

FLORIDA DEPARTMENT OF REVENUE

STATUS REPORT

Examination of the Impact of the Tax Cuts and Jobs Act of 2017

November 16, 2018 - Revised



**Status Report on the
Examination of the Impact of the Tax Cuts and Jobs Act of 2017
November 16, 2018**

I. Introduction

Pursuant to chapter 2018-119, Laws of Florida, this is the second status report prepared by the Department of Revenue outlining the activities that have taken place to 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 2018 Internal Revenue Code.

II. Overview

During the 2018 legislative session, the Florida Legislature recognized that federal tax law changes made by the Tax Cuts and Jobs Act of 2017 (Public Law 115-97) would have significant effects on Florida corporate income tax and taxpayers when it is fully implemented. To better understand these effects, the Department of Revenue was directed to 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 2018 Internal Revenue Code. Chapter 2018-119, Laws of Florida, provides guidance on how the examination is to be conducted and requires a final report to be submitted to the Governor, President of the Senate, Speaker of the House of Representatives, and the chairs of the appropriate legislative committees by February 1, 2019. The chapter law also requires the Department to provide status reports on August 3, 2018, and November 16, 2018, to the chairs of the appropriate legislative committees. The status reports are to include a brief description of the Department's activities as well as any relevant guidance issued by the Internal Revenue Service (IRS). The information provided below details the Department's activities thus far in examining the Tax Cuts and Jobs Act of 2017 and describes the processes that the Department has established to solicit and receive public input.

III. Process for Receiving Public Input

In accordance with the law, the Department has established a process to receive input from the public about the Tax Cuts and Jobs Act of 2017. The Department created a dedicated webpage that went live in April, floridarevenue.com/citreview. The webpage provides the public with multiple methods by which to provide comments, including a dedicated email address. The webpage also provides links to the law requiring the examination, Chapter 2018-119, Laws of Florida; the Tax Cuts and Jobs Act of 2017, Public Law No. 115-97; Florida's corporate income tax code, Chapter 220, Florida Statutes; and information from the IRS. The Department sent notices seeking public comment to the Florida Institute of Certified Public Accountants, the Tax Section of the Florida Bar, as well as through the Department's general tax information electronic notification lists. A notice was also published in the Florida Administrative Register on May 2, 2018. Various postings on the Department's website alert taxpayers to the project. The Department posts all public comments received on the webpage weekly. As of November 15, 2018, the Department has received 12* public comments.

IV. Process for Developing the Final Report

The Department has established a 14-member team, from various sections within the agency, to work on this project. The team includes attorneys from the General Counsel's Office, staff and managers from the General Tax Administration Program, Office of Technical Assistance

*Original version incorrectly stated 14 comments

and Dispute Resolution, Office of Tax Research, Office of Legislative and Cabinet Services, and the Executive Office.

In the August 3, 2018, status report, the Department identified 13 topics that have the potential to have significant impacts on Florida. The topics were identified based on information that was obtained during and after the legislative session. The Department's Office of Tax Research used the federal Joint Committee on Taxation's spreadsheet, which identified the estimated budget effects of the Tax Cuts and Jobs Act of 2017, as a starting point. The Department also reviewed a report published by the Council on State Taxation and the final House of Representatives legislative bill analysis on House Bill 7093 to determine possible topics with substantial impact to Florida. In October, the Department added an additional topic, Like-Kind Exchanges, and it is included in the information below. The Department is continuing to monitor and review IRS guidance and other information as it is released.

V. Topics Under Review and Relevant IRS Guidance

Listed below are the 14 topics that the Department has identified as having the potential to have significant impacts on Florida. For each topic, relevant IRS guidance that has been issued through November 15, 2018, has been identified. The Department is currently analyzing these topics and guidance to determine the potential effects of the Tax Cuts and Jobs Act of 2017 on the state corporate income tax structure and state revenues. The Department is also reviewing options for changes the Legislature could make to state tax law, which may be needed to integrate state law with federal law.

A. Treatment of Deferred Foreign Income Upon Transition to a Participation Exemption System of Taxation

The Tax Cuts and Jobs Act of 2017 amends Internal Revenue Code (IRC) section 965 to impose a one-time transition tax on deferred (untaxed) foreign income as if such income had been repatriated to the United States in the business's last tax year beginning before January 1, 2018.

Public Law 115-97 References: Section 14103

Internal Revenue Code References: Section 965

IRS Guidance as of July 31, 2018:

- Publication 5292, How to Calculate Section 965 Amounts and Elections Available to Taxpayers, <https://www.irs.gov/pub/irs-pdf/p5292.pdf>
- Questions and Answers about Reporting Related to Section 965 on 2017 Tax Returns, <https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns>
- Notice 2018-07, Guidance under Section 965, <https://www.irs.gov/pub/irs-drop/n-18-07.pdf>
- Notice 2018-13, Additional Guidance Under Section 965 and Guidance Under Sections 863 and 6038 in Connection with the Repeal of Section 958(b)(4), <https://www.irs.gov/pub/irs-drop/n-18-13.pdf>

- Notice 2018-26, Additional Guidance Under Section 965, Guidance Under Sections 62, 962, and 6081 in Connection with Section 965; and Penalty Relief Under Section 6654 and 6655 in Connection with Section 965 and Repeal of Section 958(b)(4), <https://www.irs.gov/pub/irs-drop/n-18-26.pdf>

- Revenue Procedure 2018-17, <https://www.irs.gov/pub/irs-drop/rp-18-17.pdf>

Florida Tax Information Publication: [18C01-01](#)

IRS Guidance Added Since August 3rd Status Report:

- Notice 2018-78, Additional Guidance Under Section 965, <https://www.irs.gov/pub/irs-drop/n-18-78.pdf>
- Revenue Procedure 2018-47, <https://www.irs.gov/pub/irs-drop/rp-18-47.pdf>
- REG-104226-18, Guidance Regarding the Transition Tax Under Section 965 and Related Provisions, <https://www.irs.gov/pub/irs-drop/reg-104226-18.pdf>

B. Repeal of Alternative Minimum Tax

The Tax Cuts and Jobs Act of 2017 repeals the federal corporate alternative minimum tax (AMT) for taxable years beginning after December 31, 2017. The Act also accelerates the use of previously earned federal AMT credits by not only allowing those credits to offset the regular federal corporate income tax liability, but also by allowing the credit to be refunded.

Public Law 115-97 References: Sections 12001, 12002

Internal Revenue Code References: Sections 53, 55, 56

IRS Guidance as of July 31, 2018:

- Effect of Sequestration on the Alternative Minimum Tax Credit for Corporations, March 28, 2018, <https://www.irs.gov/businesses/effect-of-sequestration-on-the-alternative-minimum-tax-credit-for-corporations>

IRS Guidance Added Since August 3rd Status Report: None as of November 15, 2018

C. Increases in the Section 179 Expense Amount

Taxpayers may elect to immediately expense certain business assets rather than depreciating them over time. The Tax Cuts and Jobs Act of 2017 amends IRC section 179, to increase the deduction from \$500,000 to \$1 million and the deduction phase-out from \$2 million to \$2.5 million.

Public Law 115-97 References: Sections 11002, 13101

Internal Revenue Code References: Section 179

IRS Guidance as of July 31, 2018:

- Fact Sheet FS-2018-9, April 2018, <https://www.irs.gov/newsroom/new-rules-and-limitations-for-depreciation-and-expensing-under-the-tax-cuts-and-jobs-act>
- IRS Tax Reform Tax Tip 2018-68, May 3, 2018, <https://www.irs.gov/newsroom/tax-reform-changes-to-depreciation-affect-businesses-now>

IRS Guidance Added Since August 3rd Status Report:

- Tax Cuts and Jobs Act: A comparison for businesses
<https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses>
- IRS Tax Reform Tax Tip 2018-177, November 15, 2018,
<https://www.irs.gov/newsroom/tax-reform-changes-depreciation-limits-on-luxury-automobiles>
- IRS Newswire 2018-223, November 15, 2018, <https://www.irs.gov/newsroom/new-tax-law-allows-small-businesses-to-expense-more-expands-bonus-depreciation>

D. Changes to the Net Operating Loss Deduction

The Tax Cuts and Jobs Act of 2017 amends IRC section 172 to eliminate the two-year net operating loss carryback for most taxpayers, extend the carryforward period indefinitely, and limit the amount of net operating loss deduction that may be claimed in each year to 80% of taxable income.

Public Law 115-97 References: Section 13302

Internal Revenue Code References: Section 172

IRS Guidance: None available as of July 31, 2018

IRS Guidance Added Since August 3rd Status Report: None as of November 15, 2018

E. Bonus Depreciation

The Tax Cuts and Jobs Act of 2017 extends and modifies the additional first-year bonus depreciation deduction through 2026 for most property acquired and placed in service after September 27, 2017. The 50% allowance is increased to 100% for property placed in service before January 1, 2023. After December 31, 2022, the 100% allowance is reduced by 20% per calendar year and eliminated in 2027.

Public Law 115-97 References: Section 13201

Internal Revenue Code References: Section 168(k)

IRS Guidance as of July 31, 2018:

- Fact Sheet FS-2018-9, April 2018, <https://www.irs.gov/newsroom/new-rules-and-limitations-for-depreciation-and-expensing-under-the-tax-cuts-and-jobs-act>
- IRS Tax Reform Tax Tip 2018-68, May 3, 2018, <https://www.irs.gov/newsroom/tax-reform-changes-to-depreciation-affect-businesses-now>
- Publication 946 (*How To Depreciate Property*), February 28, 2018, <https://www.irs.gov/pub/irs-pdf/p946.pdf>

IRS Guidance Added Since August 3rd Status Report:

- Revenue Procedure 2018-25, <https://www.irs.gov/pub/irs-drop/rp-18-25.pdf>
- IRS Newswire 2018-159, August 3, 2018, <https://www.irs.gov/newsroom/treasury-irs-issue-proposed-regulations-on-new-100-percent-depreciation>
- REG-104397-18, Additional First Year Depreciation Deduction, <https://www.gpo.gov/fdsys/pkg/FR-2018-08-08/pdf/2018-16716.pdf>
- IRS Newswire 2018-196, October 4, 2018, <https://www.irs.gov/newsroom/for-many-business-taxpayers-time-is-running-out-to-elect-out-of-new-100-percent-depreciation-deduction-for-2017>
- IRS Tax Tip 2018-157, October 10, 2018, <https://www.irs.gov/newsroom/new-100-percent-depreciation-deduction-benefits-business-taxpayers>
- Tax Cuts and Jobs Act: A comparison for businesses, <https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses>
- IRS Tax Reform Tax Tip 2018-177, November 15, 2018, <https://www.irs.gov/newsroom/tax-reform-changes-depreciation-limits-on-luxury-automobiles>
- IRS Newswire 2018-223, November 15, 2018, <https://www.irs.gov/newsroom/new-tax-law-allows-small-businesses-to-expense-more-expands-bonus-depreciation>

F. Repeal of the Deduction for Domestic Production Activities

Internal Revenue Code section 199 provided a reduced tax rate for income from certain domestic production activities. The Tax Cuts and Jobs Act of 2017 repeals the domestic production activities deduction for taxable years beginning after December 31, 2017.

Public Law 115-97 References: Section 13305

Internal Revenue Code References: Section 199

IRS Guidance: None available as of July 31, 2018

IRS Guidance Added Since August 3rd Status Report: None as of November 15, 2018

G. BEAT – Base Erosion Anti-Abuse Tax

The Tax Cuts and Jobs Act of 2017 creates a new base erosion and anti-abuse tax (BEAT) in IRC section 59A, which is a new minimum tax on large corporations with significant base erosion payments to related foreign parties. The BEAT tax is assessed in addition to the regular federal income tax and is calculated on payments made to related entities.

Public Law 115-97 References: Section 14401

Internal Revenue Code References: Section 59A

IRS Guidance: None available as of July 31, 2018

IRS Guidance Added Since August 3rd Status Report: None as of November 15, 2018

H. Amortization of Research and Experimental Expenditures

The Tax Cuts and Jobs Act of 2017 eliminates the current deduction for IRC section 174 expenditures and requires all domestic research expenditures to be amortized over a minimum of five years and for all foreign research expenditures to be amortized over a minimum of fifteen years. The Research and Development Credit is not affected by the Act.

Public Law 115-97 References: Section 13206

Internal Revenue Code References: Section 174

IRS Guidance: None available as of July 31, 2018

IRS Guidance Added Since August 3rd Status Report:

- Publication 535 (*Business Expenses*), March 16, 2018.
<https://www.irs.gov/pub/irs-pdf/p535.pdf>

I. Deduction for Dividends Received from Foreign Corporations

The Tax Cuts and Jobs Act of 2017 provides in IRC section 245A that a U.S. corporation that is a 10% or more owner of certain foreign corporations may claim a 100% dividends-received deduction for the foreign source portion of dividends received from that foreign corporation. The foreign dividends-received deduction is limited to domestic corporations (not including REITs or RICs) and may not be included in the computation of the foreign tax credit.

Public Law 115-97 References: Section 14101

Internal Revenue Code References: Section 245A

IRS Guidance: None available as of July 31, 2018

IRS Guidance Added Since August 3rd Status Report:

- Tax Reform Guidance for 1120 filers, <https://www.irs.gov/forms-pubs/tax-reform-guidance-for-1120-filers-09-apr-2018>

J. Global Intangible Low-Taxed Income

The Tax Cuts and Jobs Act of 2017 creates IRC section 951A, which imposes a tax on the global intangible low-taxed income (GILTI) of certain U.S. taxpayers and their affiliates for tax years beginning on or after January 1, 2018. GILTI is included in a company's gross income and generally treated in a manner similar to Subpart F income, with certain deductions and exemptions.

Public Law 115-97 References: Section 14201

Internal Revenue Code References: Section 951A

IRS Guidance: None available as of July 31, 2018

IRS Guidance Added Since August 3rd Status Report:

- REG-104390-18, Guidance Related to Section 951A (Global Intangible Low-Taxed Income), <https://www.irs.gov/pub/irs-drop/reg-104390-18.pdf>
- IRS Newswire 2018-186, September 13, 2018, <https://www.irs.gov/newsroom/irs-issues-proposed-regulations-on-global-intangible-low-taxed-income-for-us-shareholders>
- Revenue Procedure 2018-48, <https://www.irs.gov/pub/irs-drop/rp-18-48.pdf>

K. Deduction for Foreign Derived Intangible Income

The Tax Cuts and Jobs Act of 2017 creates a new provision in IRC section 250 that gives domestic corporations reduced rates of U.S. tax on their foreign-derived intangible income. It provides a lower effective tax rate on high-returns related to foreign sales. The calculation is similar to GILTI in that returns in excess of 10% of fixed assets form the basis of the calculation.

This is achieved by providing domestic corporations a deduction against foreign-derived intangible income (subject to certain limitations) of 37.5% initially, reduced to 21.875% for tax years beginning after 2025. At a 21% corporate tax rate, the deduction results in effective rates of 13.125% and 16.40625% respectively. IRC section 250 also provides a subtraction for 50% of GILTI and for 50% of IRC section 78 dividends.

Public Law 115-97 References: Section 14202

Internal Revenue Code References: Section 250

IRS Guidance: None available as of July 31, 2018

IRS Guidance Added Since August 3rd Status Report: None as of November 15, 2018

L. Net Interest Deduction

The deduction for interest expenses is limited to 30% of “adjusted taxable income” (ATI) plus business interest income, with special elections available for real property trades and businesses. For the first four years after the enactment of the Tax Cuts and Jobs Act of 2017, ATI is computed without subtracting depreciation, amortization, or depletion in addition to interest and taxes. Beginning in 2022, ATI will be decreased by depreciation, amortization, or depletion, thus making the computation 30% of net interest expense exceeding earnings before interest and taxes.

Public Law 115-97 References: Section 13301

Internal Revenue Code References: Section 163(j)

IRS Guidance as of July 31, 2018:

- Notice 2018-28, Initial Guidance Under Section 163(j) as Applicable to Taxable Years Beginning After December 31, 2017, April 2, 2018, <https://www.irs.gov/pub/irs-drop/n-18-28.pdf>

IRS Guidance Added Since August 3rd Status Report:

- IRS Newswire 2018-82, April 2, 2018, <https://www.irs.gov/newsroom/irs-issues-guidance-on-business-interest-expense-limitations>
- Tax Cuts and Jobs Act: A comparison for businesses <https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses>

M. Changes to the Treatment of Capital Contributions

The Tax Cuts and Jobs Act of 2017 amends IRC section 118 to provide that certain federal, state, and local incentives used to attract companies are treated as current taxable income to those businesses, rather than deferred capital contributions.

Public Law 115-97 References: Section 13312

Internal Revenue Code References: Section 118

IRS Guidance: None available as of July 31, 2018

IRS Guidance Added Since August 3rd Status Report: None as of November 15, 2018

N. Like-Kind Exchanges (Topic Added October 2018)

The Tax Cuts and Jobs Act amends Internal Revenue Code section 1031 to limit the nonrecognition of gain in like-kind exchanges to exchanges of real property not held primarily for sale. As under pre-enactment law, real property located in the U.S. is not considered like-kind to real property located outside the U.S. Effective January 1, 2018, exchanges of machinery, equipment, vehicles, artwork, collectibles, patents and other intellectual property, and intangible business assets no longer qualify for like-kind exchange treatment.

Public Law 115-97 References: Section 13303

Internal Revenue Code References: Section 1031

IRS Guidance:

- <https://www.irs.gov/newsroom/like-kind-exchanges-under-irc-code-section-1031>
- <https://www.irs.gov/businesses/small-businesses-self-employed/like-kind-exchanges-real-estate-tax-tips>
- Publication 544 (Sales and Other Dispositions of Assets), March 13, 2018.
<https://www.irs.gov/pub/irs-pdf/p544.pdf>
- Publication 946 (How To Depreciate Property), February 28, 2018.
<https://www.irs.gov/pub/irs-pdf/p946.pdf>
- Tax Cuts and Jobs Act: A comparison for businesses
<https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses>

VI. Consultation with the Revenue Estimating Conference

On July 13, 2018, the Department consulted with members of the Revenue Estimating Conference to discuss the development of the required reports.

VII. Public Workshops

In accordance with the law, the Department held two public workshops to gather input and comments from the public. Information regarding each of those workshops is provided below.

August 22, 2018 Public Workshop:

The Department of Revenue held a public meeting in Tallahassee at 9:00 a.m. on August 22, 2018, to allow interested parties to present comments on the impact of the Tax Cuts and Jobs Act of 2017 on the Florida Corporate Income Tax and on Florida businesses. A webinar was available for those who wished to participate from remote locations. Twelve members of the public signed in for the meeting and forty people registered and attended via webinar.

The thirteen topics currently identified by the CIT Review team were introduced and members of the public were invited to provide comments after each topic. Three topics received public comments: Global Intangible Low-Taxed Income; Net Interest Deduction; and Treatment of Deferred Foreign Income Upon a Transition to a Participation Exemption System of Taxation. An additional public comment was provided, suggesting the Department should consider the issue of decoupling from the federal law on the topic of federal taxation of FDIC premiums.

A full meeting transcript along with other meeting materials and a meeting summary are available on CIT webpage.

October 24, 2018 Public Workshop:

The Department of Revenue held a public meeting in Tallahassee at 9:00 a.m. on October 24, 2018, to allow interested parties to present comments on the impact of the Tax Cuts and Jobs Act of 2017 on the Florida Corporate Income Tax and on Florida businesses. A webinar was available for those who wished to participate from remote locations. Ten members of the public signed in for the meeting and twenty-four people registered and attended via webinar.

The moderator explained that the CIT Review team had identified an additional topic, Like-Kind Exchanges, and that the topic would be introduced first and members of the public were invited to provide comments. The other thirteen topics followed, and the public was invited to comment after each topic's introduction. The topics receiving public comment were: Like-Kind Exchanges; Global Intangible Low-Taxed Income; Net Interest Deduction; and Changes to the Treatment of Capital Contributions. A few other comments unrelated to a specific topic were also received.

A full meeting transcript along with other meeting materials and a meeting summary are available on CIT webpage.