providing for the adjustment of the corporate tax rate based on net collections exceeding adjusted forecasted collections for fiscal years 2018-2019 through 2020-2021; specifying the treatment of net collections amounts that exceed adjusted forecasted net collections for fiscal years 2018-2019 through 2020-2021; amending s. 220.11, F.S.; revising the adjustment of the tax rate imposed; amending s. 220.63, F.S.; revising the adjustment of the franchise tax rate imposed on banking and savings associations; providing emergency rulemaking authority; providing for retroactive operation; providing an effective date.

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

Section 1. Paragraph (n) of subsection (1) and paragraph (c) of subsection (2) of section 220.03, Florida Statutes, are amended to read:

220.03 Definitions.—

(1) SPECIFIC TERMS.—When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the following terms shall have the following meanings:

(n) “Internal Revenue Code” means the United States Internal Revenue Code of 1986, as amended and in effect on January 1, 2018 ~~2017~~, except as provided in subsection (3).

(2) DEFINITIONAL RULES.—When used in this code and neither otherwise distinctly expressed nor manifestly incompatible with the intent thereof:

(c) Any term used in this code has the same meaning as when used in a comparable context in the Internal Revenue Code and other statutes of the

United States relating to federal income taxes, as such code and statutes are in effect on January 1, ~~2018~~ 2017. However, if subsection (3) is implemented, the meaning of a term shall be taken at the time the term is applied under this code.

Section 2. Paragraph (e) of subsection (1) of section 220.13, Florida Statutes, is amended 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:

(e) *Adjustments related to federal acts.*—Taxpayers shall be required to make the adjustments prescribed in this paragraph for Florida tax purposes with respect to certain tax benefits received pursuant to the Economic Stimulus Act of 2008, the American Recovery and Reinvestment Act of 2009, the Small Business Jobs Act of 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, the American Taxpayer Relief Act of 2012, the Tax Increase Prevention Act of 2014, ~~and the Consolidated Appropriations Act, 2016, and the Tax Cuts and Jobs Act of 2017.~~

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, s. 1201 of Pub. L. No. 111-5, s. 2022 of Pub. L. No. 111-240, s. 401 of Pub. L. No. 111-312, s. 331 of Pub. L. No. 112-240, s. 125 of Pub. L. No. 113-295, ~~and s. 143 of Division Q of Pub. L. No. 114-113, and s. 13201 of Pub. L. No. 115-97,~~ for property placed in service after December 31, 2007, and before January 1, ~~2027~~ 2021. 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, s. 1202 of Pub. L. No. 111-5, s. 2021 of Pub. L. No. 111-240, s. 402 of Pub. L. No. 111-312, s. 315 of Pub. L. No. 112-240, and s. 127 of Pub. L. No. 113-295, for taxable years beginning after December 31, 2007, and before January 1, 2015. 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. There shall be added to such taxable income an amount equal to the amount of deferred income not included in such taxable income pursuant to s. 108(i)(1) of the Internal Revenue Code of 1986, as amended by s. 1231 of Pub. L. No. 111-5. There shall be subtracted from such taxable income an amount equal to the amount of deferred income included in such taxable income pursuant to s. 108(i)(1) of the Internal Revenue Code of 1986, as amended by s. 1231 of Pub. L. No. 111-5.

4. 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.

5. 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 Legislature recognizes that the Tax Cuts and Jobs Act of 2017 will have significant effects on the state corporate income tax and on corporate taxpayers when it is fully implemented. To better understand these effects, the Legislature finds the following actions are necessary:

(1) The Department of Revenue shall examine how the Tax Cuts and Jobs Act of 2017 will affect the state corporate income tax as a result of the state's adoption of the Internal Revenue Code by this act.

(2) The Department of Revenue shall monitor guidance provided by the Internal Revenue Service and other tax authorities and advisory groups, and shall conduct at least two public workshops to gather public input. In addition, the department shall develop a process outside of the public workshops for receiving public input regarding the Tax Cuts and Jobs Act of 2017 and its potential effects on the state corporate income tax and the businesses that pay the tax.

(3) By February 1, 2019, the Department of Revenue shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of appropriate legislative committees. At a minimum, the report must include the following:

(a) A comprehensive discussion of the potential effects of the Tax Cuts and Jobs Act of 2017 on the state corporate income tax structure and revenues.

(b) Options for changes the Legislature could make to state tax law which may be needed to integrate state law with federal law.

- (c) An estimate of the potential fiscal impact of each option.
- (d) A compilation of the input received from the public through the public workshops and otherwise.
- (e) Any other information the Department of Revenue determines will assist the Legislature in evaluating the impact of the Tax Cuts and Jobs Act of 2017 on the state corporate income tax structure and revenues.
- (4) The Department of Revenue shall submit status reports to the chairs of appropriate legislative committees on August 3, 2018, and November 16, 2018. At a minimum, the status reports must include a brief description of the department's activities and any relevant guidance issued by the Internal Revenue Service.
- (5) The Department of Revenue shall consult with the Revenue Estimating Conference on the development of the required reports.
- (6) The 2019 Legislature shall consider the report required by subsection (3) to determine whether adjustments to the automatic tax rate adjustment mechanism under s. 220.1105, Florida Statutes, are needed.

Section 4. Section 220.1105, Florida Statutes, is created to read:

220.1105 Tax imposed; automatic refunds and downward adjustments to tax rates.—

- (1) As used in this section, the term:
- (a) “Net collections” means the total amount of taxes collected under this chapter by the department in the 2018-2019 fiscal year, including related interest and penalties, minus the total amount of refunds of taxes levied under this chapter and issued by the department in that fiscal year. No later than September 1, 2019, the Office of Economic and Demographic Research shall determine net collections for the 2018-2019 fiscal year.
- (b) “Forecasted net collections” means the amount of net collections forecasted for the 2018-2019 fiscal year by the Revenue Estimating Conference on February 23, 2018.
- (c) “Adjusted forecasted collections” means forecasted net collections for the 2018-2019 fiscal year multiplied by 1.07.
- (d) “Tax rate imposed” is the tax rate as defined in ss. 220.11(2) and 220.63(2) adjusted as set forth in this section.

(2) The tax rate imposed shall be adjusted based on net collections in the 2018-2019 fiscal year. If the net collections exceed the adjusted forecasted collections, the tax rate imposed for taxable years beginning on or after January 1, 2019, shall be the tax rate imposed for taxable years beginning on or after January 1, 2018, multiplied by the quotient of the adjusted

forecasted collections divided by the net collections. The resulting tax rate shall be rounded to the nearest thousandth and rounded down if the fourth digit to the right of the decimal point is the number five.

(3) By October 1, 2019, the Department of Revenue shall calculate the tax rate imposed, if it is to be adjusted pursuant to subsection (2), and shall on that same date report the results of such calculation to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(4) Any amount by which net collections exceed adjusted forecasted collections for the 2018-2019 fiscal year shall only be used to provide refunds to corporate income tax payers as follows:

(a) For purposes of this subsection:

1. "Eligible taxpayer" means a taxpayer whose taxable year begins between April 1, 2017, and March 31, 2018, and whose final tax liability for such taxable year is greater than zero.

2. "Excess collections" means the amount by which net collections for the 2018-2019 year exceed adjusted forecasted collections for that fiscal year.

3. "Final tax liability" means the taxpayer's amount of tax due under this chapter for a taxable year, reported on a return filed pursuant to s. 220.222, including a return filed timely pursuant to a valid extension.

4. "Total eligible tax liability" means the sum of final tax liabilities of all eligible taxpayers.

5. "Taxpayer refund share" means an eligible taxpayer's final tax liability as a percentage of the total eligible tax liability.

6. "Taxpayer refund" means the taxpayer refund share multiplied by the excess collections.

(b) No later than February 15, 2020, the department shall determine total eligible tax liability, the taxpayer refund share for each eligible taxpayer, and the taxpayer refund for each eligible taxpayer.

(c) No later than March 1, 2020, the department shall refund a taxpayer refund to each eligible taxpayer.

(5) Tax rate adjustments pursuant to this section are repealed for taxable years beginning on or after January 1, 2020.

Section 5. Subsection (2) of section 220.11, Florida Statutes, is amended to read:

220.11 Tax imposed.—

(2)(a) The tax imposed by this section shall be an amount equal to 5½ percent of the taxpayer’s net income for the taxable year, except as provided in paragraph (b).

(b) The tax rate imposed in paragraph (a) shall be adjusted as provided in s. 220.1105.

Section 6. Subsection (2) of section 220.63, Florida Statutes, is amended to read:

220.63 Franchise tax imposed on banks and savings associations.—

(2)(a) The tax imposed by this section shall be an amount equal to 5½ percent of the franchise tax base of the bank or savings association for the taxable year, except as provided in paragraph (b).

(b) The tax rate imposed in paragraph (a) shall be adjusted as provided in s. 220.1105.

Section 7. (1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing this act.

(2) Notwithstanding any other provision of law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section expires January 1, 2021.

Section 8. This act shall take effect upon becoming a law and operate retroactively to January 1, 2018.

Approved by the Governor March 23, 2018.

Filed in Office Secretary of State March 23, 2018.