

## CHAPTER 2019-168

### House Bill No. 7127

An act relating to the corporate income tax; amending s. 220.03, F.S.; adopting the Internal Revenue Code in effect on January 1, 2019; amending s. 220.1105, F.S., revising definitions; extending the period during which specified automatic refunds and downward adjustments to tax rates apply; amending s. 220.13, F.S.; revising the definition of the term “adjusted federal income” regarding additions and subtractions from taxable income; revising subtractions to be made in calculating taxable income; creating s. 220.27, F.S.; requiring the submission of certain corporate tax information to the Department of Revenue; requiring the department to create a secure online application for taxpayers to use when submitting such information; providing deadlines; providing audit and investigation authority; providing for a penalty; providing for future repeal; authorizing the adoption of emergency rules; providing an appropriation; 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, 2019 ~~2018~~, 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, 2019 ~~2018~~. 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. Section 220.1105, Florida Statutes, is amended 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” for a fiscal year means the total amount of taxes collected under this chapter by the department in a state ~~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 of each year, 2019, the Office of Economic and Demographic Research shall determine net collections for the most recent ~~2018-2019~~ fiscal year.

(b) “Forecasted net collections” for a fiscal year means the amount of net collections forecasted for a ~~the 2018-2019~~ fiscal year by the Revenue Estimating Conference on February 23, 2018.

(c) “Adjusted forecasted collections” for a fiscal year means forecasted net collections for a ~~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 each of the 2018-2019 fiscal years 2018-2019 through 2020-2021 year. If the net collections for a fiscal year exceed the adjusted forecasted collections for the same fiscal year, the tax rate imposed for taxable years beginning on or after January 1 of the calendar year in which the fiscal year ends, 2019, shall be the tax rate imposed for taxable years beginning on or after January 1 of the preceding calendar year, 2018, multiplied by the quotient of the adjusted forecasted collections for the fiscal year divided by the net collections for the same fiscal year. 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. The resulting tax rate shall be the tax rate imposed for subsequent taxable years for purposes of ss. 220.11(2) and 220.63(2) unless adjusted further under this section.

(3) By October 1, 2019, October 1, 2020, and October 1, 2021, 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) For fiscal years 2018-2019 through 2020-2021 any amount by which net collections for a fiscal year exceed adjusted forecasted collections for that ~~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, the term:

1. “Eligible taxpayer” means:

a. For fiscal year 2018-2019, 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;

b. For fiscal year 2019-2020, a taxpayer whose taxable year begins between April 1, 2018, and March 31, 2019, and whose final tax liability for such taxable year is greater than zero; or

c. For fiscal year 2020-2021 a taxpayer whose taxable year begins between April 1, 2019, and March 31, 2020, and whose final tax liability for such taxable year is greater than zero;

2. “Excess collections” for a fiscal year means the amount by which net collections for a fiscal year ~~the 2018-2019 year~~ exceeds ~~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 with the department pursuant to s. 220.222, including a return filed timely pursuant to a valid extension.

4. “Total eligible tax liability” for a fiscal year means the sum of final tax liabilities of all eligible taxpayers for a fiscal year as such liabilities are shown on the latest return filed with the department as of February 1 immediately following that fiscal year.

5. “Taxpayer refund share” for a fiscal year means an eligible taxpayer’s final tax liability as a percentage of the total eligible tax liability for that fiscal year.

6. “Taxpayer refund” for a fiscal year means the taxpayer refund share for a fiscal year multiplied by the excess collections for a fiscal year.

(b) No later than April 15 following a fiscal year ~~February 15, 2020,~~ the department shall determine total eligible tax liability for that fiscal year, the taxpayer refund share for that fiscal year for each eligible taxpayer, and the taxpayer refund for that fiscal year for each eligible taxpayer.

(c) No later than May 1 following a fiscal year ~~March 1, 2020,~~ the department shall refund a taxpayer refund for that fiscal year to each eligible taxpayer.

(5) For taxable years beginning on or after January 1, 2022, the tax rate adjustments pursuant to this section are repealed and the tax rate imposed for purposes of s. 220.11(2) and 220.63(2) is 5.5 percent. Tax rate adjustments pursuant to this section are repealed for taxable years beginning on or after January 1, 2020.

Section 3. Paragraph (b) 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:

(b) Subtractions.—

1. There shall be subtracted from such taxable income:

a. The net operating loss deduction allowable for federal income tax purposes under s. 172 of the Internal Revenue Code for the taxable year, except that any net operating loss that is transferred pursuant to s. 220.194(6) may not be deducted by the seller,

b. The net capital loss allowable for federal income tax purposes under s. 1212 of the Internal Revenue Code for the taxable year,

c. The excess charitable contribution deduction allowable for federal income tax purposes under s. 170(d)(2) of the Internal Revenue Code for the taxable year, and

d. The excess contributions deductions allowable for federal income tax purposes under s. 404 of the Internal Revenue Code for the taxable year.

However, a net operating loss and a capital loss shall never be carried back as a deduction to a prior taxable year, but all deductions attributable to such losses shall be deemed net operating loss carryovers and capital loss carryovers, respectively, and treated in the same manner, to the same extent, and for the same time periods as are prescribed for such carryovers in ss. 172 and 1212, respectively, of the Internal Revenue Code.

2. There shall be subtracted from such taxable income any amount to the extent included therein the following:

a. Dividends treated as received from sources without the United States, as determined under s. 862 of the Internal Revenue Code.

b. All amounts included in taxable income under s. 78, ~~or~~ s. 951, or s. 951A of the Internal Revenue Code.

However, any amount subtracted under this subparagraph is allowed only to the extent such amount is not deductible in determining federal taxable income. As to any amount subtracted under this subparagraph, there shall be added to such taxable income all expenses deducted on the taxpayer’s return for the taxable year which are attributable, directly or indirectly, to such subtracted amount. Further, no amount shall be subtracted with respect to dividends paid or deemed paid by a Domestic International Sales Corporation.

3. In computing “adjusted federal income” for taxable years beginning after December 31, 1976, there shall be allowed as a deduction the amount of wages and salaries paid or incurred within this state for the taxable year for which no deduction is allowed pursuant to s. 280C(a) of the Internal Revenue Code (relating to credit for employment of certain new employees).

4. There shall be subtracted from such taxable income any amount of nonbusiness income included therein.

5. There shall be subtracted any amount of taxes of foreign countries allowable as credits for taxable years beginning on or after September 1, 1985, under s. 901 of the Internal Revenue Code to any corporation which derived less than 20 percent of its gross income or loss for its taxable year ended in 1984 from sources within the United States, as described in s. 861(a)(2)(A) of the Internal Revenue Code, not including credits allowed under ss. 902 and 960 of the Internal Revenue Code, withholding taxes on dividends within the meaning of sub-subparagraph 2.a., and withholding taxes on royalties, interest, technical service fees, and capital gains.

6. Notwithstanding any other provision of this code, except with respect to amounts subtracted pursuant to subparagraphs 1. and 3., any increment of any apportionment factor which is directly related to an increment of gross receipts or income which is deducted, subtracted, or otherwise excluded in determining adjusted federal income shall be excluded from both the numerator and denominator of such apportionment factor. Further, all valuations made for apportionment factor purposes shall be made on a basis consistent with the taxpayer’s method of accounting for federal income tax purposes.

Section 4. Section 220.27, Florida Statutes, is created to read:

220.27 Additional required information.—

(1)(a) Every taxpayer that is required to file a return under s. 220.22(1) for a taxable year beginning during the 2018 or 2019 calendar years, must submit to the department the following information for those taxable years using the application form on the department’s website:

1. The taxpayer’s name, federal taxpayer identification number, taxable year beginning date, taxable year ending date, and whether a consolidated return for the taxpayer is required or elected under s. 220.131.

2. The taxpayer’s NAICS code for business activity that generates the greatest proportion of gross receipts of the taxpayer. As used in this paragraph, the term “NAICS” means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

3. The taxpayer’s taxable income as that term is defined in s. 220.13(2) and the taxpayer’s state apportionment fraction pursuant to s. 220.15 for the taxable year.

4. The amount of global intangible low-taxed income included in federal taxable income under s. 951A of the Internal Revenue Code, and the amount of the related deduction under s. 250 of the Internal Revenue Code, as it pertains to s. 951A of the Internal Revenue Code.

5. The amount of foreign-derived intangible income computed for the federal return for the taxable year and the amount of the related deduction under s. 250 of the Internal Revenue Code, as it pertains to foreign-derived intangible income.

6. The amount of business interest expense deducted on the federal return under s. 163 of the Internal Revenue Code, including any carryover; the amount of current year business interest expense, including any carryover, that was not deducted due to the limitation in s. 163(j) of the Internal Revenue Code; and the amount of business interest expense carried over from previous taxable years.

7. The amount of federal net operating loss deduction under s. 172 of the Internal Revenue Code, applied in determining federal taxable income and the amount of federal net operating loss carryover that was not applied due to the limitation in s. 172(a)(2) of the Internal Revenue Code.

8. The total amount of state net operating loss carryover available after the filing of the return for the taxable year.

9. The total amount of the state alternative minimum tax credit carryover available after the filing of the return for the taxable year.

(b) By September 3, 2019, the department shall create a secure online application for use by taxpayers when submitting the information required under this subsection through the department's website.

(c) An officer of the taxpayer or a person duly authorized to act on the taxpayer's behalf must certify that the information submitted pursuant to this subsection is true and correct. The required information must be submitted the earlier of 10 days after the extended due date of the state corporate income/franchise tax return or 10 days after the date the state corporate income/franchise tax return is filed. However, any information required to be submitted before September 3, 2019, is timely if submitted by September 3, 2019.

(d) In addition to its existing audit and investigation authority, the department may perform any additional financial and technical audits and investigations, including examining the accounts, books, and financial records of the taxpayer, which are necessary to verify the accuracy of the information submitted pursuant to this subsection.

(e) A taxpayer who fails to provide the required information by the required submission date is subject to a penalty of \$1,000 or 1 percent of the tax determined to be due under this chapter for the most recent taxable year reported on a return filed with the department, whichever is greater. Any

such penalty collected shall be deposited into the General Revenue Fund. The department may settle or compromise such penalty if the department determines that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud.

(2) This section is repealed January 1, 2023.

Section 5. (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, 2022.

Section 6. For the 2019-2020 fiscal year, the sum of \$120,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue to implement this act.

Section 7. This act shall take effect upon becoming a law and operate retroactively to January 1, 2019, except that section 3 shall operate retroactively to January 1, 2018.

Approved by the Governor June 28, 2019.

Filed in Office Secretary of State June 28, 2019.