



## **Changes to Corporate Income Tax and Emergency Excise Tax**

*Please note the effective date of each change made to the corporate income tax and emergency excise tax.*

### **2011 Internal Revenue Code Piggyback**

#### **Florida Adjustments for Special Bonus Depreciation and Section 179 Expense**

Every year, the Florida Legislature adopts the current Internal Revenue Code (IRC) so certain tax definitions and the calculation of adjusted federal income are consistent between the IRC and the Florida Income Tax Code (Chapter 220, Florida Statutes [F.S.]). The Florida corporate income tax “piggybacks” federal income tax determinations and uses adjusted federal income as the starting point for computing Florida net income.

In 2010, Congress passed two acts that affected the Internal Revenue Code – the Small Business Jobs Act of 2010 (“SBJA”) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (“TUJA”). These acts allow corporations to take an additional depreciation deduction equal to:

- 50 percent (50%) of the cost of business property placed in service between January 1 and September 8, 2010.
- 100 percent (100%) of the cost of business property placed in service between September 9, 2010, and December 31, 2011.
- 50 percent (50%) of the cost of business property placed in service during 2012.

These acts also allow corporations to immediately expense new depreciable business property valued in total up to:

- \$500,000 placed in service for tax years that begin in 2010.
- \$500,000 for tax years that begin in 2011.
- \$125,000 for tax years that begin in 2012.

Chapter 2011-229, Laws of Florida, amends the Florida Income Tax Code to adopt the Internal Revenue Code, retroactive to January 1, 2011. This means taxpayers filing Florida returns during 2011 will continue to use adjusted federal income as the starting point in computing their Florida corporate income tax. However, the Legislature did not adopt the federal bonus depreciation and enhanced expensing provisions contained in the SBJA and TUJA. The Florida Legislature extended current statutory provisions to decouple from similar bonus depreciation and enhanced expensing provisions (those passed by Congress in the Federal Economic Stimulus Act of 2008 and the American Recovery and Reinvestment Act of 2009) granted by SBJA and TUJA.

Chapter 2011-229, Laws of Florida, amended section 220.13(1)(e), F.S., to require additional adjustments for the special bonus depreciation (property placed in service after December 31, 2007 and before January 1, 2013) and excess section 179 expense (tax years beginning after December 31, 2007 and before January 1, 2013).

First, the 2011 Florida Legislature amended section 220.13(1)(e), F.S., to require corporate taxpayers to add back to adjusted federal income:

- (1) The special 50 percent (50%) bonus depreciation for assets placed in service between January 1 and September 8, 2010.

- (2) The 100 percent (100%) bonus depreciation for assets placed in service after September 8, 2010, through December 31, 2011.
- (3) The 50 percent (50%) bonus depreciation for assets placed in service in 2012.

Section 220.13(1)(e), F.S., was also amended to provide a corresponding subtraction taken equally over a seven-year period in the amount of the special bonus depreciation that must be added back to adjusted federal income, beginning with the year the addition occurs.

Second, section 220.13(1)(e), F.S., was amended to require corporate taxpayers claiming a deduction under section 179 of the Internal Revenue Code to add back to adjusted federal income those amounts that exceed specified dollar limits for tax years beginning in 2008, 2009, 2010, or 2011. All amounts in excess of: \$128,000 for tax years beginning in 2008 and 2009, \$250,000 for tax years beginning in 2010, and \$128,000 for tax years beginning in 2011 must be added back, including amounts carried over from previous tax years under section 179(b)(3)(B) IRC. There is a corresponding subtraction taken equally over a seven-year period in the amount of the excess section 179 expense that must be added back to adjusted federal income.

- If a corporation acquires or merges with another corporation, the acquiring corporation may claim the subtractions allowed under section 220.13(1)(e), F.S., in the same manner and to the same extent as the original corporation. In addition, if a corporate taxpayer has a net operating loss in a tax year when it is entitled to claim a subtraction, it is allowed to increase its net operating loss by the amount of the subtraction. However, if a corporate taxpayer ceases to do business, it may not transfer or otherwise use a subtraction.
- The basis of assets subject to the additions and subtractions under section 220.13(1)(e), F.S., is the same for federal and Florida corporate income tax purposes. Therefore, even though the underlying asset(s) may have been sold, fully depreciated, or otherwise disposed of, corporate taxpayers continue to claim the subtractions over the seven-year period. There is no separate Florida basis adjustment for assets subject to section 220.13(1)(e), F.S., since the effect of the addition(s) is recovered through the subtraction mechanism(s). The amount of the subtractions claimed over a seven-year period equals, but cannot exceed, the amounts required to be added back. Differences in the apportionment fraction from one year to the next are disregarded. The applicable depreciation conventions, methods, and recovery periods are the same as for federal purposes.
- Congress increased the investment limit amount under section 179(b)(2) IRC to \$2 million (for tax years beginning in 2010 and 2011) and \$500,000 (for tax years beginning in 2012). Florida follows the federal limits contained in section 179(b)(2) IRC and allows the increased \$2 million investment limitation (for tax years beginning in 2010 and 2011) and \$500,000 investment limit (for tax years beginning in 2012). Similarly, if a taxpayer is allowed to carry over a disallowed deduction on its federal return under section 179(b)(3)(B) IRC (relating to expenses in excess of the taxable income of an active trade or business), section 220.13(1)(e), F.S., allows that carryover, subject to the overall limit of \$128,000 (for tax years beginning in 2008, 2009, and 2011) and \$250,000 (for tax years beginning in 2010).
- The addition and subtraction adjustments required by section 220.13(1)(e), F.S., for the special bonus depreciation apply to assets placed in service during the 2008 through 2012 calendar years and for section 179 expense in excess of \$128,000 (for tax years beginning in 2008, 2009, and 2011) and \$250,000 (for tax years beginning in 2010) that were claimed on the related federal return. If a taxpayer does not claim the special bonus depreciation on its federal return and does not expense more than \$128,000 (for tax years beginning in 2008, 2009, and 2011) or \$250,000 (for tax years beginning in 2010) in IRC section 179 assets for those periods on the related federal return, no addition is required and no subtraction is allowed for those amounts. Similarly, if a taxpayer was not subject to the Florida corporate income tax or did not add back special bonus depreciation or IRC section 179 expense, no subtraction is allowed for Florida corporate income tax purposes.

- Corporate taxpayers must create and maintain a schedule reflecting all the adjustments made under section 220.13(1)(e), F.S. The schedule must specify the type and amount of the original addition(s) and show all subsequent subtractions by tax year. Taxpayers must also report any additions on Schedule I and subtractions on Schedule II of the Florida corporate income tax return (Florida Form F-1120) for the current tax year. The additions for the 2010 tax year should be reported on the other additions line, Florida Form F-1120, Schedule I, line 15.
- Taxpayers that have already filed a corporate tax return covering assets placed in service during 2010 or 2011, or tax years beginning during 2010 or 2011, are required to amend their Florida corporate income tax return to conform to the new law. To the extent that any tax is due and paid as a result of the difference between the special bonus depreciation (related to business assets placed in service in 2010 or 2011) and section 179 expense (for tax years beginning in 2010 or 2011) deductible under the new law and special bonus depreciation and section 179 expense deducted on the originally filed return, the Department will work with taxpayers on penalties related to these issues.

See Sections 1 and 2, Chapter 2011-229, Laws of Florida (HB 7185) for more information.

### **Increase in Exemption**

Effective for tax years beginning on or after January 1, 2012, the Florida corporate income tax exemption was increased from \$5,000 to \$25,000. This will eliminate the tax on corporations with \$25,000 or less in Florida income. However, this does not change the corporate income tax return filing requirements, and all corporations are still required to file Florida corporate income tax returns. See Sections 5 and 6, Chapter 2011-229, Laws of Florida (HB 7185) for more information.

### **Limited Election to Use Single Sales Factor Apportionment**

An election to use only the Florida sales factor in tax years beginning on or after January 1, 2013, is provided to taxpayers approved by the Office of Tourism, Trade, and Economic Development (will soon be part of the newly formed Department of Economic Opportunity) to apportion their income using this method. One of the requirements is the taxpayer must make a capital investment of \$250 million in Florida within a two-year period beginning on or after July 1, 2011.

In order to make this election, the taxpayer must attach a copy of the Office of Tourism, Trade, and Economic Development (Department of Economic Opportunity) approval/certification letter to its corporate income tax return filed with the Department. The election is valid for the tax year. The taxpayer may choose to use the single sales factor apportionment or standard apportionment for each tax year thereafter. See Sections 9 - 11, Chapter 2011-76, Laws of Florida (HB 143) for more information.

### **Corporate Income Tax Credits for Spaceflight Projects**

Effective for tax years beginning on or after October 1, 2015, spaceflight businesses that meet specified job creation and investment requirements and are certified by the Office of Tourism, Trade, and Economic Development (Department of Economic Opportunity), may claim:

- A nontransferable corporate income tax credit equal to 50 percent (50%) of the certified spaceflight business's corporate income tax liability.
- A transferable corporate income tax credit in exchange for the certified spaceflight business's net operating loss occurring after July 1, 2011. The business must treat any funds obtained from selling the credit as non-business income allocated to Florida. A certified spaceflight business is limited to the creation of \$2.5 million in credit. There are a total of \$7 million in tax credits available for this conversion. No credits may be obtained after October 1, 2017.

In order to claim these credits, the taxpayer or transferee must attach a copy of the Office of Tourism, Trade, and Economic Development (Department of Economic Opportunity) approval/certification letter to its corporate income tax return filed with the Department.

See Sections 14 and 15, Chapter 2011-76, Laws of Florida (HB 143) for more information.

### **Research and Development Tax Credit**

In tax years beginning on or after January 1, 2012, corporations that are allowed the federal credit for qualified research expenses under 26 U.S.C. s. 41, and claim that credit, may apply to the Department of Revenue on or after March 20 of each year (beginning March 20, 2013) to receive a credit against the Florida corporate income tax equal to 10 percent (10%) of the excess qualified research expenses in Florida that exceeds the average Florida qualified research expenses allowed for the previous four (4) tax years (base amount), but the amount of credit taken in any taxable year shall not exceed 50 percent (50%) of the taxpayer's income tax liability after claiming all other credits for which it is eligible. The total amount of tax credits that may be granted by the Department is \$9 million per calendar year.

The law also:

- Allows for a credit carry forward of five (5) years for any unused credit remaining.
- Requires a re-computation and repayment of the credit amount, plus interest, when a corporation's qualified research expenses are reduced as a result of a federal audit or examination.

See Section 17, Chapter 2011-76, Laws of Florida (HB 143) for more information.

### **Entertainment Industry Financial Incentive Program**

Effective July 1, 2011, taxpayers that received an entertainment industry financial incentive program credit by transfer from a certified production company (initial transferees) may subsequently transfer the credit one time to no more than two additional transferees. The transfers must occur in the same year the credit was received by transfer from the certified production company. The subsequent transferees are subject to the same rights and limitations as the certified production company awarded the credit.

A taxpayer that receives an entertainment industry financial incentive program credit by transfer from an entity other than the certified production company may not sell or otherwise transfer the credit. Application to make any transfer of an entertainment industry financial incentive program credit must be made to the Governor's Office of Film and Entertainment and approved by the Office of Tourism, Trade, and Economic Development (Department of Economic Opportunity). See Section 26, Chapter 2011-76, Laws of Florida (HB 143) for more information.

### **Repeal of the Emergency Excise Tax**

For tax years ending on or after January 1, 2012, the emergency excise tax imposed under Chapter 221, F.S., and all references to the emergency excise tax imposed under Chapter 221, F.S., are repealed. See Sections 2, 3, 6, 8, and 18 - 22, Chapter 2011-76, Laws of Florida (HB 143) for more information.

### **Emergency Excise Tax Credit**

Beginning with corporate tax years ending in 2012, the emergency excise tax credit is modified to allow a taxpayer to claim all of its existing emergency excise tax credit at one time. If the credit cannot be fully claimed due to insufficient tax liability, it may be carried forward for up to five (5) years.

The emergency excise tax credit provision of section 221.02, F.S., is repealed. See Section 16, Chapter 2011-76, Laws of Florida (HB 143) for more information.

## **Capital Investment Tax Credit**

Effective July 1, 2011, taxpayers approved for a 100 percent (100%) credit for a qualifying project resulting in a cumulative investment of at least \$100 million may claim unused credit beginning in the 21<sup>st</sup> year and ending in the 30<sup>th</sup> year after the start of operations of the project. Only unused credits resulting from insufficient tax liability on the part of the qualifying business are eligible.

See Section 1, Chapter 2011-223, Laws of Florida (HB 879) for more information.

## **Florida Tax Credit Scholarship Program**

For tax years ending on or after July 1, 2011, the 75 percent (75%) limitation on the amount of tax credit that may be claimed against the tax for contributions to nonprofit scholarship-funding organizations is removed. A taxpayer will be able to claim a credit up to the amount of its total liability.

Effective July 1, 2011, the limitation on previously rescinded credits is removed.

Effective July 1, 2011, the credit carry forward provision is expanded from three (3) years to five (5) years. Therefore, any amount of unused scholarship credit available for carryover as of July 1, 2011 (generally, credits originating in tax years ending on or after July 1, 2008), may now be carried forward for a total of five (5) years. See Sections 1 and 3, Chapter 2011-123, Laws of Florida (HB 965) for more information.

Example: A credit unused for the tax year ending December 31, 2009, may now be carried forward to the tax year ending December 31, 2014, instead of the tax year ending December 31, 2012.

## **Energy Economic Zone Pilot Program**

Effective July 1, 2012, Enterprise Zone Program incentives available under Chapters 212 and 220, F.S., will also be available to eligible businesses located in energy economic zones. A separate Tax Information Publication (TIP) will further address the incentives available in the two energy economic zones. See Section 3, Chapter 2011-223, Laws of Florida (HB 879) for more information.

## **Florida Statute References**

This tax information publication references sections 220.02, 220.03, 220.13, 220.131, 220.14, 220.15, 220.153, 220.16, 220.1845, 220.1875, 220.191, 220.194, 220.195, 220.196, 220.63, 220.801, 288.1254, and 1002.395, Florida Statutes (2011); Chapter 221, Florida Statutes (2011); and Laws of Florida, as cited previously.

## **For More Information**

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