

## Notice of Proposed Rule

### DEPARTMENT OF REVENUE

#### Corporate, Estate and Intangible Tax

##### RULE NOS.:RULE TITLES:

- 12C-1.013 Adjusted Federal Income Defined
- 12C-1.0155 Sales Factor for Apportionment
- 12C-1.0191 Capital Investment Tax Credit Program
- 12C-1.034 Special Rules Relating to Estimated Tax
- 12C-1.051 Forms

**PURPOSE AND EFFECT:** The proposed changes are necessary to implement statutory changes and to provide citizens with accurate information.

**SUMMARY:** The proposed amendments to Rule 12C-1.013, F.A.C., incorporate statutory changes made to Florida Corporate Income Tax by Chapter 2018-119, L.O.F., and address the effect that the repeal of the federal corporate Alternative Minimum Tax made by the Tax Cuts and Jobs Act, Public Law 115-97, will have on Florida Alternative Minimum Tax.

The proposed amendments to Rule 12C-1.0155, F.A.C., update an outdated statutory reference.

The proposed amendments to Rule 12C-1.0191, F.A.C., clarify how a carryover arising from the capital investment tax credit should be computed.

The proposed amendments to Rule 12C-1.034, F.A.C., incorporate statutory changes made to estimated corporate income tax by Sections 6 and 7, Chapter 2018-6, L.O.F.

The proposed amendments to Rule 12C-1.051, F.A.C., incorporate statutory changes into six forms used to administer Florida Corporate Income Tax.

##### SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: 1) no requirement for the Statement of Economic Regulatory Costs (SERC) was triggered under Section 120.541(1), F.S.; and 2) based on past experiences regarding rules of this nature, the adverse impact or regulatory cost, if any, do not exceed nor would exceed any one of the economic analysis criteria in a SERC, as set forth in Section 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**RULEMAKING AUTHORITY:** 213.06(1), 220.192(7), 220.193(4), 220.196(4), 220.24, 220.34(2)(f), 220.34(3), 220.51, 1002.395(13) FS.

**LAW IMPLEMENTED:** 119.071(5), 212.08(5)(p), 213.21, 213.755(1), 220.02(3), 220.03(5), 220.11, 220.12, 220.13, 220.131, 220.15, 220.16, 220.181, 220.182, 220.183, 220.184, 220.1845, 220.185, 220.186, 220.1875, 220.1895, 220.1896, 220.1899, 220.191, 220.192, 220.193, 220.194, 220.195, 220.196, 220.21, 220.211, 220.22, 220.221, 220.222, 220.23, 220.24, 220.241, 220.31, 220.32, 220.33, 220.34, 220.41, 220.42, 220.43, 220.44, 220.51, 220.721, 220.723, 220.725, 220.737, 220.801, 220.803, 220.805, 220.807, 220.809, 221.04, 624.5105, 624.51055, 1002.395 FS.

**IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):**

**DATE AND TIME:** October 10, 2018, 10:30 a.m.

**PLACE:** 2450 Shumard Oak Boulevard, Building One, Room 1220, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by

contacting: Tammy Miller at (850)717-6309. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tammy Miller, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)617-8346.

THE FULL TEXT OF THE PROPOSED RULE IS:

12C-1.013 Adjusted Federal Income Defined.

(1) through (3) No change.

(4)(a) No change.

(b) In calculating alternative minimum tax due pursuant to Section 220.11(3), F.S., an adjustment to the addition of exempt interest is provided. Cross reference: paragraph 12C-1.013(19)(b)5., F.A.C. ~~12C-1.013(19)(e), F.A.C.~~

(c) through (e) No change.

(5) through (13) No change.

(14) Adjustments for excess s. 179, I.R.C., expense, special 50 percent bonus depreciation (s. 168(k), I.R.C.), and deferred cancellation of indebtedness income.

(a) Additions Required:

1. No change.

2. Taxpayers are required to add back the amount of the federal deduction claimed as ~~special 50 percent~~ bonus depreciation under s. 168(k), I.R.C., for assets placed in service after December 31, 2007, and before January 1, 2027 ~~January 1, 2021~~.

3. No change.

(b) through (j) No change.

(15) through (18) No change.

(19) Florida Alternative Minimum Tax.

(a) For taxable years beginning on or after January 1, 2018, no taxpayer is required to pay Florida Alternative Minimum Tax (AMT) because no corporate income taxpayer is required to pay federal AMT. However, a taxpayer with previously earned Florida AMT credits must compute Florida AMT to determine the amount of Florida AMT credit allowable against Florida corporate income tax.

(b)1. For taxable years beginning before January 1, 2018, a A corporation subject to the Florida Income Tax Code may be required to pay an alternative minimum tax. Florida ~~AMT alternative minimum tax~~ is equal to 3.3 percent of the Florida alternative minimum taxable income. Corporations required to pay federal ~~AMT alternative minimum tax~~ must compute the amount of regular Florida corporate income tax and the amount of Florida ~~alternative minimum tax (AMT)~~ that may be due. The corporation is liable for whichever amount is greater.

2. ~~(b)~~ A taxpayer is not liable for the Florida ~~AMT alternative minimum tax~~ unless liable for the federal ~~AMT alternative minimum tax~~. A taxpayer who is part of an affiliated group ~~that which~~ filed a federal consolidated return and was not liable for federal ~~AMT alternative minimum tax~~ is not liable for Florida AMT when filing on a separate return basis. The entity is not subject to Florida AMT regardless of the amounts of federal tax preference items contained in the separate return. A corporation ~~that which~~ is part of an affiliated group that filed a consolidated return for federal income tax purposes, and paid the federal AMT, must compute Florida AMT, even if it files a separate return for Florida. This requirement applies is true even if the individual corporation would not have been subject to federal AMT if a separate return had been filed.

3. ~~(c)~~ The computation of the Florida alternative minimum taxable income is similar to the computation of the regular Florida taxable income. The primary difference is the starting point for the computation. Florida uses federal alternative minimum taxable income ~~(AMTI)~~ as the starting point in determining Florida ~~alternative minimum tax (AMT)~~, after allowance of the federal exclusion amount provided in s. 55(d)(2), I.R.C. of the Internal Revenue Code.

4. ~~(d)~~ The adjustments, additions, and subtractions provided in Section 220.13, F.S., are will be applied to the Florida alternative minimum taxable income amount to arrive at adjusted federal income. The ~~Therefore, the~~ tax

base is adjusted by the same type of adjustments, additions, and subtractions that are made to the regular federal taxable income when the regular Florida corporate income tax is ~~being~~ computed. Because different amounts may be included within the base (the “starting point”), there may be differences in the amounts of the adjustments, additions, and subtractions.

5. ~~(e)~~ ~~An addition~~ ~~A common adjustment~~ that must be made when ~~in~~ computing the Florida AMT is for the amount of interest that ~~which~~ is exempt for federal income tax purposes. Section 220.13(1)(a)2., F.S., requires ~~that~~ interest ~~that is~~ excluded from federal taxable income under s. 103(a), I.R.C., less the associated expenses, be added to the taxpayer’s federal taxable income. However, this subparagraph excludes 60 percent of the amounts already included in the federal alternative minimum taxable income, ~~including. This would include~~ interest on private activity bonds issued after August 7, 1986. If the federal Adjusted Current Earnings ~~accumulated current earnings (ACE)~~ adjustment includes interest exempt under s. 103(a), I.R.C., there ~~is would be~~ an exclusion of 60 percent of the amount included in the federal Adjusted Current Earnings ~~ACE~~ adjustment.

6.a. ~~(f)1.~~ ~~An addition~~ ~~Another common adjustment~~ that is required when ~~in~~ computing the Florida AMT is for the federal net operating loss (NOL) deduction. When ~~in~~ computing adjusted federal taxable income on the Florida corporate income/franchise tax return form for regular Florida tax purposes, the taxpayer must ~~would~~ add back the amount of the regular federal NOL ~~net operating loss~~ deduction. When ~~in~~ computing adjusted federal taxable income on the Florida return form for Florida AMT purposes, the taxpayer is only required to add back the amount of the federal AMT NOL ~~net operating loss~~ deduction.

b. 2- The Florida NOL ~~net operating loss~~ deduction ~~(NOLD)~~ allowed, for purposes of AMT, ~~is will be~~ the Florida portion of the federal loss apportioned to Florida as provided in this section. The Florida Income Tax Code does not create a separate NOL for AMT purposes.

c. 3- The Florida Income Tax Code does not limit the amount of the NOL deduction ~~NOLD~~ to 90 percent of the alternative minimum taxable income before the NOL deduction ~~NOLD~~.

d. 4- The amount of the Florida NOL ~~net operating loss~~ carryover is reduced by the amount of the NOL ~~net operating loss~~ deduction used in computing the Florida corporate income tax, whether AMT or regular corporate income tax is finally determined to be due.

e. 5- As with regular Florida corporate income tax, the use of an NOL ~~a net operating loss~~ carryover is not optional. It will be deemed used if it is available.

f. ~~6-~~ Cross reference: subsection 12C-1.013(15), F.A.C.

7. ~~(g)~~ ~~A~~ ~~Another~~ possible adjustment when ~~in~~ computing ~~the~~ Florida AMT ~~is would be~~ the depreciation adjustment for Election A and Election B taxpayers. If there is an adjustment that is required when ~~in~~ computing ~~the~~ federal AMT to the depreciation expense for property placed in service between January 1, 1981, and December 31, 1986, then the amount of adjustment required ~~is would be~~ different when Florida ~~the~~ AMT is computed.

8. ~~(h)~~ The Florida Income Tax Code allows the income tax credits listed in Section 220.02(8) ~~220.02(10)~~, F.S. to be used against the amount of Florida AMT ~~alternative minimum tax~~ due. The use of a tax credit against Florida ~~the~~ AMT is not optional and ~~A credit~~ will be deemed used if it is available.

9. ~~(i)~~ If the Florida AMT is paid, an alternative minimum tax credit is allowed by Section 220.186, F.S., in subsequent years. Cross reference: Rule 12C-1.0186, F.A.C.

(20) through (21) No change.

Rulemaking Authority 213.06(1), 220.51 FS., Section 3, Chapter 2009-192, L.O.F. Law Implemented 220.02(3), 220.03(5), 220.13, 220.131(1), 220.43(1), (3) FS. History—New 10-20-72, Amended 1-19-73, 10-20-73, 10-8-74, 4-21-75, 5-10-78, 11-13-78, 12-18-83, Formerly 12C-1.13, Amended 12-21-88, 12-7-92, 5-17-94, 10-19-94, 3-18-96, 10-2-01, 4-14-09, 6-28-10, 7-20-11, 1-10-17, \_\_\_\_\_.

12C-1.0155 Sales Factor for Apportionment.

(1) No change.

(2) Florida sales. The numerator of the sales factor includes gross receipts attributed to Florida which were derived by the taxpayer from transactions and activities in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incident to such gross receipts shall be included, regardless of the place where the account records are maintained or the location of the contract or other evidence of indebtedness.

(a) through (f) No change.

(g) Telecommunications. For purposes of this rule, gross receipts from telecommunications services include those earned by the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used ~~defined by Section 203.012(2), F.S.~~

1. through 2. No change.

(h) through (l) No change.

(3) through (4) No change.

Rulemaking Authority 213.06(1), 220.51 FS. Law Implemented 220.15, 220.44 FS. History—New 5-17-94, Amended 3-18-96, 10-2-01,\_\_\_\_\_.

#### 12C-1.0191 Capital Investment Tax Credit Program.

(1) Qualifying projects defined in Sections 220.191(1)(g)1. and 2., F.S.

(a) No change.

(b)1. The maximum annual amount of Capital Investment Tax Credit is limited to 5 percent of the certified eligible capital costs of the qualifying project, for a period not to exceed 20 years, beginning with the commencement of the project's operations. The tax credit may not be carried forward or backward, except as noted in subparagraph 2. The sum of all capital investment tax credits cannot exceed 100 percent of the eligible capital costs of the project.

2. A carryover of credit is available for a qualifying business that invested at least \$100 million and is eligible to claim the credit against 100 percent of its corporate income tax liability pursuant to Section 220.191(2)(a)1., F.S. Unused credits from the 20-year credit period may be claimed in the 21st through 30th tax years after commencement of operations of such qualifying project, ~~as long as the unused amount results from an insufficient tax liability on the part of the qualifying business.~~

3. The amount of carryover from any one taxable year is five (5) percent of the cumulative capital investment that is at least \$100 million less the amount of capital investment tax credit that could be used on the tax return for the taxable year. The amount of carryover from a taxable year may not exceed five (5) percent of the cumulative capital investment that is at least \$100 million.

4. Example: Taxpayer A is entitled to a capital investment credit in 2018 because it made a cumulative capital investment of \$100 million; the 2018 corporate income tax due on the income generated by or arising out of its capital investment is \$4 million; and the tax liability on its corporate income tax return was \$4.5 million. From the 2018 taxable year, Taxpayer A generated a capital investment carryover of \$1 million (\$5 million less the lesser of \$4.5 million or \$4 million).

5. Example: Taxpayer B is entitled to a capital investment credit in 2020 because it made a cumulative capital investment of \$100 million; the 2020 corporate income tax due on the income generated by or arising out of its capital investment is \$3.5 million; and the corporate income tax liability on its tax return was \$3 million. From the 2020 taxable year, Taxpayer B generated a capital investment carryover of \$2 million (\$5 million less the lesser of \$3 million or \$3.5 million).

(2) through (6) No change.

Rulemaking Authority 213.06(1), 220.191(8), 220.51 FS. Law Implemented 220.191 FS. History—New 8-4-05, Amended 4-5-07, 4-26-10, 1-17-13,\_\_\_\_\_.

#### 12C-1.034 Special Rules Relating to Estimated Tax.

(1) through (7) No change

(8) Overpayments of Estimated Tax.

(a)1. through 2. No change

3.a. No change

b. Example: A calendar year taxpayer in 2018 ~~2016~~ amends the 2015 ~~2013~~ Florida corporate income/franchise tax return pursuant to a federal adjustment that impacted Florida taxable income. The result of the amendment is that the taxpayer has overpaid the tax due for 2015 ~~2013~~. The overpayment may be refunded or credited to the 2018 ~~2016~~ estimated tax payments. The overpayment may not be credited to estimated tax payments for the 2016 or 2017 ~~2014 or 2015~~ taxable year.

- (b) No change
- (c)1. No change

2. Example: A calendar year taxpayer requested an extension of the filing date for the 2016 Florida corporate income/franchise tax return from May 1, 2017, until November 1, 2017 ~~October 1, 2017~~. The first payment of estimated tax for the succeeding tax year is due May 31, 2017. The 2016 return is filed on September 29, 2017. If the taxpayer requested that the overpayment of estimated tax be applied to the next tax year, the overpayment is applied effective May 31, 2017.

- (d) through (e) No change
- (9) Underpayment of estimated tax.
- (a) No change
- (b)1.a. through b. No change

c.(I) A contribution to an eligible nonprofit scholarship-funding organization (SFO) for a corporate income tax credit pursuant to Section 220.1875, F.S., reduces the amount required to meet the prior year exception referenced in sub-subparagraph a. For taxable years beginning before January 1, 2018, the ~~The~~ specific prior year exception amount reduced by a contribution to an SFO is determined by the date of contribution on the certificate of contribution issued by the SFO. For taxable years beginning on or after January 1, 2018, a taxpayer may, after earning a tax credit under Section 220.1875, F.S., reduce any estimated payment in that taxable year by the amount of the credit. Cross reference: Rule Chapter 12-29, F.A.C.

- c.(II) through (III) No change

(IV) Example: A calendar year taxpayer remitted four estimated payments of \$18,000 each on May 31, 2018; June 29, 2018; October 1, 2018; and December 31, 2018. The taxpayer also made a \$17,000 contribution to an SFO and was issued a certificate of contribution on June 20, 2018, which generated a tax credit for the taxpayer. For the prior tax year ending December 31, 2017, corporate income tax of \$90,000 was due. Taxpayer's prior year exception computation is as follows:

Due dates of installments	(1st) 5/31/2018	(2nd) 6/29/2018	(3rd) 10/1/2018	(4th) 12/31/2018
Current year: Total cumulative amount paid (or credited) from the beginning of the taxable year through the installment date indicated	18,000.00	36,000.00	54,000.00	72,000.00
(a) Prior year exception: Tax on prior year's income using current year's rates	25% of tax 22,500.00	50% of tax 45,000.00	75% of tax 67,500.00	100% of tax 90,000.00
(b) Cumulative donations timely made to SFOs for the taxable year. Certificate of contribution must be issued for the taxable year.	17,000.00	17,000.00	17,000.00	17,000.00
(c) The prior year exception adjusted for the credit for contributions to SFOs per Section 1002.395(5)(g), F.S., equals (a) less (b)	5,500.00	28,000.00	50,500.00	73,000.00
Installment meets prior year exception? To answer Yes, Current year must equal or exceed Prior year (c).	Yes	Yes	Yes	No

Taxpayer has met the prior year exception for the first three installments through a combination of estimated payments and SFO credit so that estimated tax penalty and interest will not apply for the first, second, or third installment.

- 2.a. No change
- b.(I) No change

(II) Example: Corporation C was part of affiliated group ABC, which filed a federal consolidated income tax return for the 2016 and 2017 ~~2014 and 2015~~ tax years. For Florida corporate income/franchise tax purposes,

Corporation C has always filed a separate return. On June 1, 2017 ~~June 1, 2015~~, the stock of Corporation C was bought by Corporation X. Corporation C has two taxable years for 2017 ~~2015~~ for federal income tax purposes, and, therefore, for Florida corporate income/franchise tax purposes even though it has always filed a separate Florida corporate income/franchise tax return. For the first taxable year within 2017 ~~2015~~ (January 1 through May 31, 2017 ~~May 31, 2015~~), Corporation C may base estimated tax payments on a prior year exception (January 1, 2016, through December 31, 2016 ~~January 1, 2014, through December 31, 2014~~). Corporation C may not use the prior year exception for the second taxable year within 2017 ~~2015~~ (June 1, 2017, through December 31, 2017 ~~June 1, 2015, through December 31, 2015~~). Furthermore, Corporation C cannot use a prior year exception for the 2018 ~~2016~~ tax year.

3. No change

(c) through (i) No change.

(10) through (13) No change.

Rulemaking Authority 213.06(1), 220.24, 220.34(2)(f), 220.34(3), 220.51, 1002.395(13) FS. Law Implemented 213.21, 220.131, 220.24, 220.241, 220.33, 220.34, 1002.395 FS. History—New 10-20-72, Amended 10-20-73, 7-27-80, 12-18-83, Formerly 12C-1.34, Amended 12-21-88, 4-8-92, 5-17-94, 3-18-96, 3-13-00, 9-28-04, 7-28-15, 1-10-17, 1-17-18,\_\_\_\_\_.

12C-1.051 Forms.

(1) No change

Form Number	Title	Effective Date
(2)	No change	
(3)(a)	No change	
(b) F-1065N	Instructions for Preparing Form F-1065 Florida Partnership Information Return ( <del>R-01/17</del> ) ( <a href="http://www.flrules.org/Gateway/reference.asp?No=Ref-____07765">http://www.flrules.org/Gateway/reference.asp?No=Ref-____07765</a> )	<u>XX/XX</u> <u>01/17</u>
(4) F-1120A	Florida Corporate Short Form Income Tax Return ( <del>R-01/18</del> ) ( <a href="http://www.flrules.org/Gateway/reference.asp?No=Ref-____08987">http://www.flrules.org/Gateway/reference.asp?No=Ref-____08987</a> )	<u>XX/XX</u> <u>01/18</u>
(5)(a) F-1120	Florida Corporate Income/Franchise Tax Return ( <del>R-01/17</del> ) ( <a href="http://www.flrules.org/Gateway/reference.asp?No=Ref-____07767">http://www.flrules.org/Gateway/reference.asp?No=Ref-____07767</a> )	<u>XX/XX</u> <u>01/17</u>
(b) F-1120N	Instructions for – Corporate Income/Franchise Tax Return for taxable years beginning on or after January 1, 2017 ( <del>R-01/18</del> ) ( <a href="http://www.flrules.org/Gateway/reference.asp?No=Ref-____08988">http://www.flrules.org/Gateway/reference.asp?No=Ref-____08988</a> )	<u>XX/XX</u> <u>01/18</u>
(6)	No change.	
(7)(a)	No change.	
(b) F-1120XN	Instructions for Preparing Form F-1120X Amended Florida Corporate Income/Franchise Tax Return ( <del>R-01/16</del> ) ( <a href="http://www.flrules.org/Gateway/reference.asp?No=Ref-____06347">http://www.flrules.org/Gateway/reference.asp?No=Ref-____06347</a> )	<u>XX/XX</u> <u>01/16</u>
(8) through (12)	No change	
(13) F-2220	Underpayment of Estimated Tax on Florida Corporate Income/Franchise Tax ( <del>R-01/18</del> ) ( <a href="http://www.flrules.org/Gateway/reference.asp?No=Ref-____08990">http://www.flrules.org/Gateway/reference.asp?No=Ref-____08990</a> )	<u>XX/XX</u> <u>01/18</u>
(14)	No change.	

Rulemaking Authority 213.06(1), 220.192(7), 220.193(4), 220.196(4), 220.51, 1002.395(13) FS. Law Implemented 119.071(5), 212.08(5)(p), 213.755(1), 220.11, 220.12, 220.13(1), (2), 220.15, 220.16, 220.181, 220.182, 220.183, 220.184, 220.1845, 220.185, 220.186, 220.1875, 220.1895, 220.1896, 220.1899, 220.191, 220.192, 220.193,

220.194, 220.195, 220.196, 220.21, 220.211, 220.22, 220.221, 220.222, 220.23, 220.24, 220.241, 220.31, 220.32, 220.33, 220.34, 220.41, 220.42, 220.43, 220.44, 220.51, 220.721, 220.723, 220.725, 220.737, 220.801, 220.803, 220.805, 220.807, 220.809, 221.04, 624.5105, 624.51055, 1002.395 FS. History—New 9-26-77, Amended 12-18-83, Formerly 12C-1.51, Amended 12-21-88, 12-31-89, 1-31-91, 4-8-92, 12-7-92, 1-3-96, 3-18-96, 3-13-00, 6-19-01, 8-1-02, 6-19-03, 3-15-04, 9-24-04, 6-28-05, 5-1-06, 4-5-07, 1-1-08, 1-27-09, 1-11-10, 4-26-10(12)(a), (b), 4-26-10(13)(a), (b), 6-28-10, 1-12-11, 6-6-11, 1-25-12, 1-17-13, 3-12-14, 1-19-15, 1-11-16, 1-10-17, 1-17-18,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tammy Miller

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 14, 2018

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: July 2, 2018