

[REDACTED]

[REDACTED]

DEPARTMENT OF REVENUE

Corporate, Estate and Intangible Tax

RULE NOS.: RULE TITLES:

12C-1.01915 Credit for Qualified Railroad Reconstruction
or Replacement Expenditures

12C-1.051 Forms

PURPOSE AND EFFECT: The purpose of the creation of Rule 12C-1.01915, F.A.C., is to implement the Railroad Reconstruction or Replacement Expenditures Credit Program pursuant to s. 220.1915, F.S., as created by Section 32, Chapter 2022-97, L.O.F.

SUMMARY: Under s. 220.1915, F.S., a qualifying railroad is eligible for a credit against the tax imposed by Ch. 220, F.S., equal to 50 percent of a qualifying railroad's qualified

expenditures incurred in Florida for taxable years beginning on or after January 1, 2023. The amount of the credit may not exceed the product of \$3,500 and the number of miles of railroad track owned or leased within Florida by the qualifying railroad as of the end of the taxable year in which the qualified expenditures were incurred. Rule 12C-1.01915, F.A.C., is created to implement the provisions of s. 220.1915, F.S., to provide guidance to taxpayers on how they can apply for, transfer, and use the credit once it becomes effective. Revisions to Rule 12C-1.051, F.A.C., incorporate Form F-11915 (Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Application for Credit) and Form F-11915T (Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Notice of Intent to Transfer a Credit). To claim a tax credit, the railroad must meet the criteria specified in Section 220.1915(1) and (2), F.S.

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), 220.1915(7), 220.192(7), 220.193(4), 220.196(4), 220.198(6), 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, 220.1915, 220.193, 220.194, 220.195, 220.196, 220.198, 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: June 20, 2023, at 10:00 a.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 1220, Tallahassee, Florida. If a hearing is requested in writing, members of the public can also attend electronically via webinar; participants will need to register for the webinar using the following link: <https://attendee.gotowebinar.com/register/1648218938958755669>

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: Tonya Fulford at (850)717-6799. 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: Brinton Hevey, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-7754, email RuleComments@floridarevenue.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

12C-1.01915 Credit for Qualified Railroad Reconstruction or Replacement Expenditures.

(1) Definitions. For purposes of this rule, the following terms mean:

(a) "Credit" means the credit for qualified railroad reconstruction or replacement expenditures authorized under Section 220.1915, F.S.

(b) "Qualified expenditures" means gross expenditures made in Florida by a qualifying railroad during the taxable year in which the credit is claimed, provided such expenditures were made for track that was owned or leased by a qualifying railroad, and were:

1. For the maintenance, reconstruction, or replacement of railroad infrastructure, including track, roadbed, bridges, industrial leads and sidings, or track-related structures which were owned or leased by the qualifying railroad; or

2. For new construction by the qualifying railroad of industrial leads, switches, spurs and sidings, and extensions of existing sidings located in Florida.

(c) "Qualifying railroad" means any Class II or Class III railroad operating in Florida on the last day of the taxable year for which the credit is claimed, pursuant to the classifications

in effect for that year as set by the United States Surface Transportation Board or its successor.

(2) Available Credits for Qualifying Railroads. For taxable years beginning on or after January 1, 2023, a credit equal to 50 percent of a qualifying railroad's qualified expenditures incurred in Florida during a taxable year is available against the Florida corporate income tax imposed by Chapter 220, F.S. However, the amount of the credit may not exceed \$3,500 multiplied by the number of miles of railroad track owned or leased in Florida by the qualifying railroad as of the end of the taxable year in which the qualified expenditures were incurred.

(a) The amount taken as a credit must be added to taxable income prior to computing the tax imposed by Ch. 220, F.S.

(b) For purposes of computing the credit limitation, double track is treated as multiple lines of railroad track. One mile of single track is equal to one mile, but one mile of double track is equal to two miles.

(c) The credit is allowed only once for each mile of railroad track in Florida in each taxable year. No two qualifying railroads may claim the same mile of railroad track in a taxable year.

(3) Application Process. To apply for available program credits, a qualifying railroad must submit a Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Application for Credit (Form F-11915, incorporated by reference in Rule 12C-1.051, F.A.C.) to the Department each taxable year, along with documentation demonstrating that the qualifying railroad's qualified expenditures meet the criteria to receive credits.

(a) If the qualifying railroad earned a federal credit under 26 U.S.C. 45G during the taxable year, the supporting documentation must include federal Form 8900 (Qualified Railroad Track Maintenance Credit) or its equivalent.

(b) If the qualifying railroad is a taxpayer under Chapter 220, F.S., it must submit Form F-11915 when it files its Florida Corporate Income/Franchise Tax Return (Form F-1120, incorporated by reference in Rule 12C-1.051, F.A.C.).

(c) If the qualifying railroad is not a taxpayer under Chapter 220, F.S., it must submit Form F-11915 to the Department no later than May 1 of the calendar year following the year in which the qualified expenditures were made. If the May 1 due date falls on a Saturday, Sunday, or legal holiday, Form F-11915 will be considered timely if the form is postmarked or electronically submitted on the next succeeding day that is not a Saturday, Sunday, or legal holiday. The May 1 due date may not otherwise be extended.

1. Example: Qualifying railroad X is not a taxpayer under Chapter 220, F.S. Qualifying railroad X operates on a calendar year basis. X has qualified expenditures during calendar year 2023. X must apply for a credit by submitting Form F-11915 with the Department no later than May 1, 2024.

2. Example: Qualifying railroad Y is not a taxpayer under Chapter 220, F.S. Qualifying railroad Y operates on a fiscal year basis, with a January 31 year end. Y has qualified expenditures during the fiscal year beginning February 1, 2023, and ending January 31, 2024. Y must apply for a credit by submitting Form F-11915 with the Department no later than May 1, 2025.

(d) If the qualifying railroad is a disregarded entity for federal tax purposes, Form F-11915 must be submitted in the name of the owner of the disregarded entity.

(4) Determination of Carryforward or Transfer of Unused Credits. When a credit is not fully used during a taxable year, either because the qualifying railroad that earned the credit has insufficient tax liability or because the qualifying railroad is not a taxpayer under Chapter 220, F.S., the credit may be carried forward or may be transferred in accordance with subsection (5). The carryforward or transferred credit may be used in any of the 5 subsequent taxable years in which the credit was earned, when the tax imposed by Chapter 220, F.S., for that taxable year exceeds the credit for which the qualifying railroad or transferee is eligible in that taxable year, after applying the other credits and unused carryovers in the order provided by Section 220.02(8), F.S.

(a) If the qualifying railroad is a taxpayer under Chapter 220, F.S., the Department will notify the qualifying railroad by letter within 30 days after the receipt of a completed Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Application for Credit (Form F-11915), indicating the amount of credit that may be carried forward or transferred.

(b) If the qualifying railroad is not a taxpayer under Chapter 220, F.S., the Department will notify the qualifying railroad by letter within 30 days after the receipt of completed Form F-11915, indicating the amount of credit that may be transferred.

(c)1. Amounts that exceed the limitation of \$3,500 multiplied by the number of miles of railroad track owned or leased in Florida by the qualifying railroad as of the end of the taxable year in which the qualified expenditures were incurred, as provided in subsection (2), may not be carried forward to a subsequent taxable year or transferred.

2. Example: Qualifying railroad Corporation A is a taxpayer under Chapter 220, F.S., that incurs \$20,000 of qualified expenditures during its taxable year. Corporation A owns 2 miles of railroad track within Florida as of the end of its taxable year.

Corporation A's credit is equal to 50 percent of the \$20,000 qualified expenditures incurred in the taxable year but may not exceed \$3,500 multiplied by the number of miles owned or leased in Florida at the end of its taxable year.

Credit computation: 50% x \$20,000 = \$10,000 but may not exceed \$7,000 (\$3,500 x 2 miles of railroad track). Therefore, Corporation A receives a \$7,000 credit for qualified railroad reconstruction or replacement expenditures.

The amount of computed credit exceeding the limitation amount (\$3,000 = \$10,000 - \$7,000) cannot be used, carried forward, or transferred.

When it files its Florida Corporate Income/Franchise Tax Return (Form F-1120), Corporation A has \$5,000 tax due after application of all credits required to be claimed prior to application of the credit for qualified railroad reconstruction or replacement expenditures. Assuming the Department does not have to make any adjustments to Corporation A's Form F-1120, the Department will issue a letter to Corporation A indicating that the amount of credit available to carry forward or transfer is \$2,000 (\$7,000 - \$5,000).

(5) Transfer of credit. For taxable years beginning on or after January 1, 2023, an unused credit may be transferred. The transfer of a credit does not affect the time limit for taking the credit, and the credit is subject to the same limitations imposed on the transferor in accordance with subsection (4).

(a) Credits may be transferred to a taxpayer under Chapter 220, F.S., who also:

- 1. Transports property using the rail facilities of the qualifying railroad, or
- 2. Furnishes railroad-related property or services to any railroad operating in Florida, or
- 3. Is a Class II or Class III railroad.

(b) The transferor is required to notify the Department of a credit transfer by submitting a Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Notice of Intent to Transfer a Credit (Form F-11915T, incorporated by reference in Rule 12C-1.051, F.A.C.) to the Department within 30 days after the transfer. A separate notice must be submitted for each taxpayer receiving a transfer of credit.

(c) The Department will provide a letter to the transferor and transferee acknowledging the transfer of credit. The transferee must attach the letter to its Florida Corporate Income/Franchise Tax Return (Form F-1120) on which the credit is taken.

(6) Every taxpayer claiming a credit must retain documentation that substantiates and supports the credit until tax imposed by Chapter 220, F.S., may no longer be determined and assessed under Section 95.091(3) or Section 220.23, F.S. Documentation to substantiate and support the credit includes copies of: the completed credit application submitted to the Department; documentation related to any federal credit earned under 26 U.S.C. 45G; documentation related to any qualified expenditures incurred by the qualifying railroad, and the transfer letter issued by the Department reflecting the credit amount transferred.

Rulemaking Authority 213.06(1), 220.1915(7) FS. Law Implemented 220.02(8), 220.1915 FS. History—New X-X-23.

12C-1.051 Forms.

(1)(a) The following forms and instructions are used by the Department in its administration of the corporate income tax and franchise tax. These forms are hereby incorporated by reference in this rule.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department's website at www.floridarevenue.com/forms; or, 2) calling the Department at (850)488-6800, Monday through Friday, (excluding holidays); or, 3) ~~visiting any local Department of Revenue Service Center; or,~~ 4) writing the Florida Department of Revenue, Taxpayer Services, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112. Persons with hearing or speech impairments may call the Florida Relay Service at 1(800)955-8770 (Voice) and 1(800)955-8771 (TTY).

Form Number	Title	Effective Date
(2) through (10) No change		
(11)(a)	Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Application for Credit (R. XX/XX) (http://www.flrules.org/Gateway/reference.asp?No=Ref-_____)	XX/X X
(b)	F-Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Notice of Intent to Transfer a Credit (R. XX/XX) (http://www.flrules.org/Gateway/reference.asp?No=Ref-_____)	XX/X X
(11) through (15) Renumbered (12) through (16) No change.		

Rulemaking Authority 213.06(1), 220.1915(7), 220.192(7), 220.193(4), 220.196(4), 220.198(6), 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, 220.1915, 220.193, 220.194, 220.195, 220.196, 220.198, 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, 1-8-19, 12-12-19, 5-23-22, 1-1-23, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Brinton Hevey

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 23, 2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: March 30, 2023

[REDACTED]

[REDACTED]