

FLORIDA DEPARTMENT OF REVENUE

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

February 1, 2019



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I. Overview

A. Introduction

On December 22, 2017, major federal tax reform legislation, known as the Tax Cuts and Jobs Act (TCJA), was signed into law by the President.¹ The TCJA makes substantial and broad changes to the Internal Revenue Code of 1986 (IRC).² These changes affect the taxation of individuals and businesses. Florida does not have a personal (individual) income tax. However, the changes will significantly affect Florida corporate income tax³ and corporate taxpayers when it is fully implemented.

Changes to federal corporate income tax are important since Florida piggybacks the IRC. The Florida Legislature updates its utilization of the IRC by adopting the code as it exists on January 1 in any given year.⁴ Generally, federal taxable income from Line 30 of the federal corporate income tax form, IRS form 1120, is the starting point for calculating Florida corporate income tax.⁵ Therefore, any federal changes that affect the computation of federal taxable income automatically flow into the computation of Florida corporate income tax.⁶

To calculate the Florida corporate income tax due, federal taxable income is modified by applying certain additions, subtractions and certain other adjustments.⁷ These modifications adjust taxable income for state corporate income tax purposes and reflect provisions or treatments that the state has chosen to treat differently.⁸ After the additions, subtractions, and any necessary adjustments are made, the resulting adjusted federal income is apportioned.⁹ There must also be a determination of whether there is any nonbusiness income and if so, how to allocate this income.¹⁰ Net income is computed by adding the amount of adjusted federal income apportioned to Florida and any nonbusiness income allocated to Florida, then reducing that sum by up to \$50,000

¹ Public Law No. 115-97, H.R.1 (December 22, 2017). The act, titled “An Act To Provide for reconciliation pursuant to Titles II and V of the concurrent resolution on the budget for fiscal year 2018,” was originally introduced as the Tax Cuts and Jobs Act.

² Title 26, United States Code

³ Chapter 220, Florida Statutes (F.S.)

⁴ s. 220.03, F.S.

⁵ When filing a Florida corporate income tax return, the first line on the Florida return is “Federal Taxable Income,” which for many taxpayers is taken directly from Line 30 of the federal corporate income tax return, Form 1120. See Form F-1120N, Instructions for Corporate Income/Franchise Tax Return for Taxable Years Beginning on or after January 1, 2018, incorporated by reference in Rule 12C-1.051, Florida Administrative Code (F.A.C.)

⁶ This integration with federal corporate income tax law is intended to minimize difficulties of taxpayer compliance and minimize difficulties in administering the state corporate income tax code by the Department of Revenue. See s. 220.02(3), F.S., regarding legislative intent.

⁷ s. 220.13, F.S.

⁸ For example, s. 220.13(1)(b)2., F.S., provides subtractions for certain foreign derived income. This provision is consistent with the United States Supreme Court’s decision in Kraft General Foods, Inc. v. Iowa Department of Revenue, 505 U.S. 71 (1992).

⁹ s. 220.15, F.S.

¹⁰ s. 220.16, F.S.

or the exemption.¹¹ Finally, net income is subject to the state corporate income tax rate of 5.5 percent.¹²

During the 2018 Legislative Session, the Florida Legislature determined that a closer look at the significant changes to federal corporate income tax provisions made by the Tax Cuts and Jobs Act was needed to better understand the effects on the state corporate income tax and on the state's corporate taxpayers. As such, Section 3 of Chapter 2018-119, Laws of Florida, charged the Department with the task of examining how the federal law changes will affect the state corporate income tax as a result of the Florida Legislature adopting the 2018 Internal Revenue Code. A final report of its findings is due to the Governor, President of the Senate, Speaker of the House of Representatives, and the chairs of appropriate legislative committees by February 1, 2019.

B. Requirements of Chapter 2018-119, Laws of Florida

Pursuant to Chapter 2018-119, Laws of Florida, the Department was required to examine the effect the TCJA will have on Florida corporate income tax as a result of the state's adoption of the Internal Revenue Code. The law also specified the information to be included in the final report and provided guidance to the Department on conducting the examination.

The report must include a discussion of the potential effects of the TCJA, including effects on structure and revenue; options for integration of state law with federal law; estimates of potential fiscal impacts for each option; and a compilation of all public input received.

The Department was also directed to monitor guidance provided by the Internal Revenue Service (IRS), other tax authorities, and advisory groups; and conduct at least two public workshops to gather public input. Additionally, the Department was required to develop a process outside of the workshops to receive public input.

The Department held public workshops to gather public input on August 22, 2018, and October 24, 2018. Participants attended both electronically and in person and comments were received on several topics. In accordance with the law, the Department created a dedicated webpage to collect comments and any additional input from the public about the TCJA. The webpage went live in April 2018. The webpage provided the public with multiple methods of providing comments, including a dedicated email address. A total of 13 public comments were received through the Department's dedicated website. Transcripts of the public meetings and copies of comments received are included in the report's appendix. IRS guidance issued through December 14, 2018, has been listed for each of the main topics addressed in the report.

¹¹ s. 220.14, F.S.

¹² s. 220.11(2), F.S.

Status reports were provided to the chairs of appropriate legislative committees on August 3 and November 16, 2018, as required. These status reports provided an overview of the project and actions taken by the Department, as well as preliminary identification of the substantive topics to be analyzed by the Department in the final report. The Department consulted with the Revenue Estimating Conference on the development of the required reports.

C. Final Report Development

The Department established a 14-member team, from various sections within the agency, to work on this project. The team included attorneys from the General Counsel's Office, staff and managers from the General Tax Administration Program, Office of Technical Assistance and Dispute Resolution, Office of Tax Research, Office of Legislative and Cabinet Services, and the Executive Office. The Department identified topics that have the potential to have the most significant impacts on Florida corporate income tax. The topics were identified based on information that was obtained during and after the 2018 legislative session as well as from public comments and other tax authorities.

The Department used the federal Joint Committee on Taxation's publication JCX-67-17, which identified the estimated federal budget effects of the TCJA, as a starting point.¹³ The Department also reviewed a report published by the Council on State Taxation and the final Florida House of Representatives legislative bill analysis on House Bill 7093 to determine possible topics with substantial impact on Florida corporate income tax. Weekly meetings were held to review and discuss possible topics, analyses, fiscal reports, IRS guidance, as well as, external comments and articles available through December 14, 2018.

Fourteen topics with significant impact on Florida corporate income tax have been identified. For each topic, the Department prepared an in-depth analysis that includes IRS guidance; public comments; citations; and the potential effect on state revenues along with other pertinent information. Three other topics that received public comment are also briefly discussed in the report. Section IV of the report contains information by subject area regarding other provisions in the Tax Cuts and Jobs Act. Provided for each subject area is a list of IRC citations, a summary of the federal changes with effective dates, IRS guidance and other information.

D. Limitations of the Report

The Department used its knowledge and experience, along with other available information, to evaluate the impact of the TCJA on Florida corporate income tax. Many of the TCJA's provisions are highly complex and may result in unexpected impacts that cannot be predicted at this time. It is also possible that new or subsequent guidance

¹³ Publication JCX-67-17 Estimated Budget Effects of the Conference Agreement for H.R. 1, The "Tax Cuts and Jobs Act" by United States Congress Joint Committee of Taxation (JCT) - December 18, 2017.

from the IRS could alter the analyses provided in the report. The report is not intended to provide specific tax guidance for individual taxpayers, but rather general guidance on the TCJA in relation to Florida corporate income tax. To complete the report in the timeframe allotted, the Department focused on those topics with the potential to have the most significant impacts on Florida corporate income tax. An in-depth analysis of 14 topics is included in this report based on the best information available to the Department as of December 14, 2018. Conclusions in this document are subject to revision as additional information becomes available.

E. Fiscal Impact Methodology

In this report, the Department provides estimates of the fiscal impacts of certain provisions of the Tax Cuts and Jobs Act on Florida's Corporate Income Tax (CIT) revenues. The Department used the federal Joint Committee on Taxation's (JCT) publication JCX-67-17, which identified the estimated federal budget effects of the Tax Cuts and Jobs Act, as a starting point.¹⁴

The JCT staff produced a comprehensive analysis of the various provisions of the Tax Cuts and Jobs Act and identified federal impacts for many of the provisions. The JCT analysis provides three sections that focus on changes to individual tax provisions; changes to business tax provisions; and changes to international tax provisions. The JCT estimates are allocated across ten federal fiscal years from 2018-19 to 2027-28.

Since the impacts were provided in terms of federal revenues, transformations to the JCT data were necessary in order to use the JCT analysis to estimate the impact of the federal law changes to Florida's corporate income tax. Certain provisions were identified in conversations with JCT staff as affecting both federal corporate income tax and individual income tax. JCT staff provided the percentage split for those provisions, as well as the effective tax rate of 19 percent for individual income tax. An additional transformation was made to convert federal revenue impacts to federal taxable base impacts by dividing federal revenue impacts by the new federal corporate income tax rate of 21 percent. These splits and effective rates were used to convert revenue impacts into taxable base income impacts. These transformations take place in lines 2 and 3, respectively, in the issue-specific analyses.

For most taxpayers the starting point for Florida corporate income tax is line 30 of federal form 1120. Generally, Florida is considered a "piggyback" state as the Florida income tax code incorporates much of the federal income tax code. This relationship between the Florida and the federal income tax code allows for a consistent estimation of impacts by assuming a constant share of federal impacts for Florida. To develop the constant share, the following formula was used:

¹⁴ Publication JCX-67-17 Estimated Budget Effects of the Conference Agreement for H.R. 1, The "Tax Cuts and Jobs Act" by United States Congress Joint Committee of Taxation (JCT) - December 18, 2017.

$$AVG \left(\frac{\left(\frac{\text{Florida CIT Net Receipts}_{1998-2017}}{5.5\% \text{ (Florida Stated Rate)}} \right)}{\left(\frac{\text{Federal CIT Receipts}_{1998-2017}}{35\% \text{ (Federal Stated Rate)}} \right)} \right)$$

Over the twenty-year period, the average constant share was 3.6 percent (Table X1). Once the base impacts were allocated to Florida using the 3.6 percent share, the 5.5 percent Florida CIT rate was applied to estimate Florida revenue impacts.

Since the federal fiscal year is October 1 to September 30 and the Florida fiscal year is July 1 to June 30, JCT impacts were converted to reflect the different fiscal years. To make this conversion, the Florida corporate income tax collections by month were examined over the period covering the 2011 to 2016 calendar years. The average annual percent of total collections for the months of July, August, and September was 21.04% over the period from July 2009 to June 2018 (Table X2). This share was used to convert federal fiscal years to state fiscal years under the assumption that federal receipts would have the same percentage share of total collections as Florida does for this three-month period.

The methodology above was used to estimate the provisions of the Tax Cuts and Jobs Act analyzed in this report, excluding the alternative minimum tax. For bonus depreciation and the alternative minimum tax, the use of this method to analyze fiscal impact does not result in a fair estimate of the impact to Florida. For bonus depreciation, this is because Florida decoupled from federal bonus depreciation; for the alternative minimum tax, this is because Florida's alternative minimum tax is calculated in a manner that does not result in an apportioned share of the federal alternative minimum tax for Florida. The JCT methodology is presented for the bonus depreciation analysis, but readers should consider the discussion in the fiscal impact section regarding how to interpret the analysis.

The methodology used in this report was also similarly used during the 2018 Legislative Session to illustrate possible Florida revenue impacts of adopting the provisions of the Tax Cuts and Jobs Act at the request of Florida's Revenue Estimating Conference (REC). In the REC workpapers, the following assertions¹⁵ were outlined that the REC would have to make to adopt point estimates for the impact of conforming to the federal law changes enacted in the Tax Cuts and Jobs Act:

1. The JCT analysis reasonably estimates the impacts at the federal level and applied approximately the same standards that the REC would use.
2. The application of a 3.6% share of the federal CIT tax base provides a reasonably correct representation of Florida.

¹⁵ The REC workpapers are available online at:
http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page580-589.pdf

3. The tax provisions retained at a 100% flow-through from the federal tax base to the state's portion are, in fact, 100% and not something lower.
4. For those tax provisions affecting the treatment of foreign-related income, the impacts are appropriately shared to Florida. Moreover, there are no constitutional restrictions that prevent an impact from occurring in Florida.
5. There will be no material tax planning response to the CIT tax changes. In this regard, it is important to note that the federal changes will have behavioral ramifications at the federal level, across the multiple states that have CIT, and within Florida. Some of these effects will be interactive. As corporations consider strategies for tax minimization, it is unclear what changes will occur between states.
6. For those instances where federal policies need to be developed but the development has not yet occurred, the final results will not materially alter the understanding the REC currently has of the new tax provisions.

Regarding the proposed legislation providing for full conformity to the provisions of the Tax Cuts and Jobs Act, the REC adopted negative, indeterminate cash estimates of the impact to Florida revenues for state fiscal years (SFY) 2017-18 and 2018-19; plus/minus indeterminate cash estimates for SFY 2019-20; positive indeterminate cash estimates for all years thereafter; and positive, recurring impacts for all years of the forecast. In adopting this impact, the REC expressly stated that the specific amounts or assumptions associated with the individual provisions were not adopted as the conference was not able, at that time, to accept the six overarching assertions discussed above.

Table X1

	Federal CIT Receipts(M)¹	Florida Net CIT Receipts (Collections after refund) (M)²	Federal CIT Implied Base (M)	Florida CIT Implied Base (M)	Florida Percent of Federal Base
1998	\$205,302	\$1,271	\$586,578	\$23,115	3.9%
1999	\$207,231	\$1,267	\$592,089	\$23,036	3.9%
2000	\$221,429	\$1,189	\$632,654	\$21,624	3.4%
2001	\$196,546	\$1,139	\$561,560	\$20,700	3.7%
2002	\$145,840	\$963	\$416,686	\$17,515	4.2%
2003	\$171,215	\$961	\$489,184	\$17,471	3.6%
2004	\$222,933	\$1,135	\$636,951	\$20,631	3.2%
2005	\$298,028	\$1,573	\$851,509	\$28,602	3.4%
2006	\$370,825	\$2,231	\$1,059,499	\$40,567	3.8%
2007	\$394,222	\$2,249	\$1,126,349	\$40,882	3.6%
2008	\$303,816	\$1,921	\$868,045	\$34,927	4.0%
2009	\$178,173	\$1,418	\$509,066	\$25,789	5.1%
2010	\$260,473	\$1,460	\$744,208	\$26,547	3.6%
2011	\$315,195	\$1,673	\$900,556	\$30,411	3.4%
2012	\$324,795	\$1,817	\$927,985	\$33,044	3.6%
2013	\$365,479	\$1,913	\$1,044,224	\$34,778	3.3%
2014	\$418,261	\$1,781	\$1,195,031	\$32,380	2.7%
2015	\$436,459	\$1,991	\$1,247,026	\$36,193	2.9%
2016	\$409,940	\$1,971	\$1,171,257	\$35,835	3.1%
2017	\$409,019	\$2,173	\$1,168,626	\$39,500	3.4%
	1998 - 2017 average				3.6%
Sources: 1. Data Series UFCORPTF - National Economic Estimating Conference - July 12, 2018 2. General Revenue Estimating Conference Workpapers - February 23, 2018					

Table X2

Florida CIT Receipts	JUL - SEP (M)	FY TOTAL (M)	Percent of FY
2009-10	\$421.8	\$1,789.9	23.57%
2010-11	\$410.7	\$1,874.5	21.91%
2011-12	\$421.0	\$2,010.8	20.94%
2012-13	\$441.3	\$2,081.0	21.21%
2013-14	\$441.0	\$2,042.5	21.59%
2014-15	\$469.2	\$2,236.3	20.98%
2015-16	\$463.7	\$2,272.1	20.41%
2016-17	\$510.1	\$2,366.4	21.56%
2017-18	\$415.1	\$2,413.0	17.20%
	Nine-year Average		21.04%
Source: Office of Economic and Demographic Research Detailed Monthly Revenue Reports			

II. Topics with Significant Impact to Florida

A. Transition Tax – Repatriation

1. Prior Federal Law:

United States (U.S.) corporations are subject to a federal corporate income tax on worldwide income. U.S. shareholders of foreign corporations are generally not taxed on the income earned by the foreign corporation until the income is distributed as a dividend to the U.S. shareholders. Taxpayers are allowed a foreign tax credit or a deduction for foreign income taxes paid on the income out of which the dividend is paid, but generally only when the foreign earnings are distributed to the U.S. corporation or otherwise subject to U.S. taxation. The foreign tax credit generally is available to offset, in whole or in part, the U.S. tax owed on foreign-source income.

The deferral of tax on foreign source income does not apply to certain passive or easily mobile income of U.S. controlled foreign corporations (called subpart F income¹⁶), which is taxed as earned, whether or not repatriated. A controlled foreign corporation is a corporation that is at least fifty percent (50%) owned by U.S. shareholders that each own at least ten percent (10%) of the shares.

Because of tax deferral, unrepatriated income has accumulated abroad. In 2004, section 965, IRC, was created as a temporary provision (applicable to only one taxable year) intended to encourage U.S. multinational companies to repatriate foreign earnings by allowing corporations to bring back deferred amounts at a lower tax rate on a voluntary basis.¹⁷

2. Federal Changes:

The Tax Cuts and Jobs Act¹⁸ (Act) amended section 965 of the Internal Revenue Code (IRC) to impose a unique one-time corporate income 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. The repatriation is part of the transition to a participation exemption system of taxation from the current worldwide taxation with deferral system and will exempt certain foreign dividends received by U.S. multinational businesses from domestic taxation for tax years beginning January 1, 2018, and thereafter.¹⁹ The repatriation of deferred foreign source income from 1986 to 2017 is one of the few changes made by the Act applying to tax years beginning prior to January 1, 2018.

Pursuant to section 965, IRC, the repatriated amount is specifically recognized as

¹⁶ Title 26 of the United States Code, Subtitle A, Chapter 1, Subchapter N, Part III, Subpart F - Controlled Foreign Corporations includes sections 951-965 of the Internal Revenue Code.

¹⁷ Public Law 108-357, American Jobs Creation Act of 2004, Title IV, Section 422.

¹⁸ Public Law 115-97

¹⁹ See section 245A, IRC.

subpart F income. Section 965, IRC, requires certain U.S. shareholders²⁰ to recognize as subpart F income, the accumulated foreign earnings of a controlled foreign corporation and other foreign corporations with a ten percent (10%) U.S. domestic corporate shareholder. The tax on post-1986 accumulated foreign earnings held in cash or cash equivalents is 15.5%, while the tax on post-1986 accumulated foreign earnings held in non-liquid assets is 8%. The lower tax rates are achieved through a deduction (subtraction) from the taxable repatriated foreign earnings. Taxpayers may elect to spread the repatriation tax due over an eight-year period. Other elections are also provided, such as the use of federal net operating losses.

The IRS has issued guidance on the corporate income transition tax issue in the form of notices, a publication, a revenue procedure, and frequently asked questions. This guidance generally directs the repatriation tax to be computed separately²¹ and paid separately from the regular federal corporate income tax. As a result, the repatriated income is generally not included on the federal taxable income line on the federal corporate income tax form. The IRS guidance separately addresses real estate investment trusts (REITs) and other entities.

3. Federal Law References:

Public Law 115-97 References: Section 14103

Internal Revenue Code References: Section 965

4. IRS Guidance as of December 14, 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>

²⁰ For transition tax purposes, a U.S. shareholder is a U.S. person who owns 10% or more of the total combined voting power of all classes of stock of a foreign corporation, or 10% or more of the total value of shares of all classes of stock of a foreign corporation. See section 951(b), IRC.

²¹ The transition tax is reported on *IRC 965 Transition Tax Statement*, which must be included with a taxpayer's federal income tax return.

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

5. Florida Law:

Section 220.13(1), F.S., defines “adjusted federal income,” and Rule 12C-1.013(1), F.A.C., states that “taxable income,” as defined by section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due. In general, “taxable income” is the amount of a corporation’s income that is subject to federal corporate income tax.

To the extent repatriation income is included in federal taxable income, it is included in the Florida corporate income tax base. Likewise, if repatriation income is not included in the starting point of the Florida corporate income/franchise tax return, then the income is not subject to the Florida corporate income tax. Direct and indirect expenses related to this income are included in the computation of federal taxable income as they have been since 1986.

Section 220.13(1)(b), F.S., provides for a subtraction of subpart F income, net of any direct and indirect expenses, from federal taxable income. Rule 12C-1.013(10), F.A.C., states: “...a subtraction from [federal taxable income] is provided for subpart F income reported under s. 951, I.R.C., net of associated expenses. To support the amount of subpart F income claimed, all federal forms, schedules and worksheets associated with IRS Form 5471 must be attached to the Form F-1120.”

If any repatriation income flows through to be part of the Florida corporate income tax base, it is subsequently subtracted as subpart F income, net of any direct and indirect expenses included in the computation.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

Generally, repatriation income under section 965, IRC, does not flow into federal taxable income, which is the starting point for the Florida corporate income tax computation. Internal Revenue Service (IRS) Publication 5292 directs the tax due for repatriation income under section 965, IRC, to be computed separately and paid separately from the standard federal corporate income tax. As a result, repatriation income is not included in federal taxable income on Form 1120 and does not flow into the Florida corporate income tax computation. Section 220.13(1)(a), F.S., does not contain any separate addition for section 965, IRC, income, whether net of expenses, net of the deduction to reach the lower tax rates, or any other deduction. Therefore, under most circumstances there is no Florida corporate income tax due on the repatriation income. In addition, any expenses directly and indirectly related to the production of the repatriation income that

are included in the standard federal income tax computation flow into the Florida income tax computation.

However, the IRS guidance addresses REITs and a few other entities separately. In a few unique situations, it appears that some repatriation income may be part of the standard federal taxable income that flows into the Florida corporate income tax return. If this occurs, the included repatriation income would be treated as subpart F income and subtracted, net of direct and indirect expenses. This subtraction is in accordance with section 220.13(1)(b), F.S., and Rule 12C-1.013(10), F.A.C.

Since the repatriation transaction tax is due with the federal corporate income tax return for the last taxable year beginning prior to January 1, 2018, the Department of Revenue issued Tax Information Publication (TIP 18C01-01) on April 27, 2018.

7. Florida Rulemaking related to the Federal Change:

None

8. Florida Law References:

Section 220.13, F.S., Rule 12C-1.013, F.A.C., Tax Information Publication 18C01-01

9. Public Comments as of December 14, 2018:

- First Public Meeting Transcript - August 22, 2018, pages 34 - 35
- Public Comment #11 - Received October 19, 2018

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate state law with federal law.

The tax due for repatriation income under section 965, IRC, is computed separately and paid separately from the standard federal corporate income and thus does not flow into the Florida corporate income tax calculation. In unique situations such as REITs, Florida law treats the repatriation income as subpart F income.

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Continue to next page for Potential Effect on State Revenues.**

11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect of the transition tax on Florida using the JCT methodology if the tax applied in Florida. As indicated above, the Department has issued guidance providing that under current law, this new federal tax does not generally apply in Florida. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	\$78,600	\$49,600	\$16,500	\$15,600	\$15,700	\$176,000
2	100% federal CIT impact	\$78,600	\$49,600	\$16,500	\$15,600	\$15,700	\$176,000
3	Conversion of federal revenue impact to federal taxable base impact	\$374,286	\$236,190	\$78,571	\$74,286	\$74,762	\$838,095
4	Florida taxable income share of federal base (3.6%)	\$13,474	\$8,503	\$2,829	\$2,674	\$2,691	\$30,171
5	Apply Florida CIT rate (5.5%)	\$741	\$468	\$156	\$147	\$148	\$1,659
6	Conversion to Florida state fiscal year	\$839	\$402	\$154	\$147	\$171	\$1,713

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	\$27,200	\$47,500	\$64,400	\$33,000	-\$9,400	\$338,800
2	100% federal CIT impact	\$27,200	\$47,500	\$64,400	\$33,000	-\$9,400	\$338,800
3	Conversion of federal revenue impact to federal taxable base impact	\$129,524	\$226,190	\$306,667	\$157,143	-\$44,762	\$1,612,857
4	Florida taxable income share of federal base (3.6%)	\$4,663	\$8,143	\$11,040	\$5,657	-\$1,611	\$58,063
5	Apply Florida CIT rate (5.5%)	\$256	\$448	\$607	\$311	-\$89	\$3,193
6	Conversion to Florida state fiscal year	\$297	\$481	\$545	\$227	-\$70	\$3,193

Note: Totals may be affected by rounding.

B. Alternative Minimum Tax

1. Prior Federal Law:

For corporate income tax purposes, the federal alternative minimum tax (AMT) is a minimum tax that is required to be computed in addition to the regular federal corporate income tax.²² When the regular federal corporate income tax results in a smaller tax liability than the federal AMT liability, the difference between the two amounts is the federal AMT due.²³

Federal AMT is generally a result of a taxpayer's taxable income increased by certain tax preference items and adjusted by determining the tax treatment of certain items in a manner that negates the deferral of income resulting from the regular tax treatment of those items.

When federal AMT is paid, a federal AMT credit is created for use against the regular federal corporate income tax liability in future taxable years when the regular federal corporate income tax liability exceeds the federal AMT liability.²⁴

A separate net operating loss is computed for federal AMT purposes. A taxpayer's federal alternative tax net operating loss deduction is generally limited to 90% of alternative minimum taxable income determined without regard to such deduction and any domestic production activities deduction under section 199, IRC.²⁵

2. Federal Changes:

The Tax Cuts and Jobs Act (TCJA)²⁶ repeals federal corporate AMT for taxable years beginning after December 31, 2017. The TCJA also accelerates the use of previously

²² See section 55(e), IRC (2017). A corporation is treated as a "small corporation" exempt from AMT if:

- the current year is the corporation's first taxable year in existence, or
- its average annual gross receipts for all "3-taxable-year periods" (or portion thereof) ending before its current taxable year did not exceed \$7.5 million (\$5 million for the corporation's first "3-taxable-year period").

The "small corporation" gross receipts test must be met annually. Once average gross receipts exceed \$7.5 million, the corporation loses its AMT exemption status, even if average gross receipts fall below \$7.5 million in future years.

²³ Federal corporate AMT is equal to 20% of federal alternative minimum taxable income (AMTI, as defined in section 55(b)(2), IRC (2017)) after the \$40,000 exemption (if applicable; the exemption begins phasing out when the AMTI exceeds \$150,000), less the alternative minimum tax foreign tax credit, and less the regular corporate income tax liability before applying all tax credits except the foreign tax credit. Federal corporate AMT is computed on federal Form 4626 (*Alternative Minimum Tax—Corporations*) and reported on Schedule J (*Tax Computation and Payment*) of federal Form 1120 (*U.S. Corporation Income Tax Return*).

²⁴ It should be noted that a corporation may elect to claim unused AMT credit in lieu of claiming bonus depreciation for qualified property (as defined in section 168(k)(2), IRC). See section 168(k)(4), IRC (2017). Once made, this election cannot be revoked without IRS consent.

²⁵ See section 56(d), IRC (2017).

²⁶ Public Law 115-97

earned federal AMT credits by not only allowing the federal AMT credit to offset the regular federal corporate income tax liability, but also by allowing the excess credit to be refunded. The TCJA makes previously earned federal AMT credits refundable for taxable years beginning after 2017 and before 2022.

For taxable years beginning after 2017 and before 2021, the federal AMT credit that may be refunded is limited to 50% of the excess amount of the unused/unrefunded federal AMT credit over the amount of the credit allowable for the taxable year against the regular federal income tax liability. However, for taxable years beginning in 2021, any remaining credits are refundable.

Federal AMT credit carryovers expire after tax year 2021, and no federal AMT credit may be claimed against the regular federal corporate income tax liability in a taxable year beginning on or after January 1, 2022.²⁷

3. Federal Law References:

H.R. 1, sections 12001 and 12002; Sections 53, 55, and 56, IRC; Federal Form 4626 and Instructions (*Alternative Minimum Tax—Corporations*); Federal Form 8827 (*Credit for Prior Year Minimum Tax—Corporations*)

4. IRS Guidance as of December 14, 2018:

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

5. Florida Law:

Chapter 87-99,²⁸ Laws of Florida, created the Florida corporate alternative minimum tax and AMT credit. Under Florida law, a taxpayer is only liable for Florida AMT if its federal corporate income tax return includes a liability for federal AMT. Florida law requires a taxpayer who pays federal AMT to calculate Florida AMT for that same taxable year. A taxpayer who does not owe federal AMT or whose Florida AMT computation results in no Florida AMT due, does not owe any Florida alternative minimum tax.

Pursuant to section 220.11, Florida Statutes (F.S.), the Florida corporate alternative minimum tax rate is 3.3%. Section 220.13(2)(k), F.S., provides that federal alternative taxable income is the starting point for the Florida AMT computation. When Florida AMT is greater than the regular Florida corporate income tax amount, a taxpayer owes and must pay Florida AMT. To the extent Florida AMT exceeds the regular Florida corporate income tax amount, a Florida AMT credit is created. The Florida AMT credit may be used in later taxable years to the extent the regular Florida corporate income

²⁷ See section 53(e), IRC (2018).

²⁸ Sections 13-16, Chapter 87-99, L.O.F.

tax is greater than the Florida AMT amount.²⁹ Unused Florida AMT credit carries forward indefinitely.

Florida does not require a separate net operating loss computation for AMT purposes. Consequently, if a taxpayer is required to compute both the regular Florida corporate income tax and Florida AMT, it applies the same amount of Florida net operating loss carryover toward each Florida income amount (regular tentative apportioned adjusted federal income or tentative apportioned adjusted federal alternative minimum taxable income). In taxable years in which regular tentative apportioned adjusted federal income results in a loss and Florida AMT net income requires the payment of tax, Florida AMT is due, and the taxpayer will also generate a net operating loss that may be carried forward to subsequent years.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

The TCJA repeals the federal corporate alternative minimum tax for taxable years beginning on or after January 1, 2018. Since Florida AMT is only required to be paid when a taxpayer's federal corporate income tax return includes a federal AMT liability for the same taxable year, no taxpayer will be required to pay Florida AMT for taxable years beginning after December 31, 2017. Likewise, no taxpayer will create Florida AMT credits in any taxable years beginning after December 31, 2017.

Although the TCJA provides for the accelerated use of federal AMT credit and for tax refunds, Florida law does not accelerate the use of Florida alternative minimum tax credits nor does it provide for refunds of Florida AMT credits.

Taxpayers with Florida AMT credits will continue to only be permitted to use Florida AMT credits to the extent that their regular Florida corporate income tax exceeds their Florida AMT amount. For taxable years beginning on or after January 1, 2018, taxpayers with Florida AMT credit carryovers must still compute Florida AMT (though only for purposes of determining the amount of Florida AMT credit that may be used), even though the starting figure (federal alternative minimum taxable income) is zero. Under certain circumstances, the Florida AMT amount may be larger than the regular Florida corporate income tax amount.³⁰ However, in such case, no Florida AMT is due, and no Florida AMT credit may be used. Unused Florida AMT credit carries forward indefinitely and does not expire.

7. Florida Rulemaking related to the Federal Change:

The Florida Corporate Income/Franchise Tax Return (Form F-1120)³¹ is modified for the 2018 taxable year to remove Schedule VI (*Computation of Florida Alternative Minimum Tax (AMT)*). Since Florida AMT credits do not expire until they are applied

²⁹ The Florida AMT credit is taken on Line 10 of Schedule V (*Credits Against the Corporate Income/Franchise Tax*) of Florida Form F-1120 (*Florida Corporate Income/Franchise Tax Return*).

³⁰ For example, if a taxpayer has a federal net operating loss for the year, but also has sufficient net Florida additions so that its adjusted federal income results in a positive number.

³¹ Incorporated in Rule 12C-1.051, F.A.C.

against regular Florida corporate income tax, the Florida AMT credit line will remain on Form F-1120 indefinitely.³² The instructions for the Florida AMT credit line are amended to include the Florida AMT computation for the purpose of determining the amount of Florida AMT credit that may be used.³³

8. Florida Law References:

Sections 220.11, 220.13, and 220.186, F.S., and Rules 12C-1.013, 12C-1.0186, and 12C-1.051, Florida Administrative Code (F.A.C.)

9. Public Comments as of December 14, 2018:

None.

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate Florida state law with federal law.

However, the Legislature may wish to consider conforming Florida to the federal expiration of the AMT.

Option: Consistent with federal treatment, repeal Florida AMT and allow the accelerated use of refundable credits. For taxable years beginning on or after January 1, 2018, no Florida AMT is due or required to be computed. All Florida AMT credits will be used or refunded before tax years beginning in 2022.

This option entails allowing refundable credits for any taxable year beginning after 2017 and before 2021 in an amount equal to 50% of the excess amount of the Florida AMT credit over the amount of the credit allowed against the regular Florida CIT liability. For taxable years beginning in 2021, a refund of 100% of remaining Florida AMT credits is allowable, after which no Florida AMT credit carryovers will exist.³⁴

Information regarding the potential fiscal impact of this option is provided on the subsequent pages.

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Continue to next page for Potential Effect on State Revenues.**

³² Line 10 of Schedule V (*Credits Against the Corporate Income/Franchise Tax*) of Florida Form F-1120

³³ Florida AMT credit may be used against regular Florida corporate income tax to the extent the regular Florida corporate income tax amount is greater than the Florida AMT amount.

³⁴ Depending on the repeal language, the Department will receive amended returns with Florida AMT credit claims after 2021.

11. Potential Effect on State Revenues:

Note: The value of the total unused Florida AMT credits is unknown. Also unknown is how long it would take for all remaining Florida AMT credits to be used.

Since Florida follows federal concepts, the Florida AMT is tied to the federal AMT. As discussed above, prior to the TCJA, AMT was due at both the federal and Florida level only in those instances where the AMT calculated tax is greater than the regular corporate income tax (CIT) and only when the taxpayer was required to pay AMT at the federal level. Thus, both federal and Florida AMT revenues are an incremental amount due above the regular CIT liability. There is not a necessary relationship between the federal incremental amount and the Florida incremental amount. Therefore, the JCT methodology for estimating the impact of the changes on Florida AMT calculations may not result in a fair estimate of Florida CIT revenues. An alternate methodology for estimating the impact of the TCJA on the Florida AMT is presented below.

Florida AMT credits have been generated beginning with taxable year 1987 and do not expire. The Department has data available for analysis for taxable years that ended in 2004 to 2016. To measure the amount of credits earned during this period, those returns where the tax due amount equaled the Florida AMT due amount were identified. Because the AMT credit amount is the difference between the Florida AMT due and the regular CIT liability, the regular Florida CIT liability was calculated at the return level for the identified taxpayers and the difference was obtained. The AMT credit amounts taken against regular corporate income tax on subsequent returns were also identified. Where possible, the credits taken were mapped to the earning of the credits in prior taxable years to identify how much of the credits earned during taxable years ending in 2004 to 2016 where data was available were later taken during that period. Any credits that could not be attributed to a year within the available data period were attributed to the period from 1987 to 2003. Unused credits were calculated and the source year noted.

The data in the AMT Revenue table below indicates that there are \$24.1 M in credits that were earned during the period from 2004 to 2016 that have not yet been claimed. There is also an unknown amount of credits that were earned during taxable years ending in 1987 to 2003 that are still outstanding. The data in the AMT Credits Claimed table below indicates that of the \$16.9 M of credits taken from 2004 to 2016, \$7.1 M or 42% were earned during the period from 2004 to 2016, with the remaining \$9.8 M likely earned prior to 2004.

To estimate the impact of the federal changes to Florida's Alternative Minimum Tax, the following steps were taken:

1. Estimate the amount of AMT that would have been generated in the forecast period absent change in law.
2. Estimate the amount of AMT credits that would have been taken in the forecast period had there been no change in law. This step is necessary to determine the stock of credits that will be available each year.
3. Estimate additional credits that could be taken due to the starting point for the Florida AMT calculation – the federal AMT income – being zero in all instances.

AMT Revenue					
Year	Tax due where AMT due equals tax due	Regular tax due for entities where AMT due equals tax due	AMT credits earned	Related credits later claimed	% of AMT tax since 2003 that was later granted a credit
2004	\$4,695,967	\$1,749,222	\$2,946,745	\$558,952	19.0%
2005	\$8,795,499	\$3,916,340	\$4,879,159	\$251,938	5.2%
2006	\$8,062,522	\$3,951,822	\$4,110,700	\$774,925	18.9%
2007	\$12,815,220	\$7,567,118	\$5,248,102	\$2,196,385	41.9%
2008	\$11,731,104	\$8,844,532	\$2,886,572	\$1,592,985	55.2%
2009	\$1,984,854	\$802,358	\$1,182,496	\$68,020	5.8%
2010	\$11,285,172	\$10,178,793	\$1,106,379	\$320,992	29.0%
2011	\$6,217,997	\$4,393,450	\$1,824,547	\$498,710	27.3%
2012	\$1,691,081	\$333,340	\$1,357,741	\$668,931	49.3%
2013	\$2,219,147	\$1,379,159	\$839,988	\$67,855	8.1%
2014	\$2,831,189	\$1,112,450	\$1,718,739	\$89,178	5.2%
2015	\$5,191,618	\$2,956,401	\$2,235,217	\$9,202	0.4%
2016	\$1,362,227	\$489,079	\$873,148		0.0%
Totals	\$78,883,597	\$47,674,064	\$31,209,533	\$7,098,073	22.7%

Possible outstanding credits since 2004	\$24,111,459
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AMT Credits Claimed				
Year	AMT Credit	Credit claimed in a given year that arose since 2003	Credit claimed in a given year assumed to have arisen prior to 2004	% of AMT Credit taken in a given year that arose since 2003
2004	\$2,090,393		\$2,090,393	0.0%
2005	\$654,307	\$127,373	\$526,934	19.5%
2006	\$963,469	\$516,341	\$447,128	53.6%
2007	\$466,410	\$333,482	\$132,928	71.5%
2008	\$1,476,799	\$1,218,647	\$258,152	82.5%
2009	\$3,395,392	\$2,665,255	\$730,137	78.5%
2010	\$381,093	\$221,638	\$159,455	58.2%
2011	\$573,788	\$124,814	\$448,974	21.8%
2012	\$489,908	\$433,193	\$56,715	88.4%
2013	\$4,265,464	\$1,263,195	\$3,002,269	29.6%
2014	\$1,629,329	\$71,629	\$1,557,700	4.4%
2015	\$360,829	\$87,635	\$273,194	24.3%
2016	\$162,001	\$34,871	\$127,130	21.5%
Totals	\$16,909,182	\$7,098,073	\$9,811,109	42.0%

The impact is estimated with the following equation:

$$\left(\frac{\text{Increased AMT Reduction} + \text{AMT Credit}}{\text{Amount}} \right) \times -1$$

What follows are simulations of possible impact as opposed to point estimates of impact. The simulations will demonstrate possible magnitudes of impact should the future occur in the fashion of the simulations. To demonstrate a range of possible impacts, low, middle and high impact simulations have been developed. To conduct the simulations, assumptions must be made about the level of AMT revenue that would have been received absent a change in law, the level of AMT credits that would have otherwise been claimed, and the amount of increased AMT credits that will be taken.

1. AMT Reduction

For the period data is available, the average amount of AMT paid in excess of the regular Florida CIT liability (AMT revenue) was as follows:

Year	Average AMT revenue	Used in simulation
2009-2016	\$1,392,282	Low
2004-2016	\$2,400,733	Middle
2004-2008	\$4,014,256	High

2. AMT Credits that would otherwise have been claimed.

For the period data is available, the average amount of AMT credits taken was as follows:

Year	Average AMT credit taken	Used in simulation
2009-2016	\$1,123,202	Low
2004-2016	\$1,300,706	Middle
Years > \$1 M	\$2,571,475	High

Note – the amount of credits that would otherwise have been claimed also assumes that credits would have continued to be earned beyond 2018 in order to simulate the impact of simultaneously eliminating the earning of future credits and the increased credits that will be available due to the starting point for Florida AMT now being zero.

3. Stock of available credits

The stock of available credits needs to be simulated to act as a constraint because the total amount of credits taken cannot exceed the total stock available in any given year of the forecast period.

In order to estimate the stock of credits for each year of the forecast period, the available credits as of 2018 must be simulated. AMT credits could be earned since 1987, but data is available only from 2004 forward. For each of the three simulations developed, the following method was used to simulate the amount of credits still available:

A. *Measure the stock of credits available that were earned since 2004*

For all simulations, the stock of available credits that arose since 2004 was computed as the difference between the AMT credit earned in a given year, which is presented in the AMT Revenue table above, and the amount of credit taken in that year that was identified as arising since 2004, which is presented in the AMT Credit Claimed table above, and then aggregated for all years. For example, the increment to the stock of credits for 2010 is \$884,741, which is the difference between the identified AMT credits earned for 2010 of \$1,106,379 and the credits claimed in 2010 that arose since 2003 of \$221,638.

B. *Establish the amount of credits available that were earned prior to 2004*

As the amount of credits available that were earned prior to 2004 is not available, that amount must be assumed for each simulation. The basis for this assumed amount is discussed below with respect to each simulation. With respect to the stock of AMT credits available in 2018, only this step differs in the three simulations.

C. *Reduce the assumed amount of credits earned prior to 2004 by the amount of credits taken after 2004 that were assumed to have arisen prior to 2004.*

As discussed above, those credits that were taken after 2004 that could not be shown to have been earned 2004 or later were assumed to have been earned prior to 2004. As the amount from step 2 above is estimated as of 2004, any credits taken after 2004 reduce the stock of credits available that were earned prior to 2004. AMT credit amounts assumed to have arisen prior to 2004 that were used in the period 2004 to 2016 are identified in AMT Credits Claimed table.

Low Simulation

For the low simulation, it is assumed that the period from 1987 to 2003 resulted in a stock of available credits in 2004 equal to the stock of credits earned from 2004 to 2017. Data for 2017 is not yet available, so the amount of 2017 credits earned is assumed to be \$1,392,282 (low simulation AMT revenue) and the amount of AMT credits taken is assumed to be \$1,123,202 (low simulation average AMT credit taken) with an additional assumption that 50% of that amount came from credits earned before 2003 and 50% from credits earned 2004 and later. Similar methods were used to simulate the 2017 values for the middle and high simulations using the middle and high values for AMT revenue and AMT credits that would have been taken absent a change in law. Given these assumptions, the stock of available credits in the low simulation at the start of the forecast period is:

Stock of Credits - Low Simulation			
	Earned after 2003	Earned prior to 2004	Total stock
2004	\$2,946,745	\$22,851,747	\$25,798,492
2005	\$7,698,531	\$22,324,814	\$30,023,344
2006	\$11,292,890	\$21,877,686	\$33,170,575
2007	\$16,207,510	\$21,744,758	\$37,952,268
2008	\$17,875,435	\$21,486,605	\$39,362,041
2009	\$16,392,676	\$20,756,468	\$37,149,144
2010	\$17,277,417	\$20,597,014	\$37,874,430
2011	\$18,977,150	\$20,148,040	\$39,125,189
2012	\$19,901,698	\$20,091,325	\$39,993,022
2013	\$19,478,491	\$17,089,056	\$36,567,546
2014	\$21,125,600	\$15,531,356	\$36,656,956
2015	\$23,273,182	\$15,258,162	\$38,531,344
2016	\$24,111,459	\$15,131,031	\$39,242,491
2017 (Estimate)	\$24,942,140	\$14,569,431	\$39,511,571
Earned prior to 2004		\$24,942,140	

Middle Simulation

For the middle simulation, it is assumed that from 1987 to 2003 the amount of credits earned in excess of credits taken was equal to \$2.5 M per year. This assumed amount of unused credits per year results in a total stock of \$42.5 M in credits available from the period before 2004 (17 years * \$2.5 M per year). This compares to average credits earned in excess of credits taken of \$1.75 M for the period from 2004 to 2016. This results in the stock of credits for the middle scenario being:

Stock of Credits - Middle Simulation			
	Earned after 2003	Earned prior to 2004	Total stock
2004	\$2,946,745	\$40,409,607	\$43,356,352
2005	\$7,698,531	\$39,882,673	\$47,581,204
2006	\$11,292,890	\$39,435,545	\$50,728,435
2007	\$16,207,510	\$39,302,617	\$55,510,127
2008	\$17,875,435	\$39,044,465	\$56,919,900
2009	\$16,392,676	\$38,314,328	\$54,707,004
2010	\$17,277,417	\$38,154,873	\$55,432,290
2011	\$18,977,150	\$37,705,899	\$56,683,049
2012	\$19,901,698	\$37,649,184	\$57,550,882
2013	\$19,478,491	\$34,646,915	\$54,125,406
2014	\$21,125,600	\$33,089,215	\$54,214,816
2015	\$23,273,182	\$32,816,021	\$56,089,204
2016	\$24,111,459	\$32,688,891	\$56,800,351
2017 (Estimate)	\$24,942,140	\$32,038,538	\$56,980,678
Earned prior to 2004		\$42,500,000	

High Simulation

For the high simulation, it is assumed that the amount of credits earned from 1987 to 2003 in excess of credits taken was equal to \$3.5 M per year. This assumed amount of unused credits per year results in a total stock of \$59.5 M in credits available from the period before 2004 (17 years * \$3.5 M per year). This results in the stock of credits for the high scenario being:

Stock of Credits - High Simulation			
	Earned after 2003	Earned prior to 2004	Total stock
2004	\$2,946,745	\$57,409,607	\$60,356,352
2005	\$7,698,531	\$56,882,673	\$64,581,204
2006	\$11,292,890	\$56,435,545	\$67,728,435
2007	\$16,207,510	\$56,302,617	\$72,510,127
2008	\$17,875,435	\$56,044,465	\$73,919,900
2009	\$16,392,676	\$55,314,328	\$71,707,004
2010	\$17,277,417	\$55,154,873	\$72,432,290
2011	\$18,977,150	\$54,705,899	\$73,683,049
2012	\$19,901,698	\$54,649,184	\$74,550,882
2013	\$19,478,491	\$51,646,915	\$71,125,406
2014	\$21,125,600	\$50,089,215	\$71,214,816
2015	\$23,273,182	\$49,816,021	\$73,089,204
2016	\$24,111,459	\$49,688,891	\$73,800,351
2017	\$24,942,140	\$48,403,153	\$73,345,294
Earned prior to 2004		\$59,500,000	

Note – the stock of credits available will be a significant part of the analysis for the AMT Option.

4. Increased AMT Credits

The final piece is to simulate the amount of additional AMT credits that will be taken as a result of the starting point for the Florida AMT - federal alternative taxable income - being zero for future year computations of the amount of AMT credit that could be taken. Recall that the amount that can be taken as a credit is limited to the difference between the regular Florida CIT liability and the Florida AMT liability amount. Therefore, a taxpayer must have a tax liability for Florida CIT to be able to take a credit. For each simulation, it is assumed that ten percent of the stock of credits available is taken in each year.

These simulations using the above method for simulating the increased AMT credits results in the following impacts:

Low Simulation					
	Credit that would have been claimed regardless of law change	Additional credits Taken	Remaining Stock of credits	Reduced AMT Revenues	Total Impact
Beginning Stock			\$39,511,571		
2018	\$1,123,202	\$2,827,955	\$35,560,414	\$1,392,282	-\$4,220,237
2019	\$1,123,202	\$2,432,839	\$32,004,373	\$1,392,282	-\$3,825,121
2020	\$1,123,202	\$2,077,235	\$28,803,935	\$1,392,282	-\$3,469,517
2021	\$1,123,202	\$1,757,192	\$25,923,542	\$1,392,282	-\$3,149,473
2022	\$1,123,202	\$1,469,152	\$23,331,188	\$1,392,282	-\$2,861,434
2023	\$1,123,202	\$1,209,917	\$20,998,069	\$1,392,282	-\$2,602,199
2024	\$1,123,202	\$976,605	\$18,898,262	\$1,392,282	-\$2,368,887
2025	\$1,123,202	\$766,624	\$17,008,436	\$1,392,282	-\$2,158,906
2026	\$1,123,202	\$577,642	\$15,307,592	\$1,392,282	-\$1,969,923
2027	\$1,123,202	\$407,557	\$13,776,833	\$1,392,282	-\$1,799,839
2028	\$1,123,202	\$254,481	\$12,399,150	\$1,392,282	-\$1,646,763

Middle Simulation					
	Credit that would have been claimed regardless of law change	Additional credits Taken	Remaining Stock of credits	Reduced AMT Revenues	Total Impact
Beginning Stock			\$56,980,678		
2018	\$1,300,706	\$4,397,362	\$51,282,610	\$2,400,733	-\$6,798,095
2019	\$1,300,706	\$3,827,555	\$46,154,349	\$2,400,733	-\$6,228,288
2020	\$1,300,706	\$3,314,729	\$41,538,914	\$2,400,733	-\$5,715,462
2021	\$1,300,706	\$2,853,185	\$37,385,023	\$2,400,733	-\$5,253,918
2022	\$1,300,706	\$2,437,796	\$33,646,521	\$2,400,733	-\$4,838,529
2023	\$1,300,706	\$2,063,946	\$30,281,869	\$2,400,733	-\$4,464,679
2024	\$1,300,706	\$1,727,481	\$27,253,682	\$2,400,733	-\$4,128,214
2025	\$1,300,706	\$1,424,662	\$24,528,314	\$2,400,733	-\$3,825,395
2026	\$1,300,706	\$1,152,125	\$22,075,482	\$2,400,733	-\$3,552,858
2027	\$1,300,706	\$906,842	\$19,867,934	\$2,400,733	-\$3,307,575
2028	\$1,300,706	\$686,087	\$17,881,141	\$2,400,733	-\$3,086,820

High Simulation					
	Credit that would have been claimed regardless of law change	Additional credits Taken	Remaining Stock of credits	Reduced AMT Revenues	Total Impact
Beginning Stock			\$73,345,294		
2018	\$2,571,475	\$4,763,054	\$66,010,764	\$4,014,256	-\$8,777,310
2019	\$2,571,475	\$4,029,601	\$59,409,688	\$4,014,256	-\$8,043,857
2020	\$2,571,475	\$3,369,493	\$53,468,719	\$4,014,256	-\$7,383,749
2021	\$2,571,475	\$2,775,397	\$48,121,847	\$4,014,256	-\$6,789,652
2022	\$2,571,475	\$2,240,709	\$43,309,663	\$4,014,256	-\$6,254,965
2023	\$2,571,475	\$1,759,491	\$38,978,696	\$4,014,256	-\$5,773,747
2024	\$2,571,475	\$1,326,394	\$35,080,827	\$4,014,256	-\$5,340,650
2025	\$2,571,475	\$936,607	\$31,572,744	\$4,014,256	-\$4,950,863
2026	\$2,571,475	\$585,799	\$28,415,470	\$4,014,256	-\$4,600,055
2027	\$2,571,475	\$270,072	\$25,573,923	\$4,014,256	-\$4,284,327
2028	\$2,557,392	\$0	\$23,016,530	\$4,014,256	-\$4,014,256

The simulated total impact that corresponds with the various assumptions for each scenario is:

Simulation Impact - AMT			
	Low	Middle	High
2018	-\$4,220,237	-\$6,798,095	-\$8,777,310
2019	-\$3,825,121	-\$6,228,288	-\$8,043,857
2020	-\$3,469,517	-\$5,715,462	-\$7,383,749
2021	-\$3,149,473	-\$5,253,918	-\$6,789,652
2022	-\$2,861,434	-\$4,838,529	-\$6,254,965
2023	-\$2,602,199	-\$4,464,679	-\$5,773,747
2024	-\$2,368,887	-\$4,128,214	-\$5,340,650
2025	-\$2,158,906	-\$3,825,395	-\$4,950,863
2026	-\$1,969,923	-\$3,552,858	-\$4,600,055
2027	-\$1,799,839	-\$3,307,575	-\$4,284,327
2028	-\$1,646,763	-\$3,086,820	-\$4,014,256

Impact of the AMT Option

The option would allow 50% of the excess credit to be taken in each year as a refundable credit. This means that an entity with a credit could take the credit even if no tax liability existed for that year. Any amount that did not offset tax would result in a payment to the taxpayer. For the option, all assumptions for the analysis above are applied. Additionally, as entities must still exist and be aware that they have an outstanding credit to claim a credit, it is assumed that 20% of the beginning stock of credits is not claimed in any year in the low simulation, 10% for the middle and 0% for the high. The results of the simulations for this option are:

Low Simulation					
	Credit that would have been claimed regardless of law change	Additional credits Taken	Option Credits taken	Total Credits Taken	Remaining Stock of credits
Beginning Stock					\$39,511,571
2018	\$1,123,202	\$2,827,955	\$13,829,050	\$17,780,207	\$21,731,364
2019	\$1,123,202	\$1,049,934	\$5,827,957	\$8,001,093	\$13,730,271
2020	\$1,123,202	\$249,825	\$2,227,465	\$3,600,492	\$10,129,779
2021	\$1,123,202	\$0	\$1,104,263	\$2,227,465	\$7,902,314

Middle Simulation					
	Credit that would have been claimed regardless of law change	Additional credits Taken	Option Credits taken	Total Credits Taken	Remaining Stock of credits
Beginning Stock					\$56,980,678
2018	\$1,300,706	\$4,397,362	\$22,792,271	\$28,490,339	\$28,490,339
2019	\$1,300,706	\$1,548,328	\$9,971,619	\$12,820,653	\$15,669,687
2020	\$1,300,706	\$266,262	\$4,202,325	\$5,769,294	\$9,900,393
2021	\$1,300,706	\$0	\$2,901,619	\$4,202,325	\$5,698,068

High Simulation					
	Credit that would have been claimed regardless of law change	Additional credits taken	Option credits taken	Total credits taken	Remaining stock of credits
Beginning Stock					\$73,345,294
2018	\$2,571,475	\$4,763,054	\$33,005,382	\$40,339,912	\$33,005,382
2019	\$2,571,475	\$729,063	\$14,852,422	\$18,152,960	\$14,852,422
2020	\$2,571,475	\$0	\$6,140,473	\$8,711,949	\$6,140,473
2021	\$2,571,475	\$0	\$3,568,998	\$6,140,473	\$0

The impact of the option is the difference between the credits taken under the non-option simulations compared to the credits taken in the option simulations. Therefore, the impact of each simulation is displayed below:

AMT Option Simulation impact - Low			
	Non-Option credits that would have been taken absent the option	Total credits taken under option	Option impact
2018	\$3,951,157	\$17,780,207	-\$13,829,050
2019	\$3,556,041	\$8,001,093	-\$4,445,052
2020	\$3,200,437	\$3,600,492	-\$400,055
2021	\$2,880,394	\$2,227,465	\$652,929
2022	\$2,592,354	\$0	\$2,592,354
2023	\$2,333,119	\$0	\$2,333,119
2024	\$2,099,807	\$0	\$2,099,807
2025	\$1,889,826	\$0	\$1,889,826
2026	\$1,700,844	\$0	\$1,700,844
2027	\$1,530,759	\$0	\$1,530,759
2028	\$1,377,683	\$0	\$1,377,683

AMT Option Simulation impact - Middle			
	Non-Option credits that would have been taken absent the option	Total credits taken under option	Option impact
2018	\$5,698,068	\$28,490,339	-\$22,792,271
2019	\$5,698,068	\$12,820,653	-\$7,122,585
2020	\$5,128,261	\$5,769,294	-\$641,033
2021	\$4,615,435	\$4,202,325	\$413,110
2022	\$4,153,891	\$0	\$4,153,891
2023	\$3,738,502	\$0	\$3,738,502
2024	\$3,364,652	\$0	\$3,364,652
2025	\$3,028,187	\$0	\$3,028,187
2026	\$2,725,368	\$0	\$2,725,368
2027	\$2,452,831	\$0	\$2,452,831
2028	\$2,207,548	\$0	\$2,207,548

AMT Option Simulation impact - High			
	Non-Option credits that would have been taken absent the option	Total credits taken under option	Option impact
2018	\$7,334,529	\$40,339,912	-\$33,005,382
2019	\$6,601,076	\$18,152,960	-\$11,551,884
2020	\$5,940,969	\$8,711,949	-\$2,770,980
2021	\$5,346,872	\$6,140,473	-\$793,601
2022	\$4,812,185	\$0	\$4,812,185
2023	\$4,330,966	\$0	\$4,330,966
2024	\$3,897,870	\$0	\$3,897,870
2025	\$3,508,083	\$0	\$3,508,083
2026	\$3,157,274	\$0	\$3,157,274
2027	\$2,841,547	\$0	\$2,841,547
2028	\$2,557,392	\$0	\$2,557,392

Finally, a summary of the simulation impacts of the option is presented below:

AMT Option Impact by Simulation			
	Low	Middle	High
2018	-\$13,829,050	-\$22,792,271	-\$33,005,382
2019	-\$4,445,052	-\$7,122,585	-\$11,551,884
2020	-\$400,055	-\$641,033	-\$2,770,980
2021	\$652,929	\$413,110	-\$793,601
2022	\$2,592,354	\$4,153,891	\$4,812,185
2023	\$2,333,119	\$3,738,502	\$4,330,966
2024	\$2,099,807	\$3,364,652	\$3,897,870
2025	\$1,889,826	\$3,028,187	\$3,508,083
2026	\$1,700,844	\$2,725,368	\$3,157,274
2027	\$1,530,759	\$2,452,831	\$2,841,547
2028	\$1,377,683	\$2,207,548	\$2,557,392

Total simulated impact of changes to AMT including the option

The analysis of the option above demonstrates possible impacts under the assumed scenarios for the option to allow credits to be refunded in a manner similar to the operation at the federal level. The total impact of the AMT changes including the option includes the impact of reduced AMT revenues in the future. Including those reduced revenues results in the following impacts:

AMT Option Simulation Total Impact - Low				
	Non-Option credits that would have been taken absent the option	Total Credits taken under Option	Decreased AMT Revenues	Total Option Impact
2018	\$3,951,157	\$17,780,207	\$1,392,282	-\$15,221,332
2019	\$3,556,041	\$8,001,093	\$1,392,282	-\$5,837,334
2020	\$3,200,437	\$3,600,492	\$1,392,282	-\$1,792,336
2021	\$2,880,394	\$2,227,465	\$1,392,282	-\$739,353
2022	\$2,592,354	\$0	\$1,392,282	\$1,200,072
2023	\$2,333,119	\$0	\$1,392,282	\$940,837
2024	\$2,099,807	\$0	\$1,392,282	\$707,525
2025	\$1,889,826	\$0	\$1,392,282	\$497,544
2026	\$1,700,844	\$0	\$1,392,282	\$308,562
2027	\$1,530,759	\$0	\$1,392,282	\$138,477
2028	\$1,377,683	\$0	\$1,392,282	-\$14,598

AMT Option Simulation Total Impact - Middle				
	Non-Option credits that would have been taken absent the option	Total Credits taken under Option	Decreased AMT Revenues	Total Option Impact
2018	\$5,698,068	\$28,490,339	\$2,400,733	-\$25,193,005
2019	\$5,698,068	\$12,820,653	\$2,400,733	-\$9,523,318
2020	\$5,128,261	\$5,769,294	\$2,400,733	-\$3,041,766
2021	\$4,615,435	\$4,202,325	\$2,400,733	-\$1,987,623
2022	\$4,153,891	\$0	\$2,400,733	\$1,753,158
2023	\$3,738,502	\$0	\$2,400,733	\$1,337,769
2024	\$3,364,652	\$0	\$2,400,733	\$963,919
2025	\$3,028,187	\$0	\$2,400,733	\$627,454
2026	\$2,725,368	\$0	\$2,400,733	\$324,635
2027	\$2,452,831	\$0	\$2,400,733	\$52,098
2028	\$2,207,548	\$0	\$2,400,733	-\$193,185

AMT Option Simulation Total Impact - High				
	Non-Option credits that would have been taken absent the option	Total Credits taken under Option	Decreased AMT Revenues	Total Option Impact
2018	\$7,334,529	\$40,339,912	\$4,014,256	-\$37,019,638
2019	\$6,601,076	\$18,152,960	\$4,014,256	-\$15,566,139
2020	\$5,940,969	\$8,711,949	\$4,014,256	-\$6,785,236
2021	\$5,346,872	\$6,140,473	\$4,014,256	-\$4,807,857
2022	\$4,812,185	\$0	\$4,014,256	\$797,929
2023	\$4,330,966	\$0	\$4,014,256	\$316,711
2024	\$3,897,870	\$0	\$4,014,256	-\$116,386
2025	\$3,508,083	\$0	\$4,014,256	-\$506,173
2026	\$3,157,274	\$0	\$4,014,256	-\$856,981
2027	\$2,841,547	\$0	\$4,014,256	-\$1,172,709
2028	\$2,557,392	\$0	\$4,014,256	-\$1,456,863

Lastly, the table below summarizes the total impact of the changes at the federal level including the option for each simulation:

AMT Option Total Impact by Simulation			
	Low	Middle	High
2018	-\$15,221,332	-\$25,193,005	-\$37,019,638
2019	-\$5,837,334	-\$9,523,318	-\$15,566,139
2020	-\$1,792,336	-\$3,041,766	-\$6,785,236
2021	-\$739,353	-\$1,987,623	-\$4,807,857
2022	\$1,200,072	\$1,753,158	\$797,929
2023	\$940,837	\$1,337,769	\$316,711
2024	\$707,525	\$963,919	-\$116,386
2025	\$497,544	\$627,454	-\$506,173
2026	\$308,562	\$324,635	-\$856,981
2027	\$138,477	\$52,098	-\$1,172,709
2028	-\$14,598	-\$193,185	-\$1,456,863

C. Section 179 Expensing

1. Prior Federal Law:

Generally, a taxpayer may capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization.

However, a taxpayer may elect to immediately deduct from its federal income the cost of certain property under section 179, IRC (Internal Revenue Code), and expense it in the year the property is placed in service, subject to a monetary limitation. Over the past ten years, the amounts permitted to be deducted under section 179, IRC, have substantially increased.

Section 179, IRC, permits a business to deduct as a current expense up to \$500,000 (\$510,000 for tax years beginning in 2017) of the cost of qualified assets placed in service in a tax year. That amount starts to phase out (but not below zero) when the business's spending on such assets during the taxable year totals \$2,000,000 (\$2,030,000 for tax years beginning in 2017). Both amounts have been indexed for inflation for taxable years beginning after 2015.³⁵

Qualified assets generally consist of machinery, equipment, off-the-shelf computer software, certain real improvement property, and "listed property," which includes certain passenger automobiles, sport utility vehicles, property used for entertainment or recreational purposes, and computers. Some of these qualified assets have other restrictions, based on the type of asset. For example, sport utility vehicles cannot be expensed in excess of \$25,000.³⁶

In the event the total property placed in service for the taxable year exceeds the annual limitation, a taxpayer may choose how to allocate the deduction among the qualified assets. Any amounts that are not deductible under section 179, IRC, may generally be depreciated using standard methods.³⁷

The amount eligible to be expensed for a taxable year may not exceed the taxable income for such taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to limitations).

2. Federal Changes:

The Tax Cuts and Jobs Act³⁸ (TCJA) makes several changes to section 179, IRC. The TCJA increases the amount that may be deducted under section 179, IRC, from

³⁵ Public Law 114-113, Division Q, Protecting Americans from Tax Hikes Act of 2015, Section 124(f).

³⁶ Section 179(b)(5)(A), IRC

³⁷ Sections 167, 168, IRC

³⁸ Public Law 115-97

\$500,000 to \$1 million. It also increases the deduction phaseout from \$2 million to \$2.5 million. Both amounts are indexed for inflation beginning in 2019.

The definition of qualified property is expanded to include improvements to the interior of any non-residential real property, as well as roofs; heating, ventilation, and air conditioning systems; fire protection and alarm systems; and security systems installed on such property.

The exclusion for tangible personal property used in connection with lodging facilities is eliminated. The \$25,000 expensing limit for sport utility vehicles is indexed for inflation beginning in 2019. These changes apply to property placed in service in taxable years beginning after December 31, 2017.

3. Federal Law References:

Public Law 115-97 References: Sections 11002, 13101

Internal Revenue Code References: Section 179

4. IRS Guidance as of December 14, 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>
- 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>

5. Florida Law:

For taxable years beginning after December 31, 2007, and before January 1, 2015, taxpayers are required to add back to federal taxable income the amount of the federal deduction claimed under section 179, IRC, that exceeds \$128,000.³⁹ All amounts in excess of \$128,000⁴⁰ are required to be added back, including amounts carried over from previous tax years. The overall investment limitation is the same for Florida as it is for federal income tax purposes. See section 220.13(1)(e), F.S.

For the taxable year of the addition and for each of the six (6) subsequent taxable years, there is subtracted from federal taxable income one-seventh of the amount by which federal taxable income was increased because of the addition required for excess

³⁹ There is an exception for tax years beginning in 2010, in which case taxpayers are required to add back the amount of the federal deduction under section 179, IRC, that exceeds \$250,000.

⁴⁰ \$250,000 for tax years beginning in 2010

section 179, IRC, expense, notwithstanding any sale or other disposition of the property in question and regardless of whether such property remains in service in the hands of the taxpayer.

For taxable years beginning on or after January 1, 2015, Florida piggybacks section 179, IRC, and no additions are required. Taxpayers continue to take Florida subtractions associated with the related Florida additions that were required for prior taxable years.

The Florida additions and subtractions associated with excess section 179, IRC, expense may create or increase a taxpayer's net operating loss for Florida tax purposes.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

Section 179, IRC, expense is included in the computation of federal taxable income, which is the starting point for the Florida corporate income tax computation. Florida is currently piggybacking the federal treatment of section 179, IRC, expense.

7. Florida Rulemaking Related to the Federal Change:

None.

8. Florida Law References:

Section 220.13(1)(e), F.S., and Rule 12C-1.013, F.A.C.

9. Public Comments as of December 14, 2018:

None.

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate state law with federal law.

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Continue to next page for Potential Effect on State Revenues.**

11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect of the section 179, IRC changes on Florida using the JCT methodology. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	-\$4,700	-\$7,400	-\$4,100	-\$2,600	-\$2,000	-\$20,800
2	11% federal CIT impact	-\$517	-\$814	-\$451	-\$286	-\$220	-\$2,288
3	Conversion of federal revenue impact to federal taxable base impact	-\$2,462	-\$3,876	-\$2,148	-\$1,362	-\$1,048	-\$10,895
4	Florida taxable income share of federal base (3.6%)	-\$89	-\$140	-\$77	-\$49	-\$38	-\$392
5	Apply Florida CIT rate (5.5%)	-\$5	-\$8	-\$4	-\$3	-\$2	-\$22
6	Conversion to Florida state fiscal year	-\$6	-\$7	-\$4	-\$3	-\$2	-\$22

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	-\$1,500	-\$1,000	-\$900	-\$900	-\$900	-\$25,900
2	11% federal CIT impact	-\$165	-\$110	-\$99	-\$99	-\$99	-\$2,860
3	Conversion of federal revenue impact to federal taxable base impact	-\$786	-\$524	-\$471	-\$471	-\$471	-\$13,619
4	Florida taxable income share of federal base (3.6%)	-\$28	-\$19	-\$17	-\$17	-\$17	-\$490
5	Apply Florida CIT rate (5.5%)	-\$2	-\$1	-\$1	-\$1	-\$1	-\$27
6	Conversion to Florida state fiscal year	-\$1	-\$1	-\$1	-\$1	-\$1	-\$27

Note: Totals may be affected by rounding.

D. Net Operating Loss

1. Prior Federal Law:

Net operating losses (NOL) are generated in tax years where a taxpayer's current-year business deductions exceed its current-year business income for tax purposes. NOLs may then be used to offset positive income in other tax years, thereby reducing the tax liability of a taxpayer. In most cases, the only limit on the use of a taxpayer's NOL is the amount of income of the taxpayer or the amount of NOL carryover available.

Generally, federal NOLs may be carried back and applied against taxable income in the prior two taxable years, allowing taxpayers to be refunded some or all of the tax paid in those prior two taxable years. Taxpayers may elect to forgo the carryback of an NOL.⁴¹ NOLs carry forward to each of 20 taxable years following the taxable year of the loss, or until fully used. NOLs must be used when available and must be taken in order from oldest generated NOL to most recently generated NOL. After the 20th taxable year following the taxable year of the loss, unused NOLs expire.

Net operating losses are governed by section 172, Internal Revenue Code (IRC). There are exceptions to the standard time periods for certain industries, such as insurers and farmers, and certain situations and classes of taxpayers. A separate NOL is computed for federal alternative minimum tax purposes.⁴²

2. Federal Changes:

The Tax Cuts and Jobs Act (TCJA)⁴³ amended section 172, IRC, to eliminate the two-year carryback provision for most taxpayers, extend the carryforward period indefinitely, and limit the amount of NOL deduction that may be claimed in each year. These changes ensure that NOL carryovers will never expire, while also ensuring that most taxpayers will pay some income tax in profitable years.

The new federal provisions are applied as follows:

- The NOL deduction is limited to 80% of taxable income for NOLs generated in taxable years beginning after December 31, 2017. (NOLs generated in prior taxable years are not limited and may be claimed up to 100% of taxable income);
- NOLs carry forward until used. (NOLs generated in taxable years ending on or before December 31, 2017, expire after 20 years⁴⁴); and

⁴¹ Section 172(b)(3), IRC (2017)

⁴² A taxpayer's federal alternative tax net operating loss deduction is generally limited to 90% of alternative minimum taxable income determined without regard to such deduction and any domestic production activities deduction under section 199, IRC. See section 56(d), IRC (2017).

⁴³ Public Law 115-97

⁴⁴ The 20-year carryover provision applies to NOLs generated in taxable years beginning on or after August 6, 1997 (pursuant to Public Law 105-34, section 1082), and tax years ending on or before December 31, 2017.

- NOL carrybacks are eliminated (NOLs generated in taxable years ending on or before December 31, 2017, may be carried back two years⁴⁵). Special provisions are created for certain farm businesses and insurance companies allowing them to continue to carry back NOLs.

3. Federal Law References:

Public Law 115-97 References: Section 13302

Internal Revenue Code References: Section 172

4. IRS Guidance as of December 14, 2018:

None.

5. Florida Law:

For purposes of determining the amount of the Florida NOL for the taxable year, Florida generally apportions the federal net operating loss, after giving consideration to Florida additions and subtractions.

Florida subtractions may not create or increase a Florida NOL; however, Florida subtractions may offset the amount of Florida additions. This limitation on the amount of the NOL carryforward to future years applies when Florida subtractions exceed Florida additions. In such tax years, if the calculation yields a Florida NOL, the current year federal NOL must be multiplied by the taxpayer's current year apportionment fraction to arrive at the limitation for the amount of the Florida NOL carryover from that taxable year.

There are a few exceptions specifically addressed in statute where a Florida deduction may create or increase a Florida net operating loss. For example, the deduction for bonus depreciation may create or increase a Florida NOL. Likewise, the deduction for section 179, IRC, expenses may also create or increase a Florida NOL.⁴⁶

Florida law piggybacks the federal treatment of net operating losses, with two important exceptions. Section 220.13(1)(b)1., Florida Statutes (F.S.), does not allow NOLs to be carried back to prior taxable years. In addition, Florida has only one NOL calculation; unlike the Internal Revenue Code, Florida does not have a separate alternative minimum tax NOL calculation. For all other purposes, Florida treats net operating losses in the same manner, to the same extent, and for the same time periods as provided by section 172, IRC.⁴⁷ Specifically, Florida piggybacks the twenty-year carryforward period and any limitations on the use of net operating losses.

⁴⁵ A fiscal year taxpayer is not permitted to carry back an NOL that is generated in the taxpayer's fiscal year that begins in 2017 and ends in 2018.

⁴⁶ See section 220.13(1)(e)5., F.S.

⁴⁷ See section 220.13(1)(b)1., F.S. It should be noted that the Spaceflight credit contained in section 220.194, F.S., which allows net operating losses to be sold as credits, sunset without any sales of net operating losses. The Department of Economic Opportunity advised that no taxpayers were approved for this credit incentive.

For purposes of applying the Florida NOL deduction, Florida law first requires the amount of the federal NOL deducted for the taxable year, if applicable, to be added back to federal taxable income in computing adjusted federal income. Adjusted federal income is apportioned,⁴⁸ and then the Florida NOL deduction is applied, followed by the \$50,000 Florida exemption. Every Florida corporate income taxpayer may generate a Florida net operating loss.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

Pursuant to section 220.13(1)(b)1., F.S., Florida piggybacks the new federal NOL provisions to the extent Florida is able to treat them in the same manner, to the same extent and for the same time periods as are provided federally in section 172, IRC.

Florida NOLs are computed and limited in the same manner as before. However, unused Florida NOLs generated in taxable years beginning after December 31, 2017, are now carried forward indefinitely until used and never expire. In addition, although there are special federal rules with carryback provisions for certain insurance and farming businesses, Florida law still specifically bars the carry back of Florida NOLs. In addition, every Florida corporate income taxpayer can still generate a net operating loss.

Florida law piggybacks the new federal 80% limitation on the use of NOL deductions. A Florida NOL generated in taxable years beginning after December 31, 2017, may only be carried forward and applied towards 80% of the Florida tentative apportioned adjusted federal income.⁴⁹ This allows a taxpayer to use some or all of its \$50,000 Florida exemption⁵⁰ to offset some or all of the remaining 20% of its income instead of using more of its Florida NOL carryover, as it was previously required to do.

NOLs generated in taxable years beginning before January 1, 2018, are not subject to the 80% limitation.

7. Florida Rulemaking related to the Federal Change:

No Florida rulemaking has taken place thus far. However, Rule 12C-1.013(15), Florida Administrative Code (F.A.C.), may need to be updated, depending on federal guidance that may be issued.

8. Florida Law References:

Sections 220.13 and 220.194, F.S., and Rules 12C-1.013 and 12C-1.0194, F.A.C.

9. Public Comments as of December 14, 2018:

- Public Comment #11 – Received October 19, 2018

⁴⁸ If a taxpayer does not apportion its income because it is 100% Florida, the Florida NOL deduction is taken as a deduction from federal taxable income in the computation of adjusted federal income.

⁴⁹ This treatment is consistent with Florida's piggyback of other federal net operating loss limitations.

⁵⁰ It should be noted that controlled groups are only permitted one \$50,000 Florida exemption to share.

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate Florida state law with federal law.

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Continue to next page for Potential Effect on State Revenues.**

11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect on Florida resulting from modifications of the net operating loss deduction using the JCT methodology. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	\$6,400	\$10,000	\$11,100	\$15,900	\$25,200	\$68,500
2	91% federal CIT impact	\$5,824	\$9,100	\$10,101	\$14,469	\$22,932	\$62,426
3	Conversion of federal revenue impact to federal taxable base impact	\$27,733	\$43,333	\$48,100	\$68,900	\$109,200	\$297,267
4	Florida taxable income share of federal base (3.6%)	\$998	\$1,560	\$1,732	\$2,480	\$3,931	\$10,702
5	Apply Florida CIT rate (5.5%)	\$55	\$86	\$95	\$136	\$216	\$589
6	Conversion to Florida state fiscal year	\$73	\$88	\$104	\$153	\$232	\$650

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	\$34,100	\$36,000	\$30,200	\$20,800	\$11,400	\$201,100
2	91% federal CIT impact	\$31,031	\$32,760	\$27,482	\$18,928	\$10,374	\$183,001
3	Conversion of federal revenue impact to federal taxable base impact	\$147,767	\$156,000	\$130,867	\$90,133	\$49,400	\$871,433
4	Florida taxable income share of federal base (3.6%)	\$5,320	\$5,616	\$4,711	\$3,245	\$1,778	\$31,372
5	Apply Florida CIT rate (5.5%)	\$293	\$309	\$259	\$178	\$98	\$1,725
6	Conversion to Florida state fiscal year	\$296	\$298	\$242	\$161	\$77	\$1,725

Note: Totals may be affected by rounding.

E. Bonus Depreciation

1. Prior Federal Law:

Generally, a taxpayer must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization.

The Modified Accelerated Cost Recovery System (MACRS) is used to recover the basis of most business and investment property placed in service after 1986. MACRS is used to determine the amount of depreciation deduction for different types of property based on an assigned applicable depreciation method, recovery period, and convention.⁵¹

MACRS includes the General Depreciation System (GDS) and the Alternative Depreciation System (ADS). These systems provide different methods and recovery periods to use in figuring depreciation deductions. A taxpayer uses GDS unless specifically required by law to use ADS or the taxpayer elects to use ADS.⁵²

An additional first-year depreciation deduction is allowed equal to 50% of the adjusted basis of qualified property acquired and placed in service before January 1, 2020.^{53 54} This bonus depreciation allowance is an additional deduction a taxpayer can take after any section 179, IRC, deduction⁵⁵ and before the regular depreciation under MACRS for the year the taxpayer places the property in service.

The 50% bonus depreciation allowance is phased down for property placed in service after December 31, 2017.⁵⁶ The bonus depreciation percentage rates are as follows:

Year Placed in Service	Bonus Depreciation % for Qualified Property	
	Qualified Property in General	Longer Production Period Property and Certain Aircraft
2017	50%	50%
2018	40%	50%
2019	30%	40%
2020	None	30%

⁵¹ See section 168(a), IRC. It should be noted that MACRS does not apply to certain property, including motion picture film, video tape, sound recordings, or to any other property if the taxpayer elects to exclude such property from MACRS and the taxpayer properly applies a unit-of-production method or other method of depreciation not expressed in a term of years. See also section 168(f), IRC.

⁵² Pursuant to section 168(g), IRC (2017), ADS property includes tangible property used predominately outside the United States during the taxable year, any tax-exempt use property, and any tax-exempt bond financed property. Listed property (as defined in section 280F(d)(4)(A), IRC) used 50% or less in a qualified business use is also treated as ADS property for depreciation purposes. See section 280F(b)(1), IRC.

⁵³ January 1, 2021, for longer production period property and certain aircraft.

⁵⁴ It should be noted that if ADS is the required method of depreciating the property, no first-year bonus depreciation allowance may be claimed for the property.

⁵⁵ A taxpayer may elect to immediately deduct from its federal income the cost of certain property under section 179, IRC, and expense it in the year the property is placed in service, subject to a monetary limitation.

⁵⁶ After December 31, 2018, for longer production period property and certain aircraft.

Section 168(k)(2), IRC (2017), defines qualified property for bonus depreciation purposes. Generally, the term “qualified property” means property:

- to which MACRS applies, with an applicable recovery period of 20 years or less; certain computer software; water utility property; or qualified improvement property⁵⁷;
- the original use of which commences with the taxpayer; and
- which is placed in service by the taxpayer before January 1, 2020.⁵⁸

A taxpayer may affirmatively elect out of the additional first-year bonus depreciation for any class of qualified property for any taxable year. This allows taxpayers the ability to choose which classes of assets will be depreciated with bonus depreciation, and if desired, which will be depreciated without bonus depreciation. Once a taxpayer elects not to deduct bonus depreciation for a class of property, the taxpayer cannot revoke the election without IRS consent.⁵⁹

A corporation otherwise eligible for first-year bonus depreciation may elect to claim additional alternative minimum tax (AMT) credits in lieu of claiming bonus depreciation with respect to qualified property.⁶⁰

2. Federal Changes:

For property placed in service after September 27, 2017, the Tax Cuts and Jobs Act (TCJA)⁶¹ differentiates between property acquired on or before September 27, 2017, and property acquired after September 27, 2017.

The TCJA follows the application of the present-law phase-down of bonus depreciation to property acquired on or before September 27, 2017, and placed in service after September 27, 2017.⁶²

The TCJA also extends and modifies the additional first-year bonus depreciation deduction through 2026⁶³ to property both acquired and placed in service after September 27, 2017. The 50% percent allowance is increased to 100% for property placed in service after September 27, 2017, and before January 1, 2023. The 100% allowance is phased down by 20% each calendar year for property placed in service beginning after 2022.⁶⁴

⁵⁷ Qualified improvement property is any improvement to an interior portion of a building that is nonresidential real property if such improvement is placed in service after the date such building was first placed in service. See section 168(k)(3), IRC.

⁵⁸ January 1, 2021, for longer production period property and certain aircraft.

⁵⁹ See section 168(k)(7), IRC.

⁶⁰ See section 168(k)(4), IRC.

⁶¹ Public Law 115-97

⁶² See section 168(k)(8), IRC.

⁶³ Through 2027 for longer production period property and certain aircraft.

⁶⁴ After 2023 for longer production period property and certain aircraft.

Year Placed in Service	Bonus Depreciation % for Qualified Property	
	Qualified Property in General/Specified Plants	Longer Production Period Property and Certain Aircraft
Portion of Basis of Qualified Property Acquired Before September 28, 2017		
Sept. 28, 2017 – Dec. 31, 2017	50%	50%
2018	40%	50%
2019	30%	40%
2020	None	30%
2021 and after	None	None
Portion of Basis of Qualified Property Acquired After September 27, 2017		
Sept. 28, 2017 – Dec. 31, 2022	100%	100%
2023	80%	100%
2024	60%	80%
2025	40%	60%
2026	20%	40%
2027	None	20%
2028 and after	None	None

A transition rule provides that for a taxpayer's first taxable year ending after September 27, 2017, a taxpayer may elect to apply a 50% allowance instead of the 100% allowance.

The TCJA strikes the requirement that the original use of the qualified property must commence with the taxpayer (i.e., the additional first-year depreciation deduction is allowed for new and used qualified property).

The corporate election to receive a refund of AMT credits in lieu of claiming bonus depreciation on qualified property is eliminated for taxable years beginning after December 31, 2017.

3. Federal Law References:

Public Law 115-97 References: Section 13201

Internal Revenue Code References: Section 168(k)

4. IRS Guidance as of December 14, 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>

- 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>

5. Florida Law:

Taxpayers are required to add back to federal taxable income the amount of the federal bonus depreciation deduction claimed pursuant to sections 167 and 168(k), IRC, for property placed in service after December 31, 2007, and before January 1, 2021. See section 220.13(1)(e), Florida Statutes (F.S.).

For the taxable year of the addition and for each of the six (6) subsequent taxable years, there is subtracted from federal taxable income one-seventh of the amount by which federal taxable income was increased because of the bonus depreciation addition, notwithstanding any sale or other disposition of the property in question and regardless of whether such property remains in service in the hands of the taxpayer.

The Florida additions and subtractions associated with the federal bonus depreciation deduction may create or increase a taxpayer's net operating loss for Florida tax purposes.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

The bonus depreciation deduction is included in the computation of federal taxable income, which is the starting point for the Florida corporate income tax computation. Florida has decoupled from federal bonus depreciation provisions since 2008, as explained in the previous section. The Florida Legislature recently adopted an amendment⁶⁵ to section 220.13(1)(e), F.S., to expand the number of taxable years to which Florida bonus depreciation additions and subtractions apply.

Taxpayers are required to add back to federal taxable income the amount of the federal bonus depreciation deduction claimed pursuant to sections 167 and 168(k), IRC, for property placed in service after December 31, 2007, and before January 1, 2027.

⁶⁵ See section 2 of Chapter 2018-119, Laws of Florida.

7. Florida Rulemaking Related to the Federal Change:

Rule 12C-1.013, Florida Administrative Code (F.A.C.), may be amended to reflect the additional taxable years to which Florida bonus depreciation additions and subtractions apply, as specified in Chapter 2018-119, Laws of Florida.

8. Florida Law References:

Chapter 2018-119, Laws of Florida; Section 220.13(1)(e), F.S., and Rule 12C-1.013, F.A.C.

9. Public Comments as of December 14, 2018:

- Public Comment #5 – Received June 13, 2018
- Public Comment #7 – Received August 20, 2018
- Public Comment #8 – Received August 21, 2018
- Public Comment #10 – Received October 1, 2018
- Public Comment #11 – Received October 19, 2018
- Public Comment #12 – Received October 23, 2018
- Second Public Meeting Transcript – October 24, 2018, pages 9 – 12
- Public Comment #13 – Received November 19, 2018

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate state law with federal law. The Florida Legislature has addressed the issue of bonus depreciation and chosen to decouple from the federal treatment by spreading out the impact of bonus depreciation over a seven-year period.

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Continue to next page for Potential Effect on State Revenues.**

11. Potential Effect on State Revenues:

Florida chose to decouple from federal bonus depreciation and provided an alternative method to be used. The tables below provide an analysis of the effect on Florida resulting from changes to bonus depreciation using the JCT methodology if Florida had chosen to adopt federal bonus depreciation. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	-\$32,500	-\$36,500	-\$24,600	-\$14,200	-\$11,600	-119,400
2	72% federal CIT impact	-\$23,400	-\$26,280	-\$17,712	-\$10,224	-\$8,352	-\$85,968
3	Conversion of federal revenue impact to federal taxable base impact	-\$111,429	-\$125,143	-\$84,343	-\$48,686	-\$39,771	-\$409,371
4	Florida taxable income share of federal base (3.6%)	-\$4,011	-\$4,505	-\$3,036	-\$1,753	-\$1,432	-\$14,737
5	Apply Florida CIT rate (5.5%)	-\$221	-\$248	-\$167	-\$96	-\$79	-\$811
6	Conversion to Florida state fiscal year	-\$273	-\$231	-\$152	-\$93	-\$69	-\$818

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	-\$4,900	\$3,300	\$8,400	\$12,500	\$13,700	-\$86,300
2	72% federal CIT impact	-\$3,528	\$2,376	\$6,048	\$9,000	\$9,864	-\$62,208
3	Conversion of federal revenue impact to federal taxable base impact	-\$16,800	\$11,314	\$28,800	\$42,857	\$46,971	-\$296,229
4	Florida taxable income share of federal base (3.6%)	-\$605	\$407	\$1,037	\$1,543	\$1,691	-\$10,664
5	Apply Florida CIT rate (5.5%)	-\$33	\$22	\$57	\$85	\$93	-\$587
6	Conversion to Florida state fiscal year	-\$22	\$30	\$63	\$87	\$73	-\$587

Note: Totals may be affected by rounding

F. Domestic Production Activities Deduction

1. Prior Federal Law:

In 2004, Congress enacted section 199, Internal Revenue Code (IRC), the deduction for qualified domestic production activities.⁶⁶ The intent of this provision was to provide tax rate relief for U.S. manufacturers who were contending with an economic slowdown of the early 2000s and promote international competitiveness.⁶⁷

Section 199, IRC, provides a domestic production activities deduction (DPAD) equal to nine percent (9%)⁶⁸ of the lesser of:

- the taxpayer's qualified production activities income (QPAI)⁶⁹ for the taxable year or
- the taxpayer's taxable income (determined without regard to section 199, IRC) for the taxable year.

The amount of the deduction is limited to 50% of the taxpayer's W-2⁷⁰ wages allocable to domestic production gross receipts. Effectively, the DPAD reduces the corporate income tax rate by 3.15% for qualified production activities income (9% x 35% federal tax rate).

Section 199(c)(4)(A), IRC (2017), provides that domestic production gross receipts may be derived from certain activities so long as they are conducted either in whole or in significant part within the United States.⁷¹ Such activities include:

- The lease, rental, license, sale, exchange, or other disposition of:
 - Qualifying production property (QPP) manufactured, produced, grown, or extracted by the taxpayer. QPP means tangible personal property, computer software, and sound recordings.⁷²
 - Any qualified film produced by the taxpayer.⁷³
 - Electricity, natural gas, or potable water produced by the taxpayer.⁷⁴
- The construction of real property.
- The performance of engineering or architectural services with respect to the construction of real property.

⁶⁶ See Public Law 108-357, American Jobs Creation Act of 2004, Title I, Section 102, applicable to taxable years beginning after December 31, 2004.

⁶⁷ See Congressional Research Service Report: *The Section 199 Production Activities Deduction: Background and Analysis*, p. 3. See also U.S. Congress, House of Representatives, American Jobs Creation Act of 2004, Conference Report to Accompany H.R. 4520, 108th Congress, 2nd session, October 7, 2004, H.Rept. 108-755, p. 275.

⁶⁸ Phased in transition rates for taxable years beginning in 2005-2009: 3% for taxable years 2005-2006 and 6% for taxable years 2007-2009. See section 102, Public Law 108-357.

⁶⁹ As defined in section 199(c), IRC, QPAI is the excess (if any) of domestic production gross receipts (DPGR) over the sum of: (1) cost of goods sold allocable to DPGR and (2) other expenses, losses, or deductions (other than the DPAD).

⁷⁰ Federal Form W-2 (*Wage and Tax Statement*)

⁷¹ See Treasury Regulation (Treas. Reg.) 1.199-3(h).

⁷² See section 199(c)(5), IRC, and Treas. Reg. 1.199-3(j)(1).

⁷³ See section 199(c)(6), IRC, and Treas. Reg. 1.199-3(k).

⁷⁴ See Treas. Reg. 1.199-3(l).

The DPAD is deducted on Line 25 of federal Form 1120 (*U.S. Corporation Income Tax Return*), and reduces the amount of federal taxable income (Line 30 of federal Form 1120).⁷⁵

2. Federal Changes:

The Tax Cuts and Jobs Act (TCJA)⁷⁶ repeals the domestic production activities deduction (section 199, IRC) for taxable years beginning after December 31, 2017. As a result, the DPAD may no longer be claimed for taxable years beginning on or after January 1, 2018.⁷⁷

3. Federal Law References:

Public Law 115-97 References: Section 13305

Internal Revenue Code References: Section 199

4. IRS Guidance as of December 14, 2018:

None

5. Florida Law:

The deduction for domestic production activities reduces the amount of federal taxable income, which is the starting point for the Florida corporate income tax computation. Florida piggybacks the deduction for domestic production activities under section 199, IRC.

When a taxpayer claims the domestic production activities deduction on Line 25 of its federal income tax return, it reduces the amount of income subject to both federal and Florida corporate income tax.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

Rule 12C-1.013(1), F.A.C., states that “taxable income,” as defined by section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due (generally Line 30 of federal Form 1120). Since the domestic production activities deduction has been repealed, federal taxable income is likely to be higher for those taxpayers who claimed the DPAD because it operated to reduce federal taxable income.

7. Florida Rulemaking related to the Federal Change:

None

⁷⁵ The Florida corporate income tax computation generally starts with federal taxable income.

⁷⁶ Public Law 115-97

⁷⁷ While the TCJA eliminates the domestic production activities deduction (which functions as a tax rate reduction) created by section 199, IRC, the TCJA also provides a tax rate reduction for all corporate income taxpayers (from 35% to 21%) and it restructures the United States system of taxation as it relates to both domestic and international companies.

8. Florida Law References:

Sections 220.03, 220.13, F.S., Rule 12C-1.013, F.A.C.

9. Public Comments as of December 14, 2018:

None

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate state law with federal law.

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11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect of the repeal of the domestic production activities deduction on Florida using the JCT methodology. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	\$4,300	\$8,900	\$9,300	\$9,600	\$9,900	\$42,100
2	77% federal CIT impact	\$3,311	\$6,853	\$7,161	\$7,392	\$7,623	\$32,340
3	Conversion of federal revenue impact to federal taxable base impact	\$15,767	\$32,633	\$34,100	\$35,200	\$36,300	\$154,000
4	Florida taxable income share of federal base (3.6%)	\$568	\$1,175	\$1,228	\$1,267	\$1,307	\$5,544
5	Apply Florida CIT rate (5.5%)	\$31	\$65	\$68	\$70	\$72	\$305
6	Conversion to Florida state fiscal year	\$45	\$65	\$68	\$70	\$72	\$321

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	\$10,300	\$10,700	\$11,100	\$11,600	\$12,200	\$98,000
2	77% federal CIT impact	\$7,931	\$8,239	\$8,547	\$8,932	\$9,394	\$75,383
3	Conversion of federal revenue impact to federal taxable base impact	\$37,767	\$39,233	\$40,700	\$42,533	\$44,733	\$358,967
4	Florida taxable income share of federal base (3.6%)	\$1,360	\$1,412	\$1,465	\$1,531	\$1,610	\$12,923
5	Apply Florida CIT rate (5.5%)	\$75	\$78	\$81	\$84	\$89	\$711
6	Conversion to Florida state fiscal year	\$75	\$78	\$81	\$85	\$70	\$711

Note: Totals may be affected by rounding.

G. Base Erosion and Anti-Abuse Tax

1. Prior Federal Law:

There is no federal base erosion or anti-abuse tax, so multinational companies may establish cross-border related-party payments to lower the income of related entities doing business in the United States.⁷⁸

2. Federal Changes:

The Tax Cuts and Jobs Act (TCJA)⁷⁹ creates a new base erosion and anti-abuse tax (BEAT) in section 59A, Internal Revenue Code (IRC), which is a new minimum tax on large corporations with significant base erosion payments to foreign related parties.

The BEAT applies to those corporations:

- whose average annual gross receipts for the 3-taxable-year period ending with the preceding taxable year are at least \$500 million and
- whose base erosion percentage for the taxable year is 3% or higher (2% in the case of banks and registered securities dealers).⁸⁰

Whether a taxpayer is subject to BEAT is generally determined on a controlled group basis, taking into account all corporations that would be considered a single employer under section 52(a), IRC,⁸¹ which substitutes “more than 50 percent” for “at least 80 percent” in section 1563(a)(1), IRC (definition of controlled group of corporations).⁸²

The BEAT is paid in addition to the regular corporate income tax and does not affect the base of the regular corporate income tax. The BEAT is computed using a formula that compares a stated percentage of the modified taxable income with the regular tax due by the taxpayer (reduced by certain credits). If the applicable percentage of the modified taxable income is larger than the regular tax due for the taxable year, the difference between the two amounts is the BEAT.⁸³

The BEAT applies to base erosion payments paid or accrued in taxable years beginning after December 31, 2017.⁸⁴

⁷⁸ The Internal Revenue Code contains other limitations on the shifting of U.S. income out of country, such as section 482, IRC, *Allocation of income and deductions among taxpayers*.

⁷⁹ Public Law 115-97

⁸⁰ The BEAT does not apply to regulated investment companies, real estate investment trusts, or S corporations. See section 59A(e)(1)(A), IRC.

⁸¹ See section 59A(e)(3), IRC.

⁸² It should be noted that, in general, a group of U.S. companies owned directly by a foreign company would not be a controlled group under the single employer rule because section 1563(b)(2)(C), IRC, excludes foreign corporations from the definition of controlled group. However, section 59A(e)(3), IRC, disregards this exclusion. Consequently, U.S. companies that are owned more than 50 percent by a foreign corporation are all part of the same controlled group for purposes of the BEAT.

⁸³ While the determination of which corporations are subject to the BEAT is done on a controlled group basis, the calculation of any BEAT liability is done on a taxpayer entity-by-entity basis.

⁸⁴ See section 14401(e) of Public Law 115-97.

The term “base erosion payment” means any amount paid or accrued by the taxpayer to a foreign related party⁸⁵ of the taxpayer for the taxable year.

The term “base erosion percentage” means, for the taxable year, the quotient of:

- the aggregate amount of base erosion tax benefits of the taxpayer for the taxable year divided by
- the sum of the aggregate amount of deductions allowable to the taxpayer (including the base erosion tax benefits allowable to the taxpayer for the taxable year).⁸⁶

The term “base erosion tax benefit” means:

- any deduction allowed under Chapter 1 of the Internal Revenue Code for the taxable year with respect to a base erosion payment, such as for interest, rents, royalties, and certain services⁸⁷;
- the case of a base erosion payment with respect to the purchase of depreciable or amortizable property, any deduction allowed in Chapter 1 for depreciation or amortization with respect to the property acquired with such payment;
- in the case of a base erosion payment with respect to reinsurance payments, any reduction under section 803(a)(1)(B), IRC, for the gross amounts or premiums or other consideration on insurance, annuity contracts, or indemnity insurance, and any deduction under section 832(b)(4)(A), IRC, from the gross premiums written on insurance contracts during the taxable year for the premiums paid for reinsurance; or
- in the case of certain base erosion payments to expatriated entities,⁸⁸ any reduction in gross receipts with respect to a payment to a surrogate foreign corporation⁸⁹ in computing gross income of the taxpayer for the taxable year.

⁸⁵ For BEAT purposes, a related party is generally a 25% owner of the taxpayer (by total voting power or total value of all classes of stock), any person related within the meaning of sections 267(b) or 707(b)(1), IRC, and any person related to the taxpayer within the meaning of section 482, IRC. See section 59A(g), IRC.

⁸⁶ See section 59A(c)(4)(B), IRC. Certain items are not taken into account in the computation of “base erosion percentage,” such as:

- net operating loss deductions under section 172, IRC;
- the amount of deductions allowed under sections 245A (100% dividend received deduction for foreign source dividend) and 250 (Foreign-derived intangible income and Global intangible low-taxed income), IRC;
- any deduction for certain amounts paid or accrued for services which meet the requirements for eligibility for use of the services cost method under section 482, IRC (determined without regard to the requirement that the services not contribute significantly to fundamental risks of business success or failure), and which constitute the total services cost with no markup component (see Treasury Regulation 1.482-9(b) and (j)); and
- any deduction for qualified derivative payments which are not treated as base erosion payments.

⁸⁷ Payments for cost of goods sold (COGS) are generally excluded, as COGS is considered a reduction of income and not a deduction.

⁸⁸ See section 59A(d)(4), IRC.

⁸⁹ As defined in section 59A(d)(4)(C)(i), IRC.

The base erosion minimum tax amount for any taxable year is the excess, if any, of:

- Ten percent⁹⁰ (five percent for taxable years beginning in calendar year 2018) of the modified taxable income of the taxpayer for the taxable year over
- the regular tax liability for the taxable year reduced (but not below zero) by the excess, if any, of:
 - the credits allowed under Chapter 1 of the Internal Revenue Code, over
 - the sum of:
 - the credit allowed under section 38, IRC, that is allocable to the research credit determined under section 41(a), IRC, plus
 - the portion of the applicable section 38, IRC, credits that do not exceed 80% of the lesser of:
 - the amounts of the applicable section 38, IRC, credits⁹¹ or
 - the base erosion minimum tax amount (determined without regard to the section 38, IRC, credits 80% limitation⁹²).

Example. Assume that XYZ Consolidated Group is an applicable taxpayer pursuant to section 59A(e), IRC. For its taxable year beginning in 2019, XYZ has federal taxable income of \$100,000, resulting in federal tax liability of \$21,000, before consideration of any applicable tax credits (assuming a 21% tax rate). XYZ claims a total of \$6,000 in tax credits for the taxable year. Of the \$6,000 in tax credits, \$3,000 are research credits and \$2,000 are applicable section 38, IRC, credits.

The regular tax liability for the taxable year reduced by the excess of certain credits equals \$19,600:

\$21,000 regular tax liability – (\$6,000 total credits – (\$3,000 research credit + (\$2,000 section 38, IRC, credits x 80%))) = \$19,600.

\$21,000 regular tax liability – (\$6,000 – (\$3,000 + \$1,600)) = \$19,600.

\$21,000 regular tax liability – (\$6,000 – \$4,600) = \$19,600.

\$21,000 regular tax liability – \$1,400 = \$19,600.

Since ten percent of the modified taxable income of the taxpayer is compared with the regular tax liability as computed above, the BEAT will be owed to the extent that XYZ's modified taxable income is more than \$196,000 (\$196,000 x 10% = \$19,600).

⁹⁰ There is an increased rate for certain banks and securities dealers. The percentage rate is increased by 1% for any taxpayer that is a member of an affiliated group which includes a bank or registered securities dealer. See section 59A(b)(3), IRC.

⁹¹ See section 59A(b)(4), IRC. For BEAT computation purposes, the applicable section 38, IRC, credits are those credits allowed under section 38, IRC, for the taxable year which are properly allocable to:

- the low-income housing credit under section 42(a), IRC;
- the renewable electricity production credit under section 45(a), IRC; and
- the investment credit determined under section 46, IRC, but only to the extent properly allocable to the energy credit determined under section 48, IRC.

⁹² See section 59A(b)(1)(B)(ii)(II), IRC.

Example continued. For its taxable year beginning in 2019, assume XYZ Consolidated Group's modified taxable income is \$250,000.

Therefore, the BEAT is \$5,400:

\$250,000 modified taxable income x 10% = \$25,000.

\$25,000 - \$19,600 regular tax liability reduced by the excess of certain credits = \$5,400.

The BEAT is paid in addition to the regular corporate income tax of \$15,000 (\$21,000 - \$6,000 tax credits).

Modified taxable income is computed by adding back to a taxpayer's federal taxable income:

- any base erosion tax benefit with respect to any base erosion payment, and
- the base erosion percentage of any net operating loss deduction allowed under section 172, IRC, for the taxable year.

For taxable years beginning after December 31, 2025, for purposes of computing the BEAT amount, the percentage of modified taxable income increases from 10% to 12.5%.⁹³ Also, the regular tax liability is reduced (but not below zero) by the aggregate amount of allowable credits, rather than by the excess of certain credits, as discussed previously.⁹⁴

Summary BEAT rate table:

Taxable Year(s) beginning in	% of Modified Taxable Income	% of Modified Taxable Income for Banks and Registered Securities Dealers
2018	5%	6%
2019-2025	10%	11%
2026-	12.5%	13.5%

3. Federal Law References:

Public Law 115-97 References: Section 14401

Internal Revenue Code References: Section 59A

4. IRS Guidance as of December 14, 2018:

- IRS Newswire 2018-250, December 13, 2018, <https://www.irs.gov/newsroom/irs-issues-proposed-regulations-on-key-new-international-provision-the-base-erosion-and-anti-abuse-tax>

⁹³ For taxable years beginning after December 31, 2025, the percentage of modified taxable income increases from 11% to 13.5% for certain banks and securities dealers.

⁹⁴ See section 59A(b)(2), IRC.

- REG-104259-18, Base Erosion and Anti-Abuse Tax, <https://www.irs.gov/pub/irs-drop/reg-104259-18.pdf>

5. Florida Law:

There is no federal base erosion or anti-abuse tax affecting federal taxable income, which is the starting point for the Florida corporate income tax computation. Likewise, there is no separate Florida base erosion law or anti-abuse tax.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

The BEAT does not affect federal taxable income, which is the starting point for the Florida corporate income tax computation. Therefore, the BEAT has no impact on Florida.

7. Florida Rulemaking related to the Federal Change:

None.

8. Florida Law References:

Sections 220.03 and 220.13, F.S., and Rule 12C-1.013, F.A.C.

9. Public Comments as of December 14, 2018:

None.

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate Florida state law with federal law.

<p>Remainder of page intentionally left blank. Continue to next page for Potential Effect on State Revenues.</p>

11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect of the new base erosion and anti-abuse tax on Florida using the JCT methodology. As discussed above, the BEAT tax does not apply in Florida. These estimates have been provided to demonstrate a possible impact amount were such a tax to apply to Florida. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	\$800	\$4,300	\$13,300	\$16,100	\$17,100	\$51,700
2	100% federal CIT impact	\$800	\$4,300	\$13,300	\$16,100	\$17,100	\$51,700
3	Conversion of federal revenue impact to federal taxable base impact	\$3,810	\$20,476	\$63,333	\$76,667	\$81,429	\$246,190
4	Florida taxable income share of federal base (3.6%)	\$137	\$737	\$2,280	\$2,760	\$2,931	\$8,846
5	Apply Florida CIT rate (5.5%)	\$8	\$41	\$125	\$152	\$161	\$487
6	Conversion to Florida state fiscal year	\$16	\$58	\$131	\$154	\$161	\$520

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	\$16,800	\$15,900	\$16,500	\$21,600	\$27,000	\$149,600
2	100% federal CIT impact	\$16,800	\$15,900	\$16,500	\$21,600	\$27,000	\$149,600
3	Conversion of federal revenue impact to federal taxable base impact	\$80,000	\$75,714	\$78,571	\$102,857	\$128,571	\$711,429
4	Florida taxable income share of federal base (3.6%)	\$2,880	\$2,726	\$2,829	\$3,703	\$4,629	\$25,611
5	Apply Florida CIT rate (5.5%)	\$158	\$150	\$156	\$204	\$255	\$1,409
6	Conversion to Florida state fiscal year	\$157	\$151	\$166	\$214	\$201	\$1,409

Note: Totals may be affected by rounding.

H. Amortization of Research and Experimental Expenditures

1. Prior Federal Law:

Research or experimental expenditures are expenditures incurred in connection with a trade or business which represent research and development costs in the experimental or laboratory sense. The term generally includes all such costs for activities intended to eliminate uncertainty about the development or improvement of a product.⁹⁵

Whether expenditures qualify as research or experimental expenditures depends on the nature of the activity to which the expenditures relate, not the nature of the product or improvement being developed or the level of technological advancement the product or improvement represents.^{96 97}

Section 174, IRC, offers taxpayers three options for treating certain reasonable research or experimental expenditures⁹⁸ paid or incurred in connection with development or improvement of a product:

- Pursuant to section 174(a), IRC, taxpayers may elect to deduct currently (expense) the amount of certain reasonable research or experimental expenditures paid or incurred in connection with a trade or business.⁹⁹
- Pursuant to section 174(b), IRC, taxpayers may elect to forgo a current deduction, capitalize their research or experimental expenditures, and amortize (recover) them ratably over the useful life of the research, for a period of no less

⁹⁵ See Treasury Regulations (Treas. Reg.) section 1.174-2(a)(3), *Product defined*. The term “product” includes any pilot model, process, formula, invention, technique, patent, or similar property, and includes products to be used by the taxpayer in its trade or business, as well as products to be held for sale, lease, or license.

⁹⁶ See Treas. Reg. section 1.174-2(a)(1), *Research or experimental expenditures defined*.

⁹⁷ See Treas. Reg. section 1.174-2(a)(6), *Research or experimental expenditures—exclusions*. Research and experimental costs do not include expenses for any of the following activities: quality control testing; efficiency surveys; management studies; consumer surveys; advertising or promotions; the acquisition of another’s patent, model, production, or process; or research in connection with literary, historical, or similar projects.

⁹⁸ Section 41, Internal Revenue Code (IRC), provides a tax credit for expenses paid or incurred for qualified research conducted domestically. See federal Form 6765 (*Credit for Increasing Research Activities*). Qualified research is research for which expenses may be treated as section 174, IRC, expenditures. It should be noted, however, that not all section 174, IRC, expenditures qualify as eligible toward earning the section 41, IRC, tax credit. Some taxpayers with qualified research choose to claim the section 41, IRC, research credit in lieu of deducting qualifying research and development expenditures under section 174, IRC.

Florida has a similar corporate income tax credit available to certain qualified target industry businesses for increased research and development expenses incurred in Florida. See section 220.196, Florida Statutes (F.S.).

⁹⁹ An election to deduct research and experimental expenditures as current business expenses (which are not chargeable to a capital account) is binding for the year it is made and for all subsequent years unless a change to a different method is authorized by the Secretary of the Treasury.

than 60 months.¹⁰⁰

- As cross referenced in section 174(f), IRC, election of 10-year amortization of expenditures allowable as a deduction under section 174(a), IRC, is permitted pursuant to section 59(e), IRC.¹⁰¹

Other considerations with respect to section 174, IRC, include:

- Land other property. Section 174, IRC, does not apply to any expenditure for the acquisition or improvement of land or of depreciable or depletable property used in connection with any research or experimentation. See section 174(c), IRC.
- Exploration expenditures. Section 174, IRC, does not apply to any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas). See section 174(d), IRC.
- Software. Although software is not specifically mentioned in section 174, IRC, the IRS has had a longstanding rule of administrative convenience that permits taxpayers to treat costs of developing software similarly to costs deductible as section 174, IRC, expenses, whether or not the particular software is patented or copyrighted or otherwise meets the requirements of section 174, IRC.¹⁰²

2. Federal Changes:

Pursuant to the Tax Cuts and Jobs Act (TCJA),¹⁰³ with respect to specified research or experimental expenditures, section 174, IRC, will differentiate between domestic and foreign research paid or incurred in taxable years beginning after December 31, 2021:

- Specified research or experimental expenditures which are attributable to domestic research are capitalized and amortized ratably over a five-year period, beginning with the midpoint of the tax year in which the specified research or experimental expenditures are paid or incurred.¹⁰⁴ The current year expensing of specified research or experimental expenditures is eliminated for those expenditures incurred in taxable years beginning after December 31, 2021.

¹⁰⁰ Amortization begins with the month in which the taxpayer first realizes benefits from such expenditures. To elect to amortize research and experimental costs, a taxpayer completes Part VI of federal Form 4562 (*Depreciation and Amortization*).

¹⁰¹ Taxpayers electing this method do not have to make an Alternative Minimum Tax (AMT) adjustment with respect to these expenditures when computing AMT. To elect to amortize qualifying costs over the optional 10-year recovery period, a taxpayer completes Part VI of federal Form 4562 (*Depreciation and Amortization*) and attaches a statement specifying the type and the amount of cost for which the election is made.

¹⁰² See Revenue Procedure 2000-50, 2000-2 C.B. 601.

¹⁰³ Public Law (P.L.) 115-97

¹⁰⁴ See section 13206(a), P.L. 115-97; new section 174(a)(2)(B), IRC.

- Specified research or experimental expenditures which are attributable to foreign research¹⁰⁵ are capitalized and amortized ratably over a period of 15 years, beginning with the midpoint of the tax year in which the specified research or experimental expenditures are paid or incurred.

The cross reference to section 59(e), IRC, in section 174(f), IRC, is removed as part of the rewriting of section 174, IRC (as amended by the TCJA). Taxpayers will no longer be able to elect to amortize research or experimental expenditures ratably over 10 years for tax years beginning after 2021.¹⁰⁶

The TCJA specifies that any amount paid or incurred in connection with software development is treated as a research or experimental expenditure.¹⁰⁷ The new law terminates the previous rule under Revenue Procedure 2000-50, which allowed current year expensing.

Unchanged from before the enactment of the TCJA, section 174, IRC, treatment does not apply to expenditures for the acquisition or improvement of land or of depreciable or depletable property used in connection with any research or experimentation nor to expenditures paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).¹⁰⁸

In the case of retired, abandoned, or disposed property with respect to which specified research or experimental expenditures are paid or incurred, any remaining basis may not be recovered in the year of retirement, abandonment, or disposal, but instead must continue to be amortized over the remaining amortization period.¹⁰⁹

The application of the amendments to section 174, IRC, is treated as a change in the taxpayer's method of accounting for purposes of section 481, IRC, initiated by the taxpayer, and made with the consent of the Secretary of the Treasury.¹¹⁰ These changes are applied on a cutoff basis to research or experimental expenditures paid or incurred in tax years beginning after December 31, 2021; therefore, no adjustments under section 481(a), IRC, will be made for research or experimental expenditures paid or incurred in taxable years beginning before January 1, 2022.

3. Federal Law References:

Public Law 115-97 References: Section 13206

Internal Revenue Code References: Section 174

4. IRS Guidance as of December 14, 2018:

¹⁰⁵ Within the meaning of section 41(d)(4)(F), IRC, foreign research is any research conducted outside the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

¹⁰⁶ Previously, taxpayers with significant losses elected 10-year amortization to reduce the amount of carryforward that could be subject to expiration under the 20-year net operating loss carryforward limitation, even if they had no alternative minimum tax liability.

¹⁰⁷ See section 13206(a), P.L. 115-97; new section 174(c)(3), IRC.

¹⁰⁸ See section 13206(a), P.L. 115-97; new sections 174(c)(1) and (2), IRC.

¹⁰⁹ See section 13206(a), P.L. 115-97; new section 174(d), IRC.

¹¹⁰ See section 13206(b), P.L. 115-97.

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

5. Florida Law:

Section 174, IRC, deductions are included in the computation of federal taxable income, which is the starting point for the Florida corporate income tax computation. Florida currently piggybacks the federal treatment of section 174, IRC, deductions.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

Rule 12C-1.013(1)(a), F.A.C., states that “taxable income,” as defined by section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due (generally Line 30 of federal Form 1120 (*U.S. Corporation Income Tax Return*)).

The TCJA requires research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2021, to be amortized over five years (fifteen years, in the case of foreign research). These deductions are included in the computation of federal taxable income. The main impact of this change is timing, as section 174, IRC, before and after the enactment of the TCJA, allows research and experimental expenditures to be deducted in full, over time.

7. Florida Rulemaking Related to the Federal Change:

None

8. Florida Law References:

Section 220.13(2), F.S., and Rule 12C-1.013, F.A.C.

9. Public Comments as of December 14, 2018:

- Public Comment #11

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate state law with federal law.

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Continue to next page for Potential Effect on State Revenues.**

11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect of the amortization of research and experimental expenditure changes on Florida using the JCT methodology. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	\$0	\$0	\$0	\$0	\$24,200	\$24,200
2	77% federal CIT impact	\$0	\$0	\$0	\$0	\$18,634	\$18,634
3	Conversion of federal revenue impact to federal taxable base impact	\$0	\$0	\$0	\$0	\$88,733	\$88,733
4	Florida taxable income share of federal base (3.6%)	\$0	\$0	\$0	\$0	\$3,194	\$3,194
5	Apply Florida CIT rate (5.5%)	\$0	\$0	\$0	\$0	\$176	\$176
6	Conversion to Florida state fiscal year	\$0	\$0	\$0	\$37	\$189	\$226

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	\$32,900	\$26,000	\$18,900	\$11,400	\$6,300	\$119,700
2	77% federal CIT impact	\$25,333	\$20,020	\$14,553	\$8,778	\$4,851	\$92,169
3	Conversion of federal revenue impact to federal taxable base impact	\$120,633	\$95,333	\$69,300	\$41,800	\$23,100	\$438,900
4	Florida taxable income share of federal base (3.6%)	\$4,343	\$3,432	\$2,495	\$1,505	\$832	\$15,800
5	Apply Florida CIT rate (5.5%)	\$239	\$189	\$137	\$83	\$46	\$869
6	Conversion to Florida state fiscal year	\$228	\$178	\$126	\$75	\$36	\$869

Note: Totals may be affected by rounding.

I. Participation Exemption for Dividends Received from Foreign Corporation

[Disclaimer: This section’s focus is limited to that of domestic C corporations owning at least 10 percent of a foreign corporation.]

1. Prior Federal Law:

United States (U.S.) corporations are subject to a federal corporate income tax on worldwide income. In general, income earned directly by a U.S. person from the conduct of a foreign business is taxed on a current basis, but income earned indirectly from a separate legal entity operating the foreign business is not.

Instead, active foreign business income earned by a U.S. person indirectly through an interest in a foreign corporation is generally not subject to U.S. tax until the income is distributed as a dividend to the U.S. person.¹¹¹

Certain anti-deferral regimes may cause the U.S. owner to be taxed on a current basis in the United States on certain categories of passive or highly mobile income earned by the foreign corporation, regardless of whether the income has been distributed as a dividend to the U.S. owner. The main anti-deferral regimes that provide such exceptions are the controlled foreign corporation (CFC) rules of subpart F¹¹² and the passive foreign investment company (PFIC)¹¹³ rules.

These provisions are exceedingly intricate and contain numerous general rules, special rules, definitions, exceptions, exclusions, and limitations. As such, only a basic overview is included here.

Controlled Foreign Corporation rules

Subpart F does not apply directly to a CFC. Instead, the Subpart F rules operate by treating a U.S. shareholder¹¹⁴ of a CFC as if it actually received its proportionate share of certain categories of the foreign corporation’s current earnings and profits. The U.S.

¹¹¹ It should be noted that section 245, Internal Revenue Code (IRC), allows as a deduction from federal income a specified percentage of the U.S.-source portion of the dividends received by a corporation from a qualified 10-percent owned foreign corporation as follows:

For a _____ foreign corporation,	...there is allowed a _____ dividends-received deduction.
less-than-20%-owned	70%
20%-or-more-owned	80%
wholly owned	100%

Section 245, IRC, specifies that the percentage allowed as a deduction is an amount equal to the percent specified in section 243, IRC. A “qualified 10-percent owned foreign corporation” is any foreign corporation (other than a passive foreign investment company) if at least 10 percent of the stock of such corporation (by vote and value) is owned by the taxpayer. See section 245(a)(2), IRC.

These dividend-received deductions are subject to certain income limitations. See section 246(b), IRC.

¹¹² Subpart F - Controlled Foreign Corporations includes sections 951-965 of the Internal Revenue Code.

¹¹³ Treatment of Certain Passive Foreign Investment Companies includes sections 1291 (Subpart A), 1293-1295 (Subpart B), 1296 (Subpart C), and 1297-1298 (Subpart D) of the Internal Revenue Code.

¹¹⁴ Pursuant to section 951(b), IRC, a U.S. shareholder is generally a U.S. person (as defined in section 957(c), IRC) who owns 10 percent or more of the total combined voting power of such foreign corporation.

shareholder is required to report this income in the current taxable year, whether or not the CFC actually makes a distribution.¹¹⁵

A CFC generally is defined as any foreign corporation if U.S. persons own (directly¹¹⁶, indirectly through foreign entities¹¹⁷, or constructively¹¹⁸) more than 50 percent of the corporation's stock (measured by vote or value) on any day during the taxable year of such foreign corporation.¹¹⁹

Congress enacted section 956, IRC (included in subpart F income), so taxpayers that engaged in transactions that were considered substantially the same as declaring a dividend from a CFC to its U.S. shareholder (e.g., a loan from the foreign subsidiary or a pledge of the foreign subsidiary's assets to secure borrowing in the United States) are taxed as if a dividend had, in fact, been paid. This "deemed dividend" rule applies to situations where a CFC acts as pledgor or guarantor of (or otherwise permits its assets to directly or indirectly support) a U.S. borrowing.

Section 961, IRC, provides for adjustments to the basis of stock in a CFC and certain other property if a stockholder sells its interest in a CFC. These adjustments may require an increase to the basis of stock (to reflect income previously taxed to the U.S. shareholder) or a decrease to the basis of stock (to reflect an amount of a distribution excluded from income).

Pursuant to section 1248, IRC, any gain recognized on the sale or exchange of the stock of a CFC by a U.S. person may be required to be included in the gross income of the U.S. person as a dividend, to the extent of the earnings and profits of the CFC that have not already been subject to U.S. tax.

Passive Foreign Investment Company rules

The PFIC regime aims to discourage U.S. persons from forming a foreign corporation and using that company to invest in primarily passive investments, in an attempt to shift income out of the U.S. federal tax system. Alternative sets of income inclusion rules apply to U.S. persons that are shareholders in a PFIC, regardless of their percentage ownership in the company.¹²⁰

If a U.S. person is treated as owning an interest in a PFIC, that person may be subject to certain tax and interest charges, upon receipt of an "excess distribution," which consists of certain distributions from, and all gain from the disposition of stock in, the PFIC. This special tax and interest charge approximates the U.S. federal income tax that would have been payable if the foreign corporation had distributed all of its income every year. The U.S. person may be able to avoid the application of the excess distribution rules by making an election to include amounts in income each year, regardless of whether or not the PFIC makes a distribution in that year.

¹¹⁵ See section 951(a), IRC.

¹¹⁶ See section 958(a)(1), IRC.

¹¹⁷ See section 958(a)(2), IRC.

¹¹⁸ See section 958(b), IRC.

¹¹⁹ See section 957(a), IRC.

¹²⁰ See sections 1291, 1293-1296, IRC.

A PFIC is generally defined as any foreign corporation if 75 percent or more of its gross income for the taxable year consists of passive income (income test), or 50 percent or more of its assets consists of assets that produce, or are held for the production of, passive income (asset test).¹²¹

Under the PFIC regime, passive income is any income which is of a kind that would be foreign personal holding company income, including dividends, interest, royalties, rents, and certain gains on the sale or exchange of property, commodities, or foreign currency. Some exceptions apply.¹²²

The PFIC rules generally don't affect U.S. shareholders of CFCs. When a PFIC is also a CFC, the PFIC rules do not apply, and the asset is taxed as a CFC in the hands of the U.S. shareholder.¹²³

Foreign tax credit

The federal income tax code allows a foreign tax credit¹²⁴, which enables U.S. taxpayers to avoid or reduce double taxation, but generally only when foreign earnings are distributed to the U.S. parent or otherwise subject to U.S. taxation. The foreign tax credit is generally available to offset, in whole or in part, the U.S. tax owed on foreign source income.¹²⁵

Pursuant to section 902, IRC, a domestic corporation that owns at least 10 percent of the voting stock of a foreign corporation is allowed a "deemed-paid" credit for foreign income taxes paid by the foreign corporation that the domestic corporation is deemed to have paid when the related income is distributed as a dividend.

2. Federal Changes:

The Tax Cuts and Jobs Act (TCJA)¹²⁶ adds new section 245A, IRC, as part of the establishment of a participation exemption (territorial) system for taxation of foreign income. A territorial tax system taxes companies based on the location of profits rather than corporate residence. This means that, under certain circumstances, U.S. companies that earn profits overseas will not face an additional U.S. tax on those profits when they are brought back to the United States.

The exemption is in the form of a 100 percent dividends-received deduction (DRD) for the foreign-source portion of dividends received from specified 10-percent owned foreign corporations (STFC) by domestic corporations that are U.S. shareholders of those foreign corporations within the meaning of section 951(b), IRC. The exemption

¹²¹ See section 1297, IRC.

¹²² See section 954(c), IRC.

¹²³ See section 951(c), IRC.

¹²⁴ Foreign Tax Credit includes sections 901-909 of the Internal Revenue Code.

¹²⁵ Taxpayers may choose to take a deduction for foreign taxes paid instead of choosing a credit. In most cases, the foreign tax credit is to a taxpayer's advantage.

¹²⁶ Public Law 115-97

encourages U.S. companies to repatriate their accumulated foreign earnings and invest them in the United States.¹²⁷

The term STFC does not include any corporation which is a PFIC with respect to the shareholder and which is not a CFC.¹²⁸

The term “dividend received” is intended to be interpreted broadly, consistent with provisions of sections 243 and 245, IRC. For example, if a domestic corporation indirectly owns stock of a foreign corporation through a partnership, and the domestic corporation would qualify for the DRD if it owned the stock directly, then the domestic corporation is allowed a DRD with respect to its distributive share of the partnership’s dividend from the foreign corporation.

Also, the DRD is available only to C corporations that are not regulated investment companies (RICs) or real estate investment trusts (REITs).¹²⁹

Foreign-source portion of a dividend

The foreign-source portion of any dividend from an STFC is an amount which bears the same ratio to that dividend as the undistributed foreign earnings of the STFC bears to the total undistributed earnings of the STFC.^{130 131}

The undistributed earnings are the amount of the earnings and profits of the STFC (computed in accordance with sections 964(a) and 986, IRC) as of the close of the tax year of the STFC in which the dividend is distributed and not reduced by dividends distributed during that taxable year.¹³²

Hybrid dividends

The section 245A DRD is not allowed for hybrid dividends which have received a deduction or other relief for foreign taxes. A hybrid dividend is an amount received from a CFC for which a deduction would be allowed under section 245A, IRC, and for which the STFC received a deduction (or other tax benefit) with respect to any income, war profits, and excess profits taxes imposed by any foreign country.

¹²⁷ Because a domestic corporation that is a U.S. shareholder now generally receives a section 245A DRD on dividends from STFCs, section 902, IRC, was repealed by section 14301 of the TCJA.

¹²⁸ See section 245A(b), IRC.

¹²⁹ See Conference Report on H.R. 1, Tax Cuts and Jobs Act (H. Rept. 115-466).

¹³⁰ See section 245A(c)(1), IRC.

¹³¹ As it did before the enactment of the TCJA, section 245, IRC, allows as a deduction from federal income a specified percentage of the U.S.-source portion of the dividends received by a corporation from a qualified 10-percent owned foreign corporation. Section 13002 of the TCJA amended the percentage of the allowed dividends-received deduction:

For a _____ foreign corporation,	...there is allowed a _____ dividends-received deduction.
less-than-20%-owned	50%
20%-or-more-owned	65%
wholly owned	100%

¹³² See section 245A(c)(2), IRC.

If a CFC with respect to which a domestic corporation is a U.S. shareholder receives a hybrid dividend from any other CFC with respect to which the domestic corporation is also a U.S. shareholder, then the hybrid dividend is treated as subpart F income of the recipient CFC. The U.S. shareholder includes its pro rata share of the subpart F income in its gross income.

Section 956, IRC

Subpart F income remains taxable and is not eligible for a section 245A DRD. The TCJA did not amend section 956, IRC, which led to an inconsistent result following enactment of section 245A, IRC: A section 956, IRC, inclusion (a “deemed dividend”) of a U.S. shareholder is taxable (and, therefore, not eligible for the section 245A DRD), even though an *actual* dividend of the same amount would not be taxable under new section 245A, IRC.

The IRS has issued proposed rules¹³³ providing that the amount otherwise determined under section 956, IRC, is reduced to the extent that the U.S. shareholder would be allowed a deduction under section 245A, IRC, if the U.S. shareholder had received a distribution from the CFC in an amount equal to that otherwise determined under section 956, IRC.

Section 961, IRC

If a U.S. shareholder that is a domestic corporation has received a dividend from a foreign corporation that is allowed a section 245A DRD, then solely for the purposes of determining the domestic corporation’s loss on the sale of stock of the foreign corporation, the domestic corporation reduces its basis in the stock of the foreign corporation by an amount equal to the section 245A DRD.¹³⁴

Section 1248, IRC

Certain deemed dividends under section 1248, IRC, qualify for a section 245A DRD.¹³⁵ Specifically, if a domestic corporation has gain from the sale or exchange of stock of a foreign corporation that it has held for at least one year, any amount that is treated as a dividend under section 1248, IRC, would be eligible for the section 245A DRD.

Foreign tax credit disallowance

No foreign tax credit or deduction is allowed for any taxes paid or accrued with respect to any portion of a distribution treated as a dividend qualifying for the DRD. For purposes of computing the foreign tax credit limitation, a U.S. shareholder of an STFC computes its foreign-source taxable income by disregarding the foreign-source portion of any dividend received for which the DRD is taken.¹³⁶

¹³³ See REG-114540-18, *Amount Determined Under Section 956 for Corporate United States Shareholders*.

¹³⁴ See new section 961(d), IRC, added by section 14102 of the TCJA.

¹³⁵ See section 1248(j), added by section 14102(a) of the TCJA.

¹³⁶ See section 904(b)(5), IRC.

Holding period requirement

The U.S. shareholder must hold its stock for over a year in order to qualify for the section 245A DRD for any dividend received on that stock. Specifically, a domestic corporation is not permitted a DRD in respect of any dividend on any share of stock that is held by the domestic corporation for 365 days or less during the 731-day period beginning on the date which is 365 days before the date on which such share becomes ex-dividend with respect to such dividend.¹³⁷

The foreign corporation must qualify as an STFC and the domestic corporation must qualify as a 10 percent shareholder at all times during the applicable period.¹³⁸

Effective date

The provision applies to distributions made (and for purposes of determining a taxpayer's foreign tax credit limitation under section 904, IRC, deductions in taxable years beginning) after December 31, 2017.

3. Federal Law References:

Public Law 115-97 References: Section 14101

Internal Revenue Code References: Section 245A, IRC (2018)

4. IRS Guidance as of December 14, 2018:

- Tax Reform Guidance for 1120 filers, April 9, 2018, <https://www.irs.gov/forms-pubs/tax-reform-guidance-for-1120-filers-09-apr-2018>
- IRS Newswire 2018-210, October 31, 2018, <https://www.irs.gov/newsroom/irs-issues-proposed-regulations-reducing-potential-income-inclusions-for-certain-domestic-corporations-that-own-stock-in-foreign-corporations>
- REG-114540-18, Amount Determined Under Section 956 for Corporate United States Shareholders, <https://www.irs.gov/pub/irs-drop/reg-114540-18.pdf>
- IRS Newswire 2018-235, November 28, 2018, <https://www.irs.gov/newsroom/irs-issues-proposed-regulations-on-foreign-tax-credits>
- REG-105600-18, Guidance Related to the Foreign Tax Credit, Including Guidance Implementing Changes Made by the Tax Cuts and Jobs Act, <https://www.irs.gov/pub/irs-drop/reg-105600-18.pdf>

5. Florida Law:

Rule 12C-1.013(1)(a), F.A.C., states that "taxable income," as defined by section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due (generally Line 30 of federal Form 1120 (*U.S. Corporation Income Tax Return*)).

¹³⁷ See section 246(c)(5)(A), IRC. Ex-dividend is a synonym for "without dividend." Said of a stock at the time when the declared dividend becomes the property of the person who owned the stock on the record date. When stock is sold ex-dividend, the seller--not the buyer--has the right to the next dividend which has been declared but not paid.

¹³⁸ See section 246(c)(5)(B), IRC.

Florida piggybacks the federal treatment of sections 243 and 245, IRC, dividends-received deductions. Florida also piggybacks the federal classification of certain foreign income and deemed dividends as subpart F income.

Section 220.13(1)(b)2., F.S., provides for a subtraction from federal taxable income, to the extent included therein, for certain foreign income. Specifically, the statute refers to dividends treated as received from sources without the United States as determined under section 862, IRC, and all amounts included in federal taxable income under section 78 or section 951, IRC.¹³⁹

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

Section 245A DRDs are included in the computation of federal taxable income, which is the starting point for the Florida corporate income tax computation.

7. Florida Rulemaking related to the Federal Change:

None

8. Florida Law References:

Sections 220.03, 220.13, F.S., Rule 12C-1.013, F.A.C.

9. Public Comments as of December 14, 2018:

None.

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate state law with federal law.

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Continue to next page for Potential Effect on State Revenues.**

¹³⁹ “Income derived from foreign (non-United States) sources was never seriously considered by the legislature to be an appropriate subject for Florida taxation.... It was shown that vast inequities among competing corporations with different corporate structures, but with similar levels of business activity in Florida, would result unless the Florida Income Tax Code provided something akin to the federal tax credit for foreign source income. A state tax credit did not seem feasible, however.” See *Corporate Income Taxation in Florida: Background, Scope, and Analysis* by Arthur J. England, Jr. (1972) [as part of *Florida Corporate Income Taxation* symposium, published by Florida State University].

11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect of the deduction for dividends received from foreign corporations on Florida using the JCT methodology. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	-\$17,800	-\$28,100	-\$20,100	-\$20,300	-\$20,800	-\$107,200
2	100% federal CIT impact	-\$17,800	-\$28,100	-\$20,100	-\$20,300	-\$20,800	-\$107,200
3	Conversion of federal revenue impact to taxable base income impact	-\$84,762	-\$133,810	-\$95,714	-\$96,667	-\$99,048	-\$510,000
4	Florida taxable income share of federal base (3.6%)	-\$3,051	-\$4,817	-\$3,446	-\$3,480	-\$3,566	-\$18,360
5	Apply Florida CIT rate (5.5%)	-\$168	-\$265	-\$190	-\$191	-\$196	-\$1,010
6	Conversion to Florida state fiscal year	-\$224	-\$249	-\$190	-\$192	-\$197	-\$1,052

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	-\$21,000	-\$22,100	-\$23,200	-\$24,300	-\$25,800	-\$223,600
2	100% federal CIT impact	-\$21,000	-\$22,100	-\$23,200	-\$24,300	-\$25,800	-\$223,600
3	Conversion of federal revenue impact to taxable base income impact	-\$100,000	-\$105,238	-\$110,476	-\$115,714	-\$122,857	-\$1,064,286
4	Florida taxable income share of federal base (3.6%)	-\$3,600	-\$3,789	-\$3,977	-\$4,166	-\$4,423	-\$38,314
5	Apply Florida CIT rate (5.5%)	-\$198	-\$208	-\$219	-\$229	-\$243	-\$2,107
6	Conversion to Florida state fiscal year	-\$200	-\$211	-\$221	-\$232	-\$192	-\$2,107

Note: Totals may be affected by rounding.

J. Global Intangible Low-Taxed Income

1. Prior Federal Law:

There is no federal global intangible low-taxed income (GILTI) inclusion/addition to federal taxable income.¹⁴⁰

United States (U.S.) corporations are subject to a federal corporate income tax on worldwide income. U.S. shareholders of foreign corporations are generally not taxed on the income earned by the foreign corporation until the income is distributed as a dividend to the U.S. shareholders. Taxpayers are allowed a foreign tax credit or a deduction for foreign income taxes paid on the income out of which the dividend is paid, but generally only when the foreign earnings are distributed to the U.S. corporation or otherwise subject to U.S. taxation. The foreign tax credit generally is available to offset, in whole or in part, the U.S. tax owed on foreign-source income.

The deferral of tax on foreign source income does not apply to certain passive or easily mobile income of U.S. controlled foreign corporations (called subpart F income¹⁴¹), which is taxed as earned, whether or not repatriated. A controlled foreign corporation is a corporation that is at least 50 percent owned by U.S. shareholders that each own at least 10 percent of the shares.

Intangible property, including patents, can be held outside of the U.S. by controlled foreign corporations. U.S. corporations may deduct expenses paid to controlled foreign corporations for the use of intangible property, thereby reducing or deferring U.S. taxable income. These deductions defer income of the U.S. corporate shareholder until later when the income is given back through a dividend or a deemed dividend from the controlled foreign corporation, or when another federal provision subjects such income to federal income tax.¹⁴²

2. Federal Changes:

The Tax Cuts and Jobs Act (TCJA)¹⁴³ adds new section 951A, Internal Revenue Code (IRC), which requires a U.S. shareholder of a 10-percent owned controlled foreign corporation to include in income its global intangible low-taxed income. The inclusion of GILTI is similar to subpart F income under section 951, IRC, in that the income is deemed repatriated in the year earned.¹⁴⁴ However, GILTI is not subpart F income under the IRC, but instead is a new class of foreign source income.¹⁴⁵

Generally, GILTI is determined at the U.S. shareholder level as the excess of all controlled foreign corporations' net income over a deemed return on tangible assets (10

¹⁴⁰ The Internal Revenue Code (IRC) contains other limitations on the shifting of U.S. income out of country, such as section 482, IRC, *Allocation of income and deductions among taxpayers*.

¹⁴¹ Sections 951-965, IRC.

¹⁴² Example - section 482, IRC, related to transfer pricing, or sections 78 or 951, IRC, related to deemed dividends.

¹⁴³ Public Law 115-97

¹⁴⁴ GILTI is recognized as income in the current year rather than being deferred to a later date.

¹⁴⁵ Pursuant to section 951A(f), IRC, GILTI is treated in the same manner as subpart F income for purposes of applying specific sections of the Code.

percent).¹⁴⁶ The amount of GILTI and the corresponding federal tax is a complicated calculation. Controlled foreign corporations that are heavily concentrated with intangible assets compared to fixed/tangible assets (or high income relative to low depreciable assets) will generate GILTI for its shareholders.

Specifically, GILTI is the excess, if any, of the shareholder's net controlled foreign corporation tested income for the taxable year over the shareholder's net deemed tangible income return for such taxable year.¹⁴⁷

GILTI = Net controlled foreign corporation tested income - Net deemed tangible income return (10 percent of qualified business asset investment (QBAI) - interest expense)

Net controlled foreign corporation tested income is the aggregate of a U.S. corporation's worldwide foreign profits in all of its controlled foreign corporations, modified to remove income already subject to U.S. income tax and some income subject to high foreign tax.¹⁴⁸ As a result, losses can offset companies with income. Qualified business asset investment is the controlled foreign corporation's return on certain tangible property used in a trade or business and depreciable property.

Taxpayers are generally able to take a deduction equal to 50 percent of their GILTI¹⁴⁹ under new section 250(a)(1)(B), IRC. In addition, foreign tax credits are allowed for foreign income taxes paid with respect to GILTI, but are limited to 80 percent of the foreign taxes and excess amounts are not allowed to be carried back or forward to other years. The foreign tax credit reduction is only allowed for C corporations.

The 50 percent deduction of GILTI income effectively reduces the tax rate on that income from 21 percent to 10.5 percent when a taxpayer has sufficient federal taxable income. For taxable years beginning January 1, 2026, the deduction is reduced to 37.5 percent of GILTI, which will reduce the tax rate from 21 percent to 13.125 percent when a taxpayer has sufficient federal taxable income.

IRS draft Form 8992 and IRS Form 8992 Instructions are used to compute a U.S. shareholder's GILTI inclusion for taxable years of controlled foreign corporations beginning after 2017.

IRS Form 8993 and IRS Form 8993 Instructions are used to figure the amount of eligible deductions for foreign-derived intangible income and GILTI.

¹⁴⁶ Basically, if the controlled foreign corporation provides a return greater than 10 percent of its tangible depreciable property, the excess amount is GILTI.

¹⁴⁷ Section 951A(b)(1), IRC.

¹⁴⁸ This income excludes: income that is effectively connected with a U.S. trade or business; subpart F income; income that is excluded from subpart F income because it is subject to an effective foreign income tax rate greater than 90% of the maximum U.S. corporate income tax rate; dividends received from related persons; and certain foreign oil and gas income.

¹⁴⁹ Although not specifically related to this issue, it should be noted that section 220.13(1)(b)2., F.S., provides for a subtraction, to the extent included therein, of the amount of income included under section 78, IRC. The Florida subtraction should take the new deduction under section 250, IRC, into account. However, it may be worthwhile to clarify the Florida subtraction is net of not only direct and indirect expenses, but also of the subtraction provided in section 250, IRC.

3. Federal Law References:

Public Law 115-97 References: Section 14201

Internal Revenue Code References: Sections 250 and 951A

4. IRS Guidance as of December 14, 2018:

- IR-2018-186, <https://www.irs.gov/newsroom/irs-issues-proposed-regulations-on-global-intangible-low-taxed-income-for-us-shareholders>
- IR-2018-210, October 31, 2018, <https://www.irs.gov/newsroom/irs-issues-proposed-regulations-reducing-potential-income-inclusions-for-certain-domestic-corporations-that-own-stock-in-foreign-corporations>
- REG-104390-18, Guidance Related to Section 951A (Global Intangible Low-Taxed Income), <https://www.irs.gov/pub/irs-drop/reg-104390-18.pdf>

5. Florida Law:

Rule 12C-1.013(1)(a), F.A.C., states that “taxable income,” as defined by section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due (generally Line 30 of federal Form 1120 (*U.S. Corporation Income Tax Return*)).

Section 220.13(1)(b)2., F.S., provides for a subtraction from federal taxable income, to the extent included therein, for certain foreign income. Specifically, the statute refers to dividends treated as received from sources without the United States as determined under section 862, IRC, and all amounts included in federal taxable income under section 78 or section 951, IRC.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

Section 951A, IRC, global intangible low-taxed income (GILTI) is included in the computation of federal taxable income, which is the starting point for the Florida corporate income tax computation. Likewise, the deduction of 50 percent of GILTI (37.5 percent for taxable years beginning on or after January 1, 2026) is included in the computation of federal taxable income, and therefore is also included in the starting point for the Florida corporate income tax computation. There is no Florida subtraction for a GILTI inclusion.

7. Florida Rulemaking related to the Federal Change:

None.

8. Florida Law References:

Sections 220.03, 220.13, F.S., Rule 12C-1.013, F.A.C.

9. Public Comments as of December 14, 2018:

- Public Comment #7 – Received August 20, 2018
- Public Comment #8 – Received August 21, 2018
- First Public Meeting Transcript – August 22, 2018, pages 6 – 21
- Public Comment #9 – Received September 7, 2018
- Public Comment #10 – Received October 1, 2018
- Second Public Meeting Transcript – October 24, 2018, pages 13 – 20

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate state law with federal law. However, many of the explanations researched as part of this project and the public comment received point to possible constitutional issues with state taxation of this foreign source income.

In 1992 in *Kraft General Foods, Inc. v. Iowa Dept. of Revenue and Finance*, 505 U.S. 71 (1992), the U.S. Supreme Court addressed the issue relating to whether a state discriminated against a taxpayer who was permitted to deduct domestic dividends from its federal income but was required to include foreign dividend income in its income subject to state income tax. The U.S. Supreme Court held that states that adopt the federal definition of income as a starting point for state income tax (including Florida) must make an adjustment for the removal of foreign dividend income when the state also excludes domestic dividend income from the state income tax computation.

Option: Given possible constitutional issues, policymakers may wish to consider creating a subtraction in Florida law for GILTI income to the extent it is included in taxable income, similar to the subtraction in section 220.13(1)(b)2., F.S., for amounts included in federal taxable income under sections 78, 862, and 951, IRC.¹⁵⁰

Should such a subtraction be enacted, the potential effect on state revenues detailed on the following page would be eliminated.

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Continue to next page for Potential Effect on State Revenues.**

¹⁵⁰ It may be worthwhile to clarify that subtractions of foreign source income are net of the deduction under section 250, IRC.

11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect of the global intangible low-taxed income provision on Florida using the JCT methodology. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	\$7,700	\$12,500	\$9,600	\$9,500	\$9,300	\$48,600
2	100% federal CIT impact	\$7,700	\$12,500	\$9,600	\$9,500	\$9,300	\$48,600
3	Conversion of federal revenue impact to taxable base income impact	\$36,667	\$59,524	\$45,714	\$45,238	\$44,286	\$231,429
4	Florida taxable income share of federal base (3.6%)	\$1,320	\$2,143	\$1,646	\$1,629	\$1,594	\$8,331
5	Apply Florida CIT rate (5.5%)	\$73	\$118	\$91	\$90	\$88	\$458
6	Conversion to Florida state fiscal year	\$97	\$112	\$90	\$89	\$87	\$476

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	\$9,000	\$9,200	\$9,300	\$15,100	\$21,200	\$112,400
2	100% federal CIT impact	\$9,000	\$9,200	\$9,300	\$15,100	\$21,200	\$112,400
3	Conversion of federal revenue impact to taxable base income impact	\$42,857	\$43,810	\$44,286	\$71,905	\$100,952	\$535,238
4	Florida taxable income share of federal base (3.6%)	\$1,543	\$1,577	\$1,594	\$2,589	\$3,634	\$19,269
5	Apply Florida CIT rate (5.5%)	\$85	\$87	\$88	\$142	\$200	\$1,060
6	Conversion to Florida state fiscal year	\$85	\$87	\$99	\$154	\$158	\$1,060

Note: Totals may be affected by rounding.

K. Foreign-Derived Intangible Income Deduction

1. Prior Federal Law:

There is no deduction for foreign-derived intangible income (FDII), which is income related to the sale and provision of goods and services to foreign entities or for a foreign use from a domestic United States (U.S.) corporation. However, federal law does encourage domestic activities with incentives such as the domestic production activities deduction that effectively provides a lower tax rate on some domestic activities.¹⁵¹

2. Federal Changes:

The Tax Cuts and Jobs Act (TCJA)¹⁵² adds new section 250, Internal Revenue Code (IRC), which not only provides for a deduction of a portion of Global Intangible Low-Taxed Income (GILTI) and a portion of section 78, IRC, income (deemed dividend income related to foreign tax credit), but also provides for a deduction of 37.5% of FDII for tax years beginning January 1, 2018.¹⁵³ The deduction is reduced to 21.875% for taxable years beginning after December 31, 2025.¹⁵⁴

The 37.5% deduction of FDII effectively reduces the U.S. corporate income tax rate on that income from 21% to 13.125% when a taxpayer has sufficient federal taxable income to fully use the subtraction. For taxable years beginning on or after January 1, 2026, the deduction is reduced to 21.875% of FDII, which reduces the effective tax rate on FDII from 21% to 16.406% when a taxpayer has sufficient federal taxable income to fully use the subtraction.

FDII is a new type or class of federal taxable income that could encourage locating intangible assets in the U.S. through a lower effective tax rate on high-returns related to foreign sales of domestic corporations. FDII is only available to C corporations. Foreign corporations with income effectively connected with a U.S. trade or business, S corporations, regulated investment companies, real estate investment trusts, partnerships and individuals cannot take an FDII deduction. U.S. corporations are required to include FDII in gross income but then are allowed the FDII deduction.

The calculation of FDII is complex. While the name, FDII, seems to imply it's only for intangible assets, the computation and the benefit are much broader. Section 250, IRC defines FDII as the amount that bears the same ratio to the taxpayer's deemed intangible income (DII) as its foreign-derived deduction eligible income (FDDEI) bears to its total deduction eligible income (DEI). The computation of the income is accomplished in multiple steps. Each component of the calculation must be determined separately.

$$\text{FDII} = \text{Deemed Intangible Income (DII)} \times \frac{\text{Foreign-Derived Deduction Eligible Income (FDDEI)}}{\text{Deduction Eligible Income (DEI)}}$$

¹⁵¹ Section 199, IRC (2017)

¹⁵² Public Law 115-97

¹⁵³ Section 250(a)(1), IRC.

¹⁵⁴ Section 250(a)(3), IRC.

Deemed intangible income is defined as the excess, if any, of the deduction eligible income of a domestic corporation over the deemed tangible income return of the corporation.¹⁵⁵ The deemed tangible income equals 10% of the corporation's qualified business asset investment (QBAI) (as defined in section 951A(d), IRC, determined by substituting "deduction eligible income" for "tested income" in paragraph (2) thereof and without regard to whether the corporation is a controlled foreign corporation).¹⁵⁶

$$\text{Deemed Intangible Income} = \text{Deduction Eligible Income} - (10\% \times \text{QBAI})^{157}$$

Deduction eligible income for a domestic corporation is the excess, if any, of the gross income of the corporation over the deductions, including taxes, properly allocable to the gross income. For this purpose, gross domestic income does not include amounts included in income under subpart F, GILTI, financial services income, dividends received from controlled foreign corporations, domestic oil and gas production income, and income earned in foreign branches.¹⁵⁸

$$\text{Deduction Eligible Income} = \text{Gross Income} - \text{Exceptions} - \text{Allocable Deductions}$$

Foreign-derived deduction eligible income¹⁵⁹ is the profit from property sold, leased, or licenses by a domestic corporation or services provided to a foreign person with respect to property located outside the U.S.

$$\text{Foreign-Derived Deduction Eligible Income} = \text{Gross Foreign Sales/Services Income} - \text{Expenses}$$

Once FDII is determined, the deduction is computed by multiplying FDII by 37.5%.

IRS Form 8993 and IRS Form 8993 Instructions are used to figure the amount of eligible deductions for foreign-derived intangible income and GILTI.

3. Federal Law References:

Public Law 115-97 References: Section 14202

Internal Revenue Code References: Section 250

4. IRS Guidance as of December 14, 2018:

- IRS guidance foreign tax credit, <https://www.irs.gov/individuals/international-taxpayers/foreign-tax-credit-compliance-tips>
- Proposed Regulations, REG-104390-18, <https://www.irs.gov/pub/irs-drop/reg-104390-18.pdf>

¹⁵⁵ Section 250(a)(2), IRC.

¹⁵⁶ Section 250(a)(2), IRC.

¹⁵⁷ Qualified Business Asset Investment is the average at each quarter end of the aggregate adjusted bases of tangible property used in the trade or business and depreciable property.

¹⁵⁸ Section 250(a)(3), IRC.

¹⁵⁹ Section 250(a)(4), IRC, specifically addresses sales of property and sales of services and section 250(a)(5), IRC, provides rules relating to foreign use of property and services.

5. Florida Law:

Rule 12C-1.013(1)(a), F.A.C., states that “taxable income,” as defined by section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due (generally Line 30 of federal Form 1120 (*U.S. Corporation Income Tax Return*)).

Section 220.13(1)(b)2., F.S., provides for a subtraction from federal taxable income, to the extent included therein, for certain foreign income. Specifically, the statute refers to dividends treated as received from sources without the United States as determined under section 862, IRC, and all amounts included in federal taxable income under section 78 or section 951, IRC.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

FDII is included in the computation of federal taxable income, which is the starting point for the Florida corporate income tax computation. Likewise, the deduction of 37.5% of FDII (21.875% for taxable years beginning on or after January 1, 2026) under section 250, IRC, is included in the computation of federal taxable income, and therefore is also included in the starting point for the Florida corporate income tax computation. In addition, expenses related to the generation of FDII are deducted in the computation of federal taxable income, and therefore are also taken into account in the starting point for the Florida corporate income tax. As a result, only a portion of FDII is taxed in Florida.

7. Florida Rulemaking related to the Federal Change:

None.

8. Florida Law References:

Sections 220.03, 220.13, F.S., Rule 12C-1.013, F.A.C.

9. Public Comments as of December 14, 2018:

None.

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate state law with federal law.

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Continue to next page for Potential Effect on State Revenues.**

11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect on Florida resulting from changes to the foreign derived intangible income deduction using the JCT methodology. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	-\$200	\$4,800	\$6,900	\$6,600	\$200	\$18,200
2	100% federal CIT impact	-\$200	\$4,800	\$6,900	\$6,600	\$200	\$18,200
3	Conversion of federal revenue impact to taxable base income impact	-\$952	\$22,857	\$32,857	\$31,429	\$952	\$87,143
4	Florida taxable income share of federal base (3.6%)	-\$34	\$823	\$1,183	\$1,131	\$34	\$3,137
5	Apply Florida CIT rate (5.5%)	-\$2	\$45	\$65	\$62	\$2	\$173
6	Conversion to Florida state fiscal year	\$8	\$49	\$64	\$50	-\$21	\$150

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	-\$11,400	-\$15,700	-\$20,200	-\$18,400	-\$16,300	\$63,800
2	100% federal CIT impact	-\$11,400	-\$15,700	-\$20,200	-\$18,400	-\$16,300	\$63,800
3	Conversion of federal revenue impact to taxable base income impact	-\$54,286	-\$74,762	-\$96,190	-\$87,619	-\$77,619	-\$303,333
4	Florida taxable income share of federal base (3.6%)	-\$1,954	-\$2,691	-\$3,463	-\$3,154	-\$2,794	-\$10,920
5	Apply Florida CIT rate (5.5%)	-\$107	-\$148	-\$190	-\$173	-\$154	-\$601
6	Conversion to Florida state fiscal year	-\$116	-\$157	-\$187	-\$169	-\$121	-\$601

Note: Totals may be affected by rounding.

L. Limit Net Interest Deductions

1. Prior Federal Law:

Foreign businesses often capitalize their United States (U.S.) subsidiaries with both equity and intercompany debt. The use of intercompany debt may allow for deductible interest expense by the U.S. corporation, which reduces the U.S. corporation's taxable income. Such related party debt may be from the foreign parent company or one of its offshore affiliates that do not file U.S. income tax returns and are often located in a low-tax or no-tax jurisdiction. This type of lending is one of the ways of shifting income from the U.S. to another jurisdiction. Congress recognized this issue and created section 163(j), IRC (known as the "earnings stripping rules").¹⁶⁰

Pursuant to the IRS's Large Business & International Practice Service Process Unit – Audit manual¹⁶¹, the purpose of section 163(j), IRC, is to limit the deductibility of interest by a thinly capitalized corporation where the interest is paid to a related payee that is totally or partially exempt from U.S. tax on the distribution. Additionally, section 163(j), IRC, applies to interest that is paid or accrued to an unrelated person if there is a disqualified guarantee on the debt and no gross basis tax is imposed on such interest.

Section 163(j), IRC, limits the deduction for interest paid or accrued by a corporation in a taxable year if the borrower's ratio of debt to equity exceeds 1.5 to 1 and its excess interest expense exceeds 50 percent of its adjusted taxable income. If section 163(j), IRC, applies to a corporation for any taxable year, no deduction is allowed for disqualified interest paid or accrued by the corporation during such taxable year.¹⁶²

Adjusted taxable income generally means taxable income computed without regard to deductions for:

- net interest expense,
- net operating losses under section 172, IRC,
- domestic production activities under section 199, IRC, and
- depreciation, amortization, and depletion.¹⁶³

Disqualified interest for section 163(j), IRC, purposes includes interest paid or accrued to:

- related parties when the interest is not subject to federal income tax;
- unrelated parties in certain instances in which a related party guaranteed the debt; or
- a real estate investment trust (REIT) by a taxable REIT subsidiary of that REIT.¹⁶⁴

Disallowed interest amounts are treated as disqualified interest paid or accrued in the

¹⁶⁰ See section 7210 of Public Law 101-239 (enacted 12/19/1989).

¹⁶¹ https://www.irs.gov/pub/int_practice_units/IBF9423_05_04.pdf

¹⁶² See section 163(j)(1)(A), IRC (2017).

¹⁶³ See section 163(j)(6)(A), IRC (2017).

¹⁶⁴ See section 163(j)(3), IRC (2017).

succeeding taxable year and may be carried forward indefinitely.¹⁶⁵ In addition, any excess limitation (i.e., the excess, if any, of 50 percent of the adjusted taxable income of the payor over the payor's net interest expense) carries forward three years.¹⁶⁶

All members of the same affiliated group (within the meaning of section 1504(a), IRC), are treated as 1 taxpayer.¹⁶⁷

There is an eight-step process for determining the interest expense limitation:

1. Determine the debt to equity ratio;
2. Determine the net interest expense;
3. Determine adjusted taxable income;
4. Determine excess interest expense;
5. Determine disqualified interest and/or interest subject to a disqualified guarantee;
6. Determine total disqualified interest for the tax year;
7. Determine interest deduction disallowed under section 163(j), IRC, for the current year and carried forward to the next tax year;
8. Determine excess limitation for the current year and excess limitation carryforward to the next tax year.¹⁶⁸

IRS Form 8926 and IRS Form 8926 Instructions detail the adjustment under section 163(j), IRC, for tax years beginning prior to January 1, 2018.

2. Federal Changes:

The Tax Cuts and Jobs Act (TCJA)¹⁶⁹ amended section 163(j), IRC, to provide new rules limiting the deduction of business interest expense for taxable years beginning after December 31, 2017. Specifically, for any taxpayer to which section 163(j), IRC, applies, a taxpayer's annual deduction for business interest expense is now limited to the sum of:

- the taxpayer's business interest income for the taxable year;¹⁷⁰
- 30 percent of the taxpayer's adjusted taxable income for the taxable year;¹⁷¹ and

¹⁶⁵ See section 163(j)(1)(B), IRC (2017).

¹⁶⁶ See section 163(j)(2)(B), IRC (2017).

¹⁶⁷ See section 163(j)(6)(C), IRC (2017). The Report of the Committee on the Budget, House of Representatives, House Report 101-247 at 1248 (Sept. 20, 1989) noted that "[i]n cases where a group of commonly controlled U.S. corporations would constitute an affiliated group but for the inclusion within the group of one or more entities other than includible corporations (as defined in section 1504(b)), the committee intends for the regulations to treat all U.S. corporations that are members of such a group as a single taxpayer where such treatment is appropriate in order to carry out the purposes of the bill or to prevent avoidance of the purposes of the bill."

¹⁶⁸ https://www.irs.gov/pub/int_practice_units/IBF9423_05_04.pdf

¹⁶⁹ Public Law 115-97

¹⁷⁰ "Business interest income," as defined in section 163(j)(6), IRC, is the amount of interest includible in the gross income of the taxpayer for the taxable year which is properly allocable to a trade or business. The term does not include investment income.

¹⁷¹ "Adjusted taxable income," (ATI) as defined in section 163(j)(8), IRC, is computed without subtracting interest, taxes, depreciation, amortization, or depletion (similar to EBITDA - earnings before interest, taxes, depreciation, and amortization). ATI is also computed without subtracting any net operating loss deduction under section 172, IRC.

- the taxpayer's floor plan financing interest for the taxable year.¹⁷²

This interest limitation applies to all taxpayers, except for those whose average annual gross receipts over the prior three taxable years does not exceed \$25 million.¹⁷³

Also, the limitation on the deduction for business interest expense does not apply to certain trades or businesses. The excepted trades or businesses are the trade or business of performing services as an employee; electing real property businesses; electing farming businesses; and certain regulated utility businesses (i.e., utilities furnishing or selling electric, water, sewage disposal, and gas or steam services).¹⁷⁴

There are special rules for partnerships and interests in partnerships, which require the limitation at both the partnership level and then again at the partner level.¹⁷⁵

Although adjusted taxable income currently excludes deductions for depreciation, amortization and depletion, this exclusion ends with taxable years beginning on or after January 1, 2022.¹⁷⁶

The amount of any business interest not allowed as a deduction for any taxable year as a result of this limitation is treated as business interest paid or accrued in the next taxable year and may be carried forward indefinitely.¹⁷⁷ The three-year carryforward of any excess limitation no longer exists (former section 163(j)(2)(B), IRC (2017)).

In addition, instead of an entire affiliated group being treated as 1 taxpayer for purposes of the interest limitation, the limitation is now made at the filer level.¹⁷⁸ Section 163(j)(6)(C), IRC, which treated an affiliated group as one taxpayer, and section 163(j)(9)(B), IRC, which authorized the affiliation rules, were removed by the TCJA and no equivalent provisions are included in the amended section 163(j), IRC. However, for a group of affiliated corporations filing a consolidated return, the limitation applies at the consolidated tax return filing level.

3. Federal Law References:

Public Law 115-97 References: Section 13301

¹⁷² "Floor plan financing interest," as defined in section 163(j)(9), IRC, is interest paid on debt used to finance the acquisition of motor vehicles held for sale or lease and secured by the inventory so acquired.

¹⁷³ See sections 163(j)(3) and 448(c), IRC.

¹⁷⁴ See section 163(j)(7), IRC. See also section 163(j)(10), IRC, which cross references the requirement in section 168(g)(1), IRC, that an electing real property trade or business or electing farming business use the alternative depreciation system, thereby forgoing bonus depreciation in section 168(k), IRC.

¹⁷⁵ See section 163(j)(4), IRC.

¹⁷⁶ See section 163(j)(8)(A)(v), IRC.

¹⁷⁷ See section 163(j)(2), IRC.

¹⁷⁸ The Notice of Proposed Rulemaking (REG-106089-18) at pages 40-41, specifically states: The Treasury Department and the IRS have determined that non-consolidated entities should not be aggregated for purposes of applying the section 163(j) limitation because, whereas old section 163(j)(6)(C) expressly provided that "[a]ll members of the same affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer," section 163(j) no longer contains such language, and nothing in the legislative history of section 163(j) suggests that Congress intended non-consolidated entities to be treated as a single taxpayer for purposes of section 163(j).

Internal Revenue Code References: Section 163(j)

4. IRS Guidance as of December 14, 2018:

- IRS Newswire 2018-82, April 2, 2018, <https://www.irs.gov/newsroom/irs-issues-guidance-on-business-interest-expense-limitations>
- IRS Newswire 2018-233, November 26, 2018, <https://www.irs.gov/newsroom/irs-issues-proposed-regulations-on-new-business-interest-expense-deduction-limit>
- Basic questions and answers about the limitation on the deduction for business interest expense, last updated November 26, 2018, <https://www.irs.gov/newsroom/basic-questions-and-answers-about-the-limitation-on-the-deduction-for-business-interest-expense>
- REG-106089-18, Limitation on Deduction for Business Interest Expense, <https://www.irs.gov/pub/irs-drop/REG-106089-18-NPRM.pdf>
- Revenue Procedure 2018-59, <https://www.irs.gov/pub/irs-drop/RP-105095-18-163j.pdf>
- Notice 2018-28, Initial Guidance as Applicable to Taxable Years Beginning After December 31, 2017; <https://www.irs.gov/pub/irs-drop/n-18-28.pdf>
- Tax Cuts and Jobs Act: A comparison for businesses, <https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses>

5. Florida Law:

The Florida corporate income tax computation starts with a taxpayer's federal taxable income. When the Florida filing group is identical to the federal filing group, the amount reported on Line 1 of the Florida corporate income tax return, Florida Form F-1120, is the consolidated federal taxable income as reported by the filing group on its federal income tax return for that taxable year. Likewise, when a corporation files separately for both federal and Florida purposes, the corporation's federal taxable income as reported on its federal income tax return will be the number reported on Line 1 of the Florida corporate income tax return.

However, when the Florida filer is not identical to the federal filer, the Florida filer must prepare a pro forma federal income tax return.¹⁷⁹ The pro forma federal income tax return is completed as if that corporation filed its actual federal income tax return in the same manner.

Generally, a corporation that is a member of an affiliated group that files a consolidated federal income tax return and files a separate Florida corporate income tax return must complete a pro forma federal income tax return as if that corporation filed separately for federal income tax purposes. The amount reported on Line 1 of the Florida Form F-1120 should be the corporation's pro forma federal taxable income, which includes any federal interest limitation.¹⁸⁰ This includes Florida's share of any previous limitation under section 163(j), IRC, which was required at the federal consolidated level.

¹⁷⁹ A rare exception to this rule is made for a subtier group (consisting only of corporations having nexus in Florida) that made an election to file as such on its first Florida corporate income tax return filed after December 20, 1984 (grandfather election).

¹⁸⁰ See Form F-1120N, adopted in Rule 12C-1.051, F.A.C.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

The TCJA amends section 163(j), IRC, to create a new limitation on the deductibility of interest (the sum of 30% of adjusted taxable income, plus business interest income, plus floor plan financing interest). This limitation applies to interest on debt with related and unrelated lenders. Since the federal limitation applies at the filer level, it will apply at the Florida filer level. The TCJA permits taxpayers to carry forward any disallowed interest expense indefinitely and include the carryover amount as interest that may be deducted in a future taxable year, subject to the limitation. The limitation does not preclude deduction in a future taxable year.¹⁸¹

Because the amended federal interest expense limitation is determined at the filer level, the amount of interest expense included in federal taxable income for Florida income tax purposes will depend on how a taxpayer files its Florida return (i.e., whether the taxpayer is required to include a pro forma federal return with its Florida filing).

7. Florida Rulemaking related to the Federal Change:

No Florida rulemaking is necessary. The requirements to compute a pro forma federal income tax return when the Florida filer is not identical to the entity (entities) that filed the actual federal income tax return are already in place and are part of Florida's piggyback of the federal income tax code.

8. Florida Law References:

Section 220.13, F.S., and Rules 12C-1.013 and 12C-1.051, F.A.C.

9. Public Comments as of December 14, 2018:

- Public Comment #5 – Received June 13, 2018
- Public Comment #6 – Received August 16, 2018
- Public Comment #7 – Received August 20, 2018
- Public Comment #8 – Received August 21, 2018
- First Public Meeting Transcript – August 22, 2018, pages 22 – 33
- Public Comment #9 – Received September 7, 2018
- Public Comment #10 – Received October 1, 2018
- Second Public Meeting Transcript – October 24, 2018, pages 20 – 27
- Public Comment #11 – Received November 19, 2018

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate Florida state law with federal law.

¹⁸¹ The shifting of Florida income to other jurisdictions via an interest deduction may be a less effective tax planning tool as a result of the interest limitation.

11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect on Florida resulting from changes to the interest limitation using the JCT methodology*. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	\$8,400	\$17,700	\$19,700	\$19,600	\$24,900	\$90,200
2	96% federal CIT impact	\$8,064	\$16,992	\$18,912	\$18,816	\$23,904	\$86,688
3	Conversion of federal revenue impact to taxable base income impact	\$38,400	\$80,914	\$90,057	\$89,600	\$113,829	\$412,800
4	Florida taxable income share of federal base (3.6%)	\$1,382	\$2,913	\$3,242	\$3,226	\$4,098	\$14,861
5	Apply Florida CIT rate (5.5%)	\$76	\$160	\$178	\$177	\$225	\$817
6	Conversion to Florida state fiscal year	\$110	\$164	\$178	\$188	\$235	\$875

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	\$30,200	\$29,600	\$31,800	\$34,700	\$36,900	\$253,400
2	96% federal CIT impact	\$28,992	\$28,416	\$30,528	\$33,312	\$35,424	\$243,360
3	Conversion of federal revenue impact to taxable base income impact	\$138,057	\$135,314	\$145,371	\$158,629	\$168,686	\$1,158,857
4	Florida taxable income share of federal base (3.6%)	\$4,970	\$4,871	\$5,233	\$5,711	\$6,073	\$41,719
5	Apply Florida CIT rate (5.5%)	\$273	\$268	\$288	\$314	\$334	\$2,295
6	Conversion to Florida state fiscal year	\$272	\$272	\$293	\$318	\$264	\$2,295

Note: Totals may be affected by rounding.

Intercompany interest expense is eliminated against intercompany interest income when a consolidated return is filed, but remains if a corporation filed separately. Since the net interest deduction operates at the filer level for both federal and Florida purposes and many Florida filers are subsidiaries of the federal filer, the impact for Florida will likely be different than the impact indicated by the JCT methodology utilized above.

*A previous version of the final report contained an error in the first paragraph on page 87 that has been corrected. The sentence previously read, "The tables below provide an analysis of the effect on Florida resulting from changes to the interest limitation using the JCT methodology if Florida chooses to decouple from that provision." The sentence now reads, "The tables below provide an analysis of the effect on Florida resulting from changes to the interest limitation using the JCT methodology."

M. Contributions to the Capital of a Corporation

1. Prior Federal Law:

History

Section 118, Internal Revenue Code (IRC), was enacted in 1954¹⁸² to codify a line of court decisions¹⁸³ determining whether corporations may exclude from gross income certain contributions to capital made by non-shareholders. These contributions include corporate subsidies and economic incentives, such as cash grants, no-cost land, and infrastructure assistance. Upon its enactment, section 118, IRC, provided that the gross income of a corporation did not include any contribution to its capital and cross-referenced section 362, IRC (*Basis to corporations*).¹⁸⁴

Neither section 118 nor section 362 of the Internal Revenue Code provided a definition of “contribution to capital.” It was the Supreme Court in United States v. Chicago, Burlington & Quincy Railroad Co., 412 U.S. 401 (1973), that addressed the question of what is a qualifying contribution to capital. In this case, the Court rejected a railroad’s assertion that highway under-crossings, bridges, and other improvements constructed at public expense prior to the enactment of the 1954 tax code were non-shareholder contributions to capital and could be depreciated. The Court established a list of five characteristics a payment or transfer of assets must have to be considered a qualifying non-shareholder contribution to capital under section 118, IRC. The five factors are:

1. The contribution must become a permanent part of the transferee corporation's working capital structure;
2. The contribution may not be compensation for the transferee corporation’s services;
3. The contribution must be bargained for;
4. The contribution must benefit the transferee corporation commensurately with its value; and
5. The contribution ordinarily will be used to produce additional income.

¹⁸² See Internal Revenue Code of 1954, Public Law 591 – Chapter 736, August 16, 1954.

¹⁸³ Noteworthy cases include Detroit Edison Co. v. Commissioner, 319 U.S. 98 (1943), in which one-time payments for connection to the utility were deemed by the Court to be payments for services and not, as the taxpayer argued, gifts or nontaxable contributions to capital (assets acquired using the customer payments received a basis of zero for purposes of depreciation because the cost to the taxpayer was zero); and Brown Shoe Co. v. Commissioner, 339 U.S. 583 (1950), in which funds and property a corporation received from several different community groups to provide incentives for the construction and/or expansion of its manufacturing facilities were deemed by the Court to be non-shareholder contributions to capital, excludible from taxable income (furthermore, any structures constructed using funding received from these community groups should be subject to depreciation expense). The key factor in both decisions was the nature of the benefit to the transferor. In Detroit Edison, the fees paid by the customers were paid for a specific service (connection to the utility). In Brown Shoe, there was no specific service paid for by the community groups. The end result of the contributions was to increase the general welfare of the community. The contributions were, therefore, deemed more akin to an investment in the company than a payment for services.

¹⁸⁴ Section 362, IRC, was also enacted in 1954. See Public Law 591 – Chapter 736, August 16, 1954. Section 362(c), IRC, negated the Brown Shoe decision by providing that contributed property has a basis of zero.

Tax Treatment

Section 118, IRC, provides an exclusion from gross income with respect to any contribution of money or property to the capital of a taxpayer.

When made by a shareholder, such payments represent an additional price paid for the shares of stock held by the individual shareholders and are treated as an addition to and as a part of the operating capital of the corporation.¹⁸⁵ Pursuant to section 362(a)(2), IRC, the corporation receives basis for the contribution equivalent to the basis of the transferor at the time of the transaction.

Section 118, IRC, does not, however, limit the exclusion from gross income to shareholders. A non-shareholder, such as a government entity or civic group, may make a contribution to a corporation's capital for the purpose of inducing the corporation to locate its business in a particular community or for the purpose of enabling the corporation to expand its operating facilities.¹⁸⁶ Section 362(c), IRC, provides that such contributions, whether they be money or property other than money, have no basis.¹⁸⁷

It should be noted that, in general, certain nonrefundable state and local incentives, such as state and local tax credits, do not qualify for section 118, IRC, treatment and are not considered a contribution to capital. The amount of the tax credit is not included in the taxpayer's federal gross income or otherwise treated as a payment from the state. Consequently, the federal tax effect of such a state tax credit is normally to reduce any deduction for payment of state tax the taxpayer may otherwise have had.¹⁸⁸

2. Federal Changes:

Following the enactment of the Tax Cuts and Jobs Act (TCJA),¹⁸⁹ section 118, IRC, continues to state that the gross income of a corporation does not include any contribution to its capital. However, the TCJA amended section 118, IRC, to expressly state that any contribution by any governmental entity or civic group (other than a contribution made by a shareholder, as such) is not considered a contribution to the capital of a corporation for section 118, IRC, purposes.¹⁹⁰

¹⁸⁵ See Treasury Regulations (Treas. Reg.) section 1.118-1, *Contributions to the capital of a corporation*.

¹⁸⁶ *Ibid*.

¹⁸⁷ See Treas. Reg. section 1.362-2, *Certain contributions to capital*. If a corporation receives money instead of property, it must reduce the basis of property acquired using that money or other property held by the corporation if no property is acquired within a period of 12 months after the date of receipt of the contribution. This allows corporations to exclude the contribution received from income but does not allow a deduction for expenses relating to that income (e.g., depreciation).

¹⁸⁸ See IRS Issue Paper LMSB-04-0408-023, <https://www.irs.gov/pub/irs-wd/1147024.pdf> (last visited August 6, 2018).

¹⁸⁹ Public Law 115-97

¹⁹⁰ As noted in the Report of the Committee on Ways and Means, House of Representatives, on H.R. 1, Tax Cuts and Jobs Act, page 256, November 13, 2017: "The Committee believes that a contribution to corporation's capital is properly treated as income to the recipient unless the contributor receives in exchange an ownership interest of commensurate value to the contribution. The Committee also believes that removing a special rule that applies only to certain contributions to a corporation by nonshareholders helps achieve the goal of similar treatment of similarly situated taxpayers. The Committee further believes that treating contributions to capital by nonshareholders as income to the corporation will remove a

As a result of this amendment, contributions of money or property from a governmental entity to a corporation are included in gross income (unless another exclusion applies). This tax treatment applies to contributions made after December 22, 2017, unless a master development plan was approved by the government entity prior to December 22, 2017.¹⁹¹

Incentives and subsidies, such as cash grants, no-cost land, equipment, “public” infrastructure and improvements, reimbursements, refunds, or other similar transfers of money or property provided to a corporation by governmental entities, including the state of Florida and its counties and cities, will likely now be taxed as income to the corporation for federal income tax purposes. This treatment also applies to similar federal government incentives.

The tax treatment of certain nonrefundable state tax credits not considered a contribution to capital under section 118, IRC, prior to the enactment of the TCJA remains the same: the amount of the tax credit is not included in the taxpayer’s federal gross income, and the federal tax effect of such a state tax credit is to reduce any deduction for payment of state tax the corporation would have otherwise had.

Uncertainty exists with regard to basis of property because while the TCJA amended section 118, IRC, the act did not amend the basis rules of section 362(c), IRC. Therefore, governmental contributions will now be included in federal gross income, pursuant to section 118, IRC, yet the related corporate assets may still have zero basis pursuant to section 362(c), IRC. The corporation is not allowed to depreciate said assets, and if the assets are ever sold, the gain is included in federal income.

3. Federal Law References:

Public Law 115-97 References: Section 13312

Internal Revenue Code References: Section 118

4. IRS Guidance as of December 14, 2018:

None.

5. Florida Law:

Most business incentives offered by a governmental unit or by a civic group are excluded from a corporation’s federal taxable income under section 118, IRC, and Treas. Reg. section 1.118-1. These exclusions from federal taxable income are automatically followed by Florida because the Florida corporate income tax computation

Federal tax subsidy for State and local governments to offer incentives to businesses as a way of encouraging them to locate operations in a particular jurisdiction. If taxpayers in a particular State or locality wish to provide such financial inducements to businesses, they should be able to do so, but they should bear the cost of such financial inducements without passing on a portion of those costs to all Federal taxpayers.”

¹⁹¹ See section 13312(b)(2) of Public Law 115-97.

starts with federal taxable income for the taxable year. Florida piggybacks the federal treatment of government tax incentives and subsidies under section 118, IRC.

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

Rule 12C-1.013(1)(a), F.A.C., states that “taxable income,” as defined by section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due (generally Line 30 of federal Form 1120 (*U.S. Corporation Income Tax Return*)). Since the federal treatment of corporate business incentives under section 118, IRC, includes most state, county, municipality, and federal government incentives as federal income to the taxpayer, that treatment and income (or exclusion from income) will be included in the Florida corporate income tax computation.

Florida will tax an incentive when the incentive is income for federal income tax purposes. Likewise, Florida will not tax an incentive when the incentive is excluded from federal taxable income.

7. Florida Rulemaking related to the Federal Change:

None

8. Florida Law References:

Sections 220.03, 220.13, F.S., Rule 12C-1.013, F.A.C.

9. Public Comments as of December 14, 2018:

- Public Comment #8 – Received August 21, 2018
- First Public Meeting Transcript – August 22, 2018, pages 47 – 48
- Public Comment #11 – Received October 19, 2018
- Second Public Meeting Transcript – October 24, 2018, pages 34 - 36

10. Options for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate state law with federal law.

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Continue to next page for Potential Effect on State Revenues.**

11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect of the capital contributions changes on Florida using the JCT methodology. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-6717)	\$100	\$200	\$400	\$700	\$1,000	\$2,500
2	100% Federal CIT Impact	\$100	\$200	\$400	\$700	\$1,000	\$2,500
3	Conversion of federal revenue impact to federal taxable base impact	\$476	\$952	\$1,905	\$3,333	\$4,762	\$11,905
4	Florida taxable income share of federal base (3.6%)	\$17	\$34	\$69	\$120	\$171	\$411
5	Apply Florida CIT Rate (5.5%)	\$1	\$2	\$4	\$7	\$9	\$23
6	Conversion to Florida state fiscal year	\$1	\$2	\$4	\$7	\$9	\$25

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-6717)	\$1,000	\$900	\$800	\$700	\$600	\$6,500
2	100% Federal CIT Impact	\$1,000	\$900	\$800	\$700	\$600	\$6,500
3	Conversion of federal revenue impact to federal taxable base impact	\$4,762	\$4,286	\$3,810	\$3,333	\$2,857	\$30,476
4	Florida taxable income share of federal base (3.6%)	\$171	\$154	\$137	\$120	\$103	\$1,097
5	Apply Florida CIT Rate (5.5%)	\$9	\$8	\$8	\$7	\$6	\$60
6	Conversion to Florida state fiscal year	\$9	\$8	\$7	\$6	\$4	\$60

Note: Totals may be affected by rounding.

N. Like-Kind Exchange

1. Prior Federal Law:

Generally, a barter transaction or an exchange of property is a taxable event unless it qualifies as a like-kind exchange under section 1031, Internal Revenue Code (IRC), which was originally “designed to avoid the imposition of a tax on those who do not ‘cash in’ on their investments in trade or business property.”¹⁹²

No gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of a “like kind” which is to be held either for productive use in a trade or business or for investment.¹⁹³

The underlying assumption of this exception “is that the new property is substantially a continuation of the old investment still unliquidated... .”¹⁹⁴ To constitute an exchange, the transaction “must be a reciprocal transfer of property, as distinguished from a transfer of property for a money consideration only.”¹⁹⁵

Exchanges of the following property are not eligible for section 1031, IRC, treatment:

- Stock in trade or other property held primarily for sale;
- Stocks, bonds, notes;
- Other securities or evidences of indebtedness or interest;
- Interests in partnerships;
- Certificates of trust or beneficial interest; or
- Choses in action^{196, 197}

If section 1031, IRC, like-kind treatment applies to an exchange of properties, the basis of the property received in the exchange is generally equal to the basis of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange.¹⁹⁸

Property acquired through a like-kind exchange under section 1031, IRC, may be depreciated or expensed under available methods and options starting with the basis of the property. A taxpayer may eventually recognize gain or loss in a subsequent property transaction not involving a like-kind exchange.

¹⁹² *Starker v. United States*, 602 F.2d 1341, 1352 (9th Cir. 1979).

¹⁹³ See section 1031(a)(1), IRC (2017).

¹⁹⁴ See Treasury Regulations (Treas. Reg.) section 1.1002-1(c), *Certain exceptions to general rule*.

¹⁹⁵ See Treas. Reg. section 1.1002-1(d), *Exchange*.

¹⁹⁶ A “chose in action” is a right of bringing an action or right to recover a debt or money. See *Black’s Law Dictionary* (6th edition, 1991).

¹⁹⁷ See section 1031(a)(2), IRC (2017).

¹⁹⁸ See section 1031(d), IRC (2017).

2. Federal Changes:

The Tax Cuts and Jobs Act (TCJA)¹⁹⁹ amends section 1031, IRC, to limit like-kind exchanges (and the non-recognition of gain or loss) to those exchanges involving real property held for investment or for productive use in a trade or business and not held primarily for sale. As under pre-enactment law, real property located in the United States is not considered like-kind to real property located outside the United States. The amendment to section 1031, IRC, generally applies to exchanges completed after December 31, 2017.

Effective January 1, 2018, exchanges of machinery, equipment, vehicles, artwork, collectibles, patents and other intellectual property, and intangible business assets will no longer qualify for like-kind exchange treatment under section 1031, IRC. Although gain or loss on an exchange of such property is now recognized and the basis in the acquired property is the actual value of the property, certain property may be depreciated under the available methods/options.²⁰⁰

3. Federal Law References:

Public Law 115-97 References: Section 13303

Internal Revenue Code References: Section 1031

4. IRS Guidance as of December 14, 2018:

- <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>
- IRS Newswire 2018-227, November 19, 2018
<https://www.irs.gov/newsroom/like-kind-exchanges-now-limited-to-real-property>

5. Florida Law:

No gain or loss is recognized on the exchange of property qualifying for like-kind exchange treatment. Therefore, federal taxable income, which is the starting point in

¹⁹⁹ Public Law 115-97

²⁰⁰ A taxpayer may be able to fully expense certain property, if the property qualifies under section 179, IRC, or for bonus depreciation treatment under section 168(k), IRC.

determining Florida corporate income tax due, is unaffected by such exchanges. Gain or loss is deferred until the property is sold.²⁰¹

6. Tax Cuts and Jobs Act Effect on Florida Corporate Income Tax Structure:

Rule 12C-1.013(1)(a), F.A.C., states that “taxable income,” as defined by section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due (generally Line 30 of federal Form 1120 (*U.S. Corporation Income Tax Return*)).

Exchanges other than those of real property completed after December 31, 2017, no longer qualify as like-kind exchanges under section 1031, IRC, and will result in recognition of gain (or loss) upon the sale of the property. This gain (or loss) is included in federal taxable income instead of deferred, as in previous years.

7. Florida Rulemaking related to the Federal Change:

None

8. Florida Law References:

Sections 220.03, 220.13, F.S., Rule 12C-1.013, F.A.C.

9. Public Comments as of December 14, 2018:

- Public Comment #12 – Received October 23, 2018
- Second Public Meeting Transcript – October 24, 2018, pages 7 - 12

10. Option for Changes the Legislature Could Make Which May be Needed to Integrate State Law with Federal Law and Potential Fiscal Impact:

No changes are needed to integrate state law with federal law.

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Continue to next page for Potential Effect on State Revenues.**

²⁰¹ A taxpayer’s basis in property for federal purposes may differ from that for Florida purposes, due to Florida’s decoupling from Accelerated Cost Recovery System (ACRS) depreciation, which applies to assets placed in service from 1/1/1981-12/31/1986. Florida taxpayers using ACRS depreciation for federal purposes were required to either pay Florida emergency excise tax (pursuant to repealed Chapter 221, F.S.) or to make depreciation adjustments to federal taxable income. Taxpayers electing to make such depreciation adjustments may also need to adjust a federal gain or loss on the Florida return upon disposition of the property because of the difference in federal and Florida property basis.

11. Potential Effect on State Revenues:

The tables below provide an analysis of the effect of the changes to like-kind exchanges on Florida using the JCT methodology. These estimates have been determined following the methodology and assumptions detailed in section IE.

Table 1 - (Millions)

Line	Federal Fiscal Years	2018	2019	2020	2021	2022	2018 - 2022
1	JCT estimate of federal impact (JCX-67-17)	\$500	\$900	\$1,300	\$1,700	\$2,200	\$6,600
2	100% federal CIT impact	\$500	\$900	\$1,300	\$1,700	\$2,200	\$6,600
3	Conversion of federal revenue impact to federal taxable base impact	\$2,381	\$4,286	\$6,190	\$8,095	\$10,476	\$31,429
4	Florida taxable income share of federal base (3.6%)	\$86	\$154	\$223	\$291	\$377	\$1,131
5	Apply Florida CIT rate (5.5%)	\$5	\$8	\$12	\$16	\$21	\$62
6	Conversion to Florida state fiscal year	\$6	\$9	\$13	\$17	\$22	\$68

Table 2 - (Millions)

Line	Federal Fiscal Years	2023	2024	2025	2026	2027	2018 - 2027
1	JCT estimate of federal impact (JCX-67-17)	\$2,900	\$3,800	\$4,700	\$5,800	\$7,200	\$31,000
2	100% federal CIT impact	\$2,900	\$3,800	\$4,700	\$5,800	\$7,200	\$31,000
3	Conversion of federal revenue impact to federal taxable base impact	\$13,810	\$18,095	\$22,381	\$27,619	\$34,286	\$147,619
4	Florida taxable income share of federal base (3.6%)	\$497	\$651	\$806	\$994	\$1,234	\$5,314
5	Apply Florida CIT rate (5.5%)	\$27	\$36	\$44	\$55	\$68	\$292
6	Conversion to Florida state fiscal year	\$29	\$38	\$46	\$57	\$54	\$292

Note: Totals may be affected by rounding.

III. Additional Topics

Receiving Comments

A. FDIC Premiums Deduction

A member of the public provided a comment at the August 22, 2018, public workshop suggesting that Florida should decouple from section 162(r), IRC, which limits the deduction of Federal Deposit Insurance Corporation (FDIC) assessment/premiums that are used to provide the \$250,000 federal guarantee on deposits to account holders. The limitations placed on the deduction to federal taxable income flow through and are apportioned to Florida in the Florida corporate income tax return. Prior to the Tax Cuts and Jobs Act (TCJA), there was no federal limitation on the deduction of FDIC premiums.

- Depository institutions with consolidated assets of \$10 billion or less are not impacted at all, as they continue to federally deduct the full FDIC premium paid. This deduction flows into the Florida corporate income tax computation as it always has.
- Depository institutions with consolidated assets of \$50 billion or more are no longer permitted federally to deduct any FDIC premium paid. As a result, there is no federal deduction to flow into the Florida corporate income tax computation.
- Depository institutions with consolidated assets between \$10 billion and \$50 billion, deduct federally a portion of FDIC premium paid, the percentage of which gets smaller as the consolidated assets increase. To the extent a depository institution doing business in Florida is permitted to federally deduct FDIC premiums, such deduction will flow through to the Florida corporate income tax computation.

B. Unrelated Business Taxable Income

1. Separate Computation for Each Trade or Business Activity

The Tax Section of the Florida Bar submitted a comment suggesting that Florida should decouple from newly created section 512(a)(6), IRC (see section 13702 of the TCJA), which requires tax-exempt organizations to calculate separately the net unrelated business taxable income (UBTI) of each unrelated trade or business (the “silo” rule). Any loss derived from one unrelated trade or business may not be used to offset income from another unrelated trade or business. Net operating loss (NOL) deductions related to post-2017 NOLs are allowed only with respect to the trade or business from which the loss arose.

In general, section 512(a)(6), IRC, applies to taxable years beginning after December 31, 2017. Any net operating losses arising in taxable years beginning before January 1, 2018, may be applied to reduce aggregate UBTI arising from all unrelated businesses (see section 13702(b)(2) of the TCJA).

Under pre-enactment law, tax-exempt organizations calculated UBTI based on all unrelated business activities regularly carried on, less the deductions directly

connected with carrying on those activities. Losses generated by one activity generally could offset income earned from another activity. The new law prevents organizations from calculating UBTI on an aggregate basis.

The IRS has issued Notice 2018-67 (issued August 21, 2018), which solicits comments regarding various issues arising under section 512(a)(6), IRC, and sets forth interim guidance and transitional rules.

In the case of a tax-exempt organization, the Florida corporate income tax computation begins with the organization's UBTI, as determined under section 512 of the Internal Revenue Code. See section 220.13(2)(h), F.S.

2. Certain Fringe Benefit Expenses

The Tax Section of the Florida Bar submitted a comment suggesting that Florida should decouple from newly created section 512(a)(7), IRC (section 13703 of the TCJA). This section creates and/or increases unrelated business taxable income (UBTI) of a tax-exempt organization by any amount of:

- qualified transportation fringe (as defined in section 132(f), IRC);
- any parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C), IRC); or
- any on-premises athletic facilities (defined in section 132(j)(4)(B), IRC);

for which a deduction is not allowable by reason of section 274, IRC. This includes instances where, but for the disallowed deductions, there would not have been any UBTI.

However, section 512(a)(7), IRC, does not apply to the extent the amount paid or incurred is directly connected with an unrelated trade or business that is regularly carried on by the organization.

Section 512(a)(7), IRC, applies to amounts paid or incurred after December 31, 2017.

In addition, the IRS issued Notice 2018-67 on August 21, 2018, which advises that the provision of the fringe benefits described in section 512(a)(7), IRC, is not an unrelated trade or business by itself. This Notice specifically states "furthermore, the Treasury Department and the IRS do not believe that the provision of the fringe benefits described in section 512(a)(7), IRC, is an unrelated trade or business." Accordingly, any amount included in UBTI under section 512(a)(7), IRC, is not subject to section 512(a)(6), IRC (silos provision).

In the case of a tax-exempt organization, the Florida corporate income tax computation begins with the organization's UBTI, as determined under section 512 of the Internal Revenue Code. See section 220.13(2)(h), F.S.

IV. Other Provisions by Subject Area

Please note the box below applies to all asterisks (*) under “Effect of reform on Florida” column:

* Changes to the computation of federal taxable income will flow through to Florida since Rule 12C-1.013(1)(a), F.A.C., states that “taxable income,” as defined by section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due (generally Line 30 of federal Form 1120 (*U.S. Corporation Income Tax Return*)).

A. Income Tax Rates

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
11(b) & 1445(e)	Reduction in corporate tax rate <ul style="list-style-type: none"> • Reduces the corporate rate to 21% • Rate also applies to personal service corporations • Reduces the withholding rate on dispositions of US real property interests by domestic partnerships, trusts, or estates; by foreign corporations in recognition transactions; and by regulated investment companies or REITs 	Effective tax years beginning after December 31, 2017	No effect
IRS Guidance			
<ul style="list-style-type: none"> ➤ Notice 2018-38 - www.irs.gov/pub/irs-drop/n-18-38.pdf ➤ IR-2018-99 - www.irs.gov/newsroom/many-corporations-will-pay-a-blended-federal-income-tax-this-year-under-the-new-tax-reform-law ➤ Tax Reform Tax Tip 2018-173 - www.irs.gov/newsroom/after-tax-reform-many-corporations-will-pay-blended-tax-rate 			
243, 245(c)(1)(B), 245A(a), 246(b)(3), 246A(a)(1), & 951(b)	Dividends-received deduction is limited <ul style="list-style-type: none"> • If the corporation owns at least 20% of another corporation, a 65% (formally 80%) dividends-received deduction is permitted. Otherwise, the deduction is limited to 50% (formally 70%) • If the payor and recipient corporations are members of the same affiliated group, a 100% dividends-received deduction is allowed. • A deduction allowed for dividends received by a corporate US shareholder from a specified 10% owned foreign corporation under participation exemption system 	Effective tax years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ Tax Reform Guidance for 1120 filers - www.irs.gov/forms-pubs/tax-reform-guidance-for-1120-filers-09-apr-2018 ➤ IR-2018-210 - www.irs.gov/newsroom/irs-issues-proposed-regulations-reducing-potential-income-inclusions-for-certain-domestic-corporations-that-own-stock-in-foreign-corporations ➤ REG-114540-18 - www.irs.gov/pub/irs-drop/reg-114540-18.pdf ➤ IR-2018-235 - www.irs.gov/newsroom/irs-issues-proposed-regulations-on-foreign-tax-credits ➤ REG-105600-18 - www.irs.gov/pub/irs-drop/reg-105600-18.pdf 			

B. Noncorporate Taxpayers

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
<p>199A(a), 199A(b), 199A(c), 199A(d), 199A(e), 199A(f), 199A(g), 62(a), 63, 3402(m)(1), & 6662(d)(1)(C)</p>	<p>20% deduction for qualified business income</p> <ul style="list-style-type: none"> • New deduction for noncorporate taxpayer for qualified business income (QBI) • The deduction is generally 20% of a taxpayer's qualified business income from a partnership, S corporation, or sole proprietorship, defined as the net amount of items of income, gain, deduction, and loss with respect to the trade or business within the US. Exception for income received from sources within Puerto Rico • Specific calculation • Defines qualified business income • Deduction is allowed for agricultural or horticultural cooperatives subject to part I of subchapter T (s. 1381 through s. 1383) 	<p>Effective tax years beginning after December 31, 2017 and before January 1, 2026</p>	<p>Any federal change would flow through to Florida. *</p>
IRS Guidance			
<ul style="list-style-type: none"> ➤ IR-2018-162: www.irs.gov/newsroom/irs-issues-proposed-regulations-on-new-20-percent-deduction-for-passthrough-businesses ➤ FAQs - www.irs.gov/newsroom/tax-cuts-and-jobs-act-provision-11011-section-199a-qualified-business-income-deduction-faqs ➤ Notice 2018-64 - www.irs.gov/pub/irs-drop/n-18-64.pdf ➤ REG-107892 - www.irs.gov/pub/irs-drop/reg-107892-18.pdf ➤ IR-2018-197 - www.irs.gov/newsroom/irs-to-highlight-tax-reform-changes-affecting-small-businesses-small-business-owners-self-employed-should-plan-now-for-new-changes ➤ IR-2018-203 - www.irs.gov/newsroom/irs-several-tax-law-changes-may-affect-bottom-line-of-many-business-owners ➤ Tax Reform Tax Tip 2018-166 - www.irs.gov/newsroom/business-owners-can-claim-a-qualified-business-income-deduction ➤ Comparison of changes to passthrough deductions under TCJA - www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses#passthrough ➤ FS-2018-17 - www.irs.gov/newsroom/the-highlights-of-tax-reform-for-businesses 			
<p>461(l)</p>	<p>Excess business loss disallowance rule replaces limitation on excess farm loss for noncorporate taxpayer</p> <ul style="list-style-type: none"> • Disallows an excess business loss of a taxpayer other than a C corporation. • An excess business loss is treated as part of the taxpayer's net operating loss carryover to the following year. • The limitation applies at the partner or S corporation shareholder level. • Expires after December 31, 2025 	<p>Effective for tax years beginning after December 31, 2017 and before January 1, 2026</p>	<p>Any federal change would flow through to Florida. *</p>
IRS Guidance			
<p>None as of December 14, 2018</p>			

C. S Corporations

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
481(d) & 1371(f)	Modifies treatment of S corporation conversions into C Corporation <ul style="list-style-type: none"> Any increase in tax due to the s. 481(a) adjustment of an eligible terminated S corporation attributable to the revocation of its S corporation election is taken into account ratably during the six-taxable-year period beginning with the year of change Defines eligible terminated S corporation In the case of a distribution of money, the accumulated adjustments account shall be allocated to such distribution, and the distribution shall be chargeable to accumulated earning and profits, in the same ratio as the amount of the accumulated adjustments account bears to the amount the accumulated earnings and profits 	Effective upon enactment of TCJA	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ Rev. Proc. 2018-44 - www.irs.gov/pub/irs-drop/rp-18-44.pdf ➤ Tax Tip 2018-179 - www.irs.gov/newsroom/some-s-corporations-may-want-to-convert-to-c-corporations ➤ Comparison of changes to corporate methods of accounting under TCJA - www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses#passthrough ➤ Rev. Proc. 2018-17 - www.irs.gov/pub/irs-drop/rp-18-17.pdf ➤ S-corporations may want to convert to C-corporations - www.irs.gov/newsroom/s-corporations-may-want-to-convert-to-c-corporation 			
1361(c)(2)(B)(V)	Expansion of qualifying beneficiaries of an electing small business trust <ul style="list-style-type: none"> Expands to allow a nonresident alien individual to be a potential current beneficiary of an electing small business trust ("ESBT") 	Effective on January 1, 2018	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
642(c)(2)(E)	Modifies the charitable contribution deduction for an electing small business trust (ESBT) <ul style="list-style-type: none"> The charitable contribution deduction of an ESBT is not determined by the rules generally applicable to trusts but rather by the rules applicable to individuals. Percentage limitation and carryforward provisions applicable to individuals apply to ESBT 	Effective for taxable years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ IR-2018-172 - www.irs.gov/newsroom/treasury-irs-issue-proposed-regulations-on-charitable-contributions-and-state-and-local-tax-credit ➤ REG-112176-18 - www.federalregister.gov/documents/2018/08/27/2018-18377/contributions-in-exchange-for-state-or-local-tax-credits 			

D. Partnerships

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
708(b)(1)	Repeal of technical termination of partnerships of at least \$500,000 <ul style="list-style-type: none"> Repeals rule for technical terminations of partnerships Does not change present-law rule that provides a partnership is considered as terminated if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in partnership 	Applies to partnership taxable years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
743(d)(1)	Expands the definition of substantial built-in loss for purposes of partnership loss transfers <ul style="list-style-type: none"> Provides that a substantial built-in loss also exists if the transferee would be allocated a net loss in excess of \$250,000 upon a hypothetical disposition by the partnership of all partnership's assets in a fully taxable transaction for cash equal to the assets' fair market value, immediately after the transfer of the partnership interest 	Applies to transfers of partnership interest after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
704(d)	Charitable contributions and foreign taxes taken into account in determining limitation on allowance of partner's share of loss <ul style="list-style-type: none"> Modifies the basis limitation on partner losses to provide that the limitation takes into account a partner's distributive share of partnership charitable contributions and taxes paid or accrued to foreign countries and to possessions of the US 	Applies to partnership taxable years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			

E. Tax-Exempt Organizations

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
4960	<p>Excise tax imposed on tax-exempt organizations that pay excess compensation</p> <ul style="list-style-type: none"> • An excise tax will be imposed on covered employees of applicable tax-exempt organizations whose remuneration exceeds \$1 million, or who receive excess parachute payments • Defines covered employees, tax-exempt organizations, remuneration, parachute payments 	For tax years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
<p>➤ REG-107163-18 - www.federalregister.gov/documents/2018/11/07/2018-24285/regulations-to-prescribe-return-and-time-for-filing-for-payment-of-section-4960-4966-4967-and-4968</p>			
4968	<p>New excise tax imposed on investment income of private colleges and universities</p> <ul style="list-style-type: none"> • Imposes on each applicable educational institution for the tax year, a tax equal to 1.4% of the applicable educational institution's net investment income for the tax year • Defines applicable educational institution and net investment income • Applies only to colleges and universities with more than 500 tuition-paying students that have at least 50% of their tuition-paying students located in the US 	Effective for tax years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
<p>➤ IR-2018-134 - www.irs.gov/newsroom/for-new-tax-on-some-private-colleges-stepped-up-basis-may-apply-to-property-sold-at-a-gain-new-basis-rule-may-limit-tax-impact</p> <p>➤ Notice 2018-55 - www.irs.gov/pub/irs-drop/n-18-55.pdf</p> <p>➤ REG-107163-18 - www.federalregister.gov/documents/2018/11/07/2018-24285/regulations-to-prescribe-return-and-time-for-filing-for-payment-of-section-4960-4966-4967-and-4968</p>			
512(a)(6)	<p>Unrelated business taxable income (UBTI) separately computed for each trade or business activity</p> <ul style="list-style-type: none"> • UBTI is first computed separately with respect to each trade or business • Prohibits the use of deductions related to one trade or business to offset income from a separate trade or business • The organization's UBTI for the taxable year is the sum of the amounts (not less than zero) computed separately 	Effective for taxable years beginning after December 31, 2017	Any federal change would flow through to Florida. *

	<ul style="list-style-type: none"> Net operating loss deduction is allowed only with respect to the specific trade or business from which it arose 		
IRS Guidance			
<p>➤ Notice 2018-67 - www.irs.gov/pub/irs-drop/n-18-67.pdf</p>			
<p style="text-align: center;">Comment on UBTI separately computed for each trade or business activity</p> <p>The Tax Section of the Florida Bar submitted a comment suggesting that Florida should decouple from newly created section 512(a)(6), IRC (see section 13702 of the TCJA), which requires tax-exempt organizations to calculate separately the net unrelated business taxable income (UBTI) of each unrelated trade or business (the “silo” rule). Any loss derived from one unrelated trade or business may not be used to offset income from another unrelated trade or business. Net operating loss deductions related to post-2017 NOLs are allowed only with respect to the trade or business from which the loss arose.</p> <p>In general, section 512(a)(6), IRC, applies to taxable years beginning after December 31, 2017. Any net operating losses arising in taxable years beginning before January 1, 2018, may be applied to reduce aggregate UBTI arising from all unrelated businesses (see section 13702(b)(2) of the TCJA).</p> <p>Under pre-enactment law, tax-exempt organizations calculated UBTI based on all unrelated business activities regularly carried on, less the deductions directly connected with carrying on those activities. Losses generated by one activity generally could offset income earned from another activity. The new law prevents organizations from calculating UBTI on an aggregate basis.</p> <p>The IRS has issued Notice 2018-67 (issued August 21, 2018), which solicits comments regarding various issues arising under section 512(a)(6), IRC, and sets forth interim guidance and transitional rules.</p> <p>In the case of a tax-exempt organization, the Florida corporate income tax computation begins with the organization’s UBTI, as determined under section 512 of the Internal Revenue Code. See section 220.13(2)(h), F.S.</p>			
512(a)(7)	<p>Unrelated business taxable income (UBTI) increased by amount of certain fringe benefit expenses for which a deduction is disallowed</p> <ul style="list-style-type: none"> UBTI includes any amount for which a deduction is not allowed under s. 274, IRC UBTI for tax-exempt organizations is increased for any qualified transportation fringe of any parking facility used in connection with qualified parking or any on-premises athletic facility 	<p>Applies to amounts paid or incurred after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>
IRS Guidance			
<p>➤ Notice 2018-76 - www.irs.gov/pub/irs-drop/n-18-76.pdf</p> <p>➤ Post Release Changes to Forms (Fringe Benefits) - www.irs.gov/forms-pubs/increase-in-unrelated-business-taxable-income-by-disallowed-fringe-benefits</p> <p>➤ IR-2018-247 - www.irs.gov/newsroom/irs-issues-guidance-for-determining-nondeductible-amount-of-parking-fringe-expenses-and-unrelated-business-taxable-income-provides-penalty-relief-to-tax-exempt-organizations</p> <p>➤ Notice 2018-99 - www.irs.gov/pub/irs-drop/n-18-99.pdf</p> <p>➤ Notice 2018-100 - www.irs.gov/pub/irs-drop/n-18-100.pdf</p>			

UBTI increased by amount of certain fringe benefit expenses
for which deduction is disallowed

The Tax Section of the Florida Bar submitted a comment suggesting that Florida should decouple from newly created section 512(a)(7), IRC (section 13703 of the TCJA). This section creates and/or increases unrelated business taxable income (UBTI) of a tax-exempt organization by any amount of:

- qualified transportation fringe (as defined in section 132(f), IRC);
- any parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C), IRC);
or
- any on-premises athletic facilities (defined in section 132(j)(4)(B), IRC);

for which a deduction is not allowable by reason of section 274, IRC. This includes instances where, but for the disallowed deductions, there would not have been any UBTI.

However, section 512(a)(7), IRC, does not apply to the extent the amount paid or incurred is directly connected with an unrelated trade or business that is regularly carried on by the organization.

Section 512(a)(7), IRC, applies to amounts paid or incurred after December 31, 2017.

In addition, the IRS issued Notice 2018-67 on August 21, 2018, which advises that the provision of the fringe benefits described in section 512(a)(7), IRC, is not an unrelated trade or business by itself. This Notice specifically states “furthermore, the Treasury Department and the IRS do not believe that the provision of the fringe benefits described in section 512(a)(7), IRC, is an unrelated trade or business.” Accordingly, any amount included in UBTI under section 512(a)(7), IRC, is not subject to section 512(a)(6), IRC (silo provision).

In the case of a tax-exempt organization, the Florida corporate income tax computation begins with the organization's UBTI, as determined under section 512 of the Internal Revenue Code. See section 220.13(2)(h), F.S.

F. Trusts and Estates

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
1(j)(1), 1(j)(2)(E) & 1(j)(3)(A)	Income tax rates and brackets for trusts and estates revised <ul style="list-style-type: none"> • Four income tax brackets apply to trust and estates: 10%, 24%, 35%, and 37% • The specific bracket amounts were also revised 	Effective tax years beginning after December 31, 2017 and before January 1, 2026	No effect
IRS Guidance			
➤ REG-106706-18 - www.federalregister.gov/documents/2018/11/23/2018-25538/estate-and-gift-taxes-difference-in-the-basic-exclusion-amount			
1(j)(1) & 1(j)(5)	Breakpoints for imposition of 15% and 20% capital gains/qualified dividends rates are set as statutory dollar amounts, adjusted for inflation <ul style="list-style-type: none"> • The 0% rate is to apply to adjusted net capital gain that is below the maximum zero rate amount, which for an estate or trust is \$2,600 • The 15% rate applies when the adjusted net capital gain exceeds the amount subject to 0% but is below the maximum 15% rate which is \$12,700 for an estate or trust • Amounts are adjusted for inflation (calculation) 	Effective tax years beginning after December 31, 2017 and before January 1, 2026	No effect
IRS Guidance			
None as of December 14, 2018			

G. Depreciation (other than 168(k) or 179)

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
280F(d)(4)(A) & 280F(d)(4)	Treatment of computer equipment as listed property is ended <ul style="list-style-type: none"> • Computer and peripheral equipment is no longer included in the definition of listed property • No longer subject to the heightened substantiation requirements 	Property placed in service after December 31, 2017 in a tax year that ends after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ A comparison for businesses - deductions, depreciation and expensing - www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses#passthrough ➤ IR-2018-223 - www.irs.gov/newsroom/new-tax-law-allows-small-businesses-to-expense-more-expands-bonus-depreciation ➤ IR-2018-9 - www.irs.gov/newsroom/new-rules-and-limitations-for-depreciation-and-expensing-under-the-tax-cuts-and-jobs-act 			
280F(a)(1)(A), 280F(a)(1)(B), 280F(d)(7)(B)(i), 280F(d)(7)(B)(i)(II), & 280F(d)(7)(B)(ii)	Modifications to depreciation limitations on luxury automobiles and personal use property <ul style="list-style-type: none"> • Annual caps on depreciation of passenger automobiles raised (more than three times higher than pre-TCJA) • \$10,000 – placed-in-service year, \$16,000 – 2nd year, \$9,600 – 3rd year, \$5,760 – 4th, 5th, 6th year, \$5,760 for years after the recovery period • For vehicles that are qualified property for which bonus depreciation is allowed, \$8,000 is added to the otherwise-applicable placed-in-service year limit 	Applies to property placed in service after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ Rev. Proc. 2018-25 - www.irs.gov/pub/irs-drop/rp-18-25.pdf ➤ A comparison for businesses - changes to luxury automobile depreciation - www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses ➤ Tax Reform Tax Tip 2018-177 - www.irs.gov/newsroom/tax-reform-changes-depreciation-limits-on-luxury-automobiles ➤ Changes to depreciation limits on luxury automobiles - www.irs.gov/newsroom/changes-to-depreciation-limits-on-luxury-automobiles ➤ FS-2018-9 - www.irs.gov/newsroom/new-rules-and-limitations-for-depreciation-and-expensing-under-the-tax-cuts-and-jobs-act 			
168(b)(2), 168(e)(B)(vii), 168(g)(1)(F), 168(g)(1)(G), & 168(g)(8)	Modifications of treatment of certain farm property <ul style="list-style-type: none"> • 200% declining balance method of MACRS is now available • Most new farming equipment is 5-year MACRS property 	Applies to property placed in service after December 31, 2017	Any federal change would flow through to Florida. *

G. Depreciation (other than 168(k) or 179) Cont'd

	<ul style="list-style-type: none"> ADS depreciation required for 10-year-or-more MACRS property, if election is made to exempt farming business from the business interest deduction limitation 		
IRS Guidance			
<ul style="list-style-type: none"> ➤ Tax Tip 2018-169 - www.irs.gov/newsroom/heres-how-tax-reform-affects-farmers-and-ranchers ➤ Tax Reform Tax Tip 2018-170 - www.irs.gov/newsroom/tax-reform-changes-to-depreciation-deduction-affect-farmers-bottom-line ➤ Tax reform changes to depreciation deduction affect farmers - www.irs.gov/newsroom/tax-reform-changes-to-depreciation-deduction-affect-farmers ➤ FS-2018-9 - www.irs.gov/newsroom/new-rules-and-limitations-for-depreciation-and-expensing-under-the-tax-cuts-and-jobs-act 			
<p>168(b)(3), 168(b)(3)(G), 168(e), 168(e)(3)(E), 168(e)(6), 168(g)(3)(B), 168(g)(2)(C), & 168(d)(2)(A)(i)</p>	<p>Applicable recovery period for real property is expanded</p> <ul style="list-style-type: none"> Eliminates the separate definitions of qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property Eligibility of building improvements for a 15-year recovery period is expanded ADS recovery period for residential rental property is shortened to 30 years 	Effective for property placed in service after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ FS-2018-14 - www.irs.gov/newsroom/know-the-tax-facts-about-renting-out-residential-property ➤ FS-2018-9 - www.irs.gov/newsroom/new-rules-and-limitations-for-depreciation-and-expensing-under-the-tax-cuts-and-jobs-act 			
<p>168(g)(1)(F) & 168(g)(8)</p>	<p>ADS depreciation for buildings (and improvements), if election is made to exempt real property business from the business interest deduction limitation</p> <ul style="list-style-type: none"> Requires depreciation under the MACRS alternative depreciation system for any nonresidential real property, residential rental property and qualified improvement property held by an electing real property trade or business. Allows an electing real property trade or business to not apply the TCJA limitations on business interest deduction limitation If election is made, it requires ADS be used 	Effective tax years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ FS-2018-9 - www.irs.gov/newsroom/new-rules-and-limitations-for-depreciation-and-expensing-under-the-tax-cuts-and-jobs-act 			
<p>460(c)(6)(B)(ii)</p>	<p>Placed-in service deadline for disregard of some bonus depreciation-eligible property under the percentage of completion method is extended (Bonus Depreciation)</p>	For property that is both (1) acquired and placed in service after September	Any federal change would flow through to Florida. *

G. Depreciation (other than 168(k) or 179) Cont'd

	<ul style="list-style-type: none"> Extends the deadline in the timing requirement for disregard of certain qualified property (MACRS recovery property of seven years or less) under the percentage of completion method to provide that property must be placed in service before January 1, 2027 	27, 2017 and (2) placed in service before January 1, 2027	
IRS Guidance			
None as of December 14, 2018			
None	<p>Normalization requirements for public utilities</p> <ul style="list-style-type: none"> Clarifies the normalization of excess tax reserves resulting from the reduction of corporate income tax rates for those taxpayers' subject to the normalization method of accounting (regulated public utilities) 	Effective tax years beginning after December 31, 2017	No effect
IRS Guidance			
None as of December 14, 2018			

H. Business Deductions and Credits

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
170(l)(1)	Charitable deduction is denied for contributions to a college or university in exchange for athletic event seating rights <ul style="list-style-type: none"> No charitable deduction is allowed for the payment to a college or university in exchange for which the contributor receives the right to purchase tickets or seating at an athletic event 	Contributions made in tax years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ IR-2018-172 - www.irs.gov/newsroom/treasury-irs-issue-proposed-regulations-on-charitable-contributions-and-state-and-local-tax-credits ➤ REG-112176-18 - www.federalregister.gov/documents/2018/08/27/2018-18377/contributions-in-exchange-for-state-or-local-tax-credits 			
274(a)(1)(A), 274(a)(1), 274(a)(2), 274(a)(4), 274(d), 274(l), 274(n), 274(n)(1), 274(n)(2), 274(o) & 7701(b)(5)(A)(iv)	Employer deduction for certain fringe benefits <ul style="list-style-type: none"> No deduction is allowed with respect to entertainment, regardless of connection to trade or business Employer-operated eating facilities (convenience of the employer), 50% deduction instead of 100% Business meals retain 50% deduction Disallows a deduction for expenses associated with providing any qualified transportation fringe benefit to employees Transportation and commuting benefits provided to employees, with the exception of transportation provided as necessary for ensuring the safety of an employee, are includible in income to the employee and not deductible by the employer 	Generally, applies to amounts paid or incurred after December 31, 2017 (for meals for employer's convenience, December 31, 2025)	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ Employer Update - www.irs.gov/newsroom/employer-update ➤ IR-2018-190 - www.irs.gov/newsroom/irs-2018-employer-reimbursements-for-employees-2017-moves-are-generally-tax-free ➤ Notice 2018-75 - www.irs.gov/pub/irs-drop/n-18-75.pdf ➤ IR-2018-195 - www.irs.gov/newsroom/irs-issues-guidance-on-tax-cuts-and-jobs-act-changes-on-business-expense-deductions-for-meals-entertainment ➤ Notice 2018-76 - www.irs.gov/pub/irs-drop/n-18-76.pdf ➤ IR-2018-203 - www.irs.gov/newsroom/irs-several-tax-law-changes-may-affect-bottom-line-of-many-business-owners ➤ Tax Reform Tax Tip 2018-162 - www.irs.gov/newsroom/tax-reform-brings-changes-to-fringe-benefits-that-can-affect-an-employers-bottom-line ➤ Tax Reform Small Business Initiative - www.irs.gov/tax-reform-small-business-initiative ➤ A comparison for businesses - changes to fringe benefits - www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses#passthrough 			

H. Business Deductions and Credits Cont'd

162(f) & 6050X	Expands provision relating to the non-deductibility of fines and penalties <ul style="list-style-type: none"> • Allows for a deduction of payments that are either restitution, remediation or amounts required to come into compliance with any law that was violated • Only applies where a government is a complainant or investigator with respect to the violation • Requires government agencies that are complainants or investigators with respect to a violation or potential violation to report to IRS and to taxpayer the amount of each settlement agreement or order where the aggregate amount required to be paid or incurred is at least \$600 	Effective for amounts paid or incurred on or after December 22, 2017 (with exceptions)	Any federal change would flow through to Florida. *
IRS Guidance			
➤ Notice 2018-23 - www.irs.gov/pub/irs-drop/n-18-23.pdf			
162(q)	Denies deduction for settlements subject to a nondisclosure agreement paid in connection with sexual harassment <ul style="list-style-type: none"> • No deduction for certain payments made in sexual harassment or sexual abuse cases • No deduction of attorney's fees related to settlement or payment 	Effective for amounts paid or incurred after December 22, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
➤ Settlement of attorney's fees related to sexual harassment - www.irs.gov/newsroom/settlement-of-attorneys-fees-related-to-sexual-harassment ➤ Comparison of changes to sexual harassment settlement payments - www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses ➤ Notice 2018-23 - www.irs.gov/pub/irs-drop/n-18-23.pdf			
162(e)(2) & 162(e)(7)	Repeal of deduction for local government lobbying expenses <ul style="list-style-type: none"> • Repeals the exception for amounts paid or incurred related to lobbying local councils or similar governing bodies, including Indian tribal governments • Applies to lobbying and political expenditures related to local legislation 	Effective for amounts paid or incurred on or after December 22, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			

H. Business Deductions and Credits Cont'd

<p>162(r)</p>	<p>Limitation on deduction for FDIC premiums</p> <ul style="list-style-type: none"> • No deduction is allowed for the applicable percentage of any FDIC premium paid or incurred by the taxpayer • Applicable percentage means the ratio (expressed as a percentage) that the excess of the taxpayer's total consolidated assets over \$10 billion bears to \$40 billion. Applicable percentage can't exceed 100%. • For banks with total consolidated assets less than \$10 billion, no impact, deduction is still allowed • For banks with total consolidated assets between \$10 billion & \$50 billion the limitation is phased out (using the ratio) • For banks with total consolidated assets over \$50 billion, no deduction is permitted 	<p>Effective for taxable years beginning after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>
<p>IRS Guidance</p>			
<p>None as of December 14, 2018</p>			
<p>Comment on loss of FDIC premiums deduction</p>			
<p>A member of the public provided a comment at the August 22, 2018, public workshop suggesting that Florida should decouple from section 162(r), IRC, which limits the deduction of Federal Deposit Insurance Corporation (FDIC) assessment/premiums that are used to provide the \$250,000 federal guarantee on deposits to account holders. The limitations placed on the deduction to federal taxable income flow through and are apportioned to Florida in the Florida corporate income tax return. Prior to the TCJA, there was no federal limitation on the deduction of FDIC premiums.</p>			
<ul style="list-style-type: none"> • Depository institutions with consolidated assets of \$10 billion or less are not impacted at all, as they continue to federally deduct the full FDIC premium paid. This deduction flows into the Florida corporate income tax computation as it always has. • Depository institutions with consolidated assets of \$50 billion or more are no longer permitted federally to deduct any FDIC premium paid. As a result, there is no federal deduction to flow into the Florida corporate income tax computation. • Depository institutions with consolidated assets between \$10 billion and \$50 billion, deduct federally a portion of FDIC premium paid, the percentage of which gets smaller as the consolidated assets increase. To the extent a depository institution doing business in Florida is permitted to federally deduct FDIC premiums, such deduction will flow through to the Florida corporate income tax computation. 			
<p>38(b)(37), 38(c)(4)(B) (ix), 45S, 280C(a), & 6501(m)</p>	<p>Provides a tax credit to certain employers who provide family and medical leave (sunset 12/31/19)</p> <ul style="list-style-type: none"> • General business credit employers may claim, based on wages paid to qualifying employees while they are on family and medical leave, subject to certain conditions. • Section 220.13(1)(b)3., F.S., specifically references s. 280C(a), IRC 	<p>Generally, effective for wages paid in taxable years beginning after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>
<p>IRS Guidance</p>			
<ul style="list-style-type: none"> ➤ Tax Reform Tax Tip 2018-69 - www.irs.gov/newsroom/how-the-employer-credit-for-family-and-medical-leave-benefits-employers ➤ FAQs - www.irs.gov/newsroom/section-45s-employer-credit-for-paid-family-and-medical-leave-faqs 			

H. Business Deductions and Credits Cont'd

<p>➤ IR-2018-191 - www.irs.gov/newsroom/new-employer-tax-credit-for-paid-family-and-medical-leave-available-for-2018-and-2019</p> <p>➤ Notice 2018-71 - www.irs.gov/pub/irs-drop/n-18-71.pdf</p> <p>➤ Tax Reform Tax Tip 2018-149 - www.irs.gov/newsroom/new-credit-benefits-employers-who-provide-paid-family-and-medical-leave</p> <p>➤ Comparison of changes to employer credits for paid family and medical leave - www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses#passthrough</p> <p>➤ Small Business Initiative - www.irs.gov/tax-reform-small-business-initiative</p> <p>➤ Tax Reform Tax Tip 2018-183 - www.irs.gov/newsroom/new-tax-credit-benefits-employers-who-provide-paid-family-and-medical-leave</p>			
<p>47(a), 47(c)(1), 47(c)(2)(B) (iv)</p>	<p>Modifies rehabilitation credit to provide 20% historic credit ratably over 5 years, repeals credit for pre-1936 property</p> <ul style="list-style-type: none"> • Requires taxpayers take the 20-percent credit ratably over five years instead of in the year they placed the building into service • Eliminates the 10 percent rehabilitation credit for the pre-1936 buildings • Changes the definition of a qualified rehabilitated building • Provides that for purposes of s. 46, IRC, (Investment Credit), for any tax year during the five-year period beginning in the tax year in which a qualified rehabilitated building is placed in service, the rehabilitation credit for that year is an amount equal to the ratable share for that year 	<p>Applies to amounts paid or incurred after December 31, 2017 (transition rules)</p>	<p>No effect</p>
<p>IRS Guidance</p>			
<p>➤ Tax Reform Tax Tip 2018-161 - www.irs.gov/newsroom/tax-reform-brings-changes-to-real-estate-rehabilitation-tax-credit</p> <p>➤ Rehabilitation Tax Credit - Real Estate Tax Tips - www.irs.gov/businesses/small-businesses-self-employed/rehabilitation-tax-credit-real-estate-tax-tips</p> <p>➤ Comparison of changes to Rehabilitation tax credit - www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses</p>			
<p>45C(a) & 280C(b)</p>	<p>Modification of credit for clinical testing expenses for certain drugs for rare diseases or conditions</p> <ul style="list-style-type: none"> • Provides that for purposes of s. 38, IRC, general business credit, the amount of the orphan drug credit equals 25% of the qualified clinical testing expenses for the tax year (s. 45C, IRC) • Allows taxpayer to elect to take a reduced orphan drug credit in lieu of reducing otherwise allowable deductions. It provides that, for a tax year for which a reduced orphan drug credit election is made the rules requiring the taxpayer to reduce the deduction or charge to capital by the amount of the orphan credit allowable for qualified clinical testing expenses don't apply, and the amount of the orphan drug credit is the amount determined under s. 280C(b)(3)(B), IRC 	<p>Applies to amounts paid or incurred in taxable years beginning after December 31, 2017</p>	<p>No effect</p>

H. Business Deductions and Credits Cont'd

IRS Guidance			
None as of December 14, 2018			
<p>38(b)(37), 38(c)(4)(B) (ix), 38(c)(6)(E)</p>	<p>Conformity of section and limitation on aggregate business credits</p> <ul style="list-style-type: none"> • Provides that the Paid Family and Medical Leave Credit (s. 45S, IRC) is a component of the general business credit and can be used to reduce a taxpayer's AMT (individual) & won't apply to wages paid in tax years beginning after Dec. 31, 2019 • In the case of a corporation, s. 38(c), IRC, is applied by treating the corporation as having a tentative minimum tax of zero. Corporations are allowed business credits for a tax year to the extent that they exceed 25% of the regular income tax (reduced by most non-refundable non-business credits) over \$25,000 • Reflects the repeal of the AMT for corporations and modification of AMT for individuals 	<p>Generally effective for taxable years beginning after December 31, 2017</p>	<p>No effect</p>
IRS Guidance			
None as of December 14, 2018			

I. Compensation

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
<p>162(m)(2), 162(m)(3)(A), 162(m)(3)(B), 162(m)(3)(C), 162(m)(3), & 162(m)(4)</p>	<p>Modification of limitation on excessive employee remuneration, with transition rule</p> <ul style="list-style-type: none"> • Definition of publicly held corporation is expanded • Definition of covered employee is expanded • Performance-based compensation and commissions are subject to \$1 million deduction limit 	<p>Applies to taxable years beginning after December 31, 2017 (transition rules)</p>	<p>Any federal change would flow through to Florida. *</p>
IRS Guidance			
<p>➤ Notice 2018-68 - www.irs.gov/pub/irs-drop/n-18-68.pdf</p>			
<p>83(i), 422(b), 423(b)(5), 423(d), 3401(i), 3402(t), 490A(d)(7), 6501(a)(16), 6051(a)(17) & 6652(p)</p>	<p>Employees can elect to defer income from option or RSU stock for up to five years after vesting (Qualified Equity Grants)</p> <ul style="list-style-type: none"> • Provides a “qualified employee” may elect to defer the income attributable to a stock option or RSU received in connection with the performance of services for up to five years if the corporation’s stock is an “eligible corporation” • Defines qualified employee, qualified stock, and eligible corporation • Defines how to make s. 83(i), IRC, election • Requires employers to report on Form W-2 the amount includible in gross income under s. 83(i)(1)(A), IRC, with respect to 83(i), IRC, election and the aggregate amount of income that is being deferred • Provides that qualified stock for which a s. 83(i), IRC, election is made is treated as wages received on the earliest date as provided by s. 83(i), IRC • Imposes a penalty on a person who fails to provide the notice required by s. 83(i), IRC, on a timely basis 	<p>Generally, applies with respect to stock attributable to options exercised or RSU's settled after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>
IRS Guidance			
<p>➤ IR-2018-246 - www.irs.gov/newsroom/for-private-corporations-and-their-employees-irs-provides-initial-guidance-on-new-tax-benefit-for-stock-options-and-restricted-stock-units</p>			
<p>➤ Notice 2018-97 - www.irs.gov/pub/irs-drop/n-18-97.pdf</p>			
<p>274(j)(3)(A)</p>	<p>Cash, gift cards, and other nontangible personal property no longer qualify as employee achievement awards</p> <ul style="list-style-type: none"> • Defines employee achievement awards • Defines tangible personal property for the purpose of section. It does not include: <ul style="list-style-type: none"> ○ Cash, cash equivalents, gift cards, gift coupons, or gift certificates 	<p>For amounts paid or incurred after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>

I. Compensation Cont'd

	<ul style="list-style-type: none"> ○ Vacations, meals, lodging, tickets to the theater or sporting events, stocks, bonds, other securities, and other similar items 		
IRS Guidance			
<ul style="list-style-type: none"> ➤ Tax Reform Tax Tip 2018-190 - www.irs.gov/newsroom/tax-reform-law-makes-changes-to-employee-achievement-award-rules ➤ Employer Update - www.irs.gov/newsroom/employer-update ➤ A comparison for businesses - changes to fringe benefits and new credit - www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses 			
132(f)(8), 274	Suspends the exclusion of qualified bicycle commuting reimbursements <ul style="list-style-type: none"> • Suspends the exclusion from gross income and wages for qualified bicycle commuting reimbursements 	Effective for tax years beginning after December 31, 2017, and before January 1, 2026	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
408A(d)(6)(B)(iii)	Recharacterization of certain IRA and Roth IRA contributions <ul style="list-style-type: none"> • The special rule that allows a contribution to one type of IRA to be recharacterized as a contribution to the other type of IRA does not apply to a conversion contribution to a Roth IRA • Recharacterization cannot be used to unwind a Roth conversion 	Effective for plan years beginning after December 31, 2017	No effect
IRS Guidance			
<ul style="list-style-type: none"> ➤ IRA FAQs - Recharacterization of IRA Contributions - www.irs.gov/retirement-plans/ira-faqs-recharacterization-of-ira-contributions 			
402(c)(3)	Rollovers of plan loan offsets <ul style="list-style-type: none"> • Deadline to avoid treating the loan amount as a taxable distribution is extended until the due date (including extension) for filing the employee's tax return for that tax year. 	Applicable to taxable years beginning after December 31, 2017	No effect
IRS Guidance			
<ul style="list-style-type: none"> ➤ Notice 2018-74 - www.irs.gov/pub/irs-drop/n-18-74.pdf 			

J. Bonds and Development Incentives

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
149(d)(1), 149(d)(2), 149(d)(3), 149(d)(4), & 149(d)(6)	Repeal of advance refunding bonds interest <ul style="list-style-type: none"> • Repeals the exclusion from gross income for interest on a bond issued to advance refund another bond 	Applies to advance refunding bonds issued after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
54A, 54B, 54C, 54D, 54E, 54F, 54AA, 1397E, & 6431	New tax-credit and direct-pay bonds may not be issued <ul style="list-style-type: none"> • Repeals the authority to issue tax-credit bonds and direct-pay bonds • Repeals: <ul style="list-style-type: none"> ○ Credit to holders of clean renewable energy bonds ○ Credit to holders of qualified tax credit bonds ○ Qualified forestry conservation bonds ○ New clean renewable energy bonds ○ Qualified energy conservation bonds ○ Qualified zone academy bonds ○ Qualified school construction bonds ○ Build America bonds ○ Credit for qualified bonds allowed to issuer ○ Credit to holders of qualified zone academy bonds 	Effective for bonds issued after December 31, 2017	No effect
IRS Guidance			
<ul style="list-style-type: none"> ➤ Direct Pay Bonds Information Page - www.irs.gov/tax-exempt-bonds/direct-pay-bonds ➤ Notice 2018-15 - www.irs.gov/pub/irs-drop/n-18-15.pdf ➤ Repeal of Authority to Issue New Clean Renewable Energy Bonds - www.irs.gov/tax-exempt-bonds/repeal-of-authority-to-issue-new-clean-renewable-energy-bonds 			
236 & 263A(f)	Craft beverage modernization and <u>excise tax</u> reform (sunset 12/31/19) <ul style="list-style-type: none"> • Excludes the aging period from the production period for beer, wine, or distilled spirits for purposes of determining whether a taxpayer can expense, rather than capitalize, interest costs paid or incurred during the production period • Reduces excise tax rates on beer and distilled spirits • Modifies the small wine producer tax credit to increase the amount of the credit, 	For interest paid or accrued in calendar years beginning after December 31, 2017, and before January 1, 2020	Any federal change would flow through to Florida. *

J. Bonds and Development Incentives Cont'd

	<p>expands the producers that are covered, and specifies an adjustment for hard cider</p> <ul style="list-style-type: none"> • Modifies the alcohol content limitations that apply to certain wines for tax purposes • Specifies definitions for "mead" and "low alcohol by volume wine;" • Modifies requirements for records, statements, and returns for certain breweries • Permits the transfer of beer between bonded facilities without payment of tax 		
IRS Guidance			
➤ FAQs - www.irs.gov/newsroom/section-13801-production-period-for-beer-wine-and-distilled-spirits-faqs			
263A(d)(2)(c)	<p>Expensing of certain costs of replacing citrus plants lost by reason of a casualty (sunset 12/22/27)</p> <ul style="list-style-type: none"> • For costs paid or incurred after the date of enactment, but no later than ten years, replanting costs may also be deducted by a person other than the taxpayer if (1) there is an equity interest not less than 50% in the replanted citrus plants or (2) such person acquires all of taxpayer's equity interest in the land replanting took place 	Effective for costs paid or incurred after December 22, 2017, but not later than December 22, 2027	Any federal change would flow through to Florida. *
IRS Guidance			
➤ Rev. Proc. 2018-35 - www.irs.gov/pub/irs-drop/rp-18-35.pdf			
1016(b)(38), 1400Z-1, & 1400Z-2	<p>Create qualified opportunity zones</p> <ul style="list-style-type: none"> • Would allow investors selling appreciated securities or other investment property to defer tax on those gains to the extent that the proceeds are reinvested in a Qualified Opportunity Zone Fund • Further tax incentives would allow for exclusion of both some of the deferred gain and any post acquisition gain if the Fund is held long enough • Allows for the designation of certain low-income community population census tracts as Qualified Opportunity Zones 	Effective December 22, 2017, (with exceptions)	Any federal change would flow through to Florida. *
IRS Guidance			
➤ Rev. Proc. 2018-16 - www.irs.gov/pub/irs-drop/rp-18-16.pdf ➤ Opportunity Zones Frequently Asked Questions - www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions ➤ IR-2018-206 - www.irs.gov/newsroom/treasury-irs-issue-proposed-regulations-on-new-opportunity-zone-tax-incentive ➤ REG-115420-18 - www.irs.gov/pub/irs-drop/reg-115420-18.pdf ➤ Rev. Rul. 2018-29 - www.irs.gov/pub/irs-drop/rr-18-29.pdf ➤ Comparison of changes to opportunity zones - www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses#passthrough			

J. Bonds and Development Incentives Cont'd

- [Small Business Initiative - www.irs.gov/tax-reform-small-business-initiative](http://www.irs.gov/tax-reform-small-business-initiative)
- [Notice 2018-48 - www.irs.gov/pub/irs-drop/n-18-48.pdf](http://www.irs.gov/pub/irs-drop/n-18-48.pdf)
- [Tax law creates new opportunity zone program - www.irs.gov/newsroom/tax-law-creates-new-opportunity-zone-program](http://www.irs.gov/newsroom/tax-law-creates-new-opportunity-zone-program)
- [Tax Tip 2018-191 - www.irs.gov/newsroom/tax-reform-creates-opportunity-zone-tax-incentive](http://www.irs.gov/newsroom/tax-reform-creates-opportunity-zone-tax-incentive)

K. Capital Gains

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
1221(a)(3), 1231(b)(1)(C)	Certain self-created property not treated as a capital asset <ul style="list-style-type: none"> Patents, inventions, certain models or designs, and secret formulas or processes are excluded from the definition of a capital asset 	Applies to dispositions of such property after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
1016(a)(1)	Cost of insurance adjustment to the basis of life insurance or annuity contracts is retroactively eliminated <ul style="list-style-type: none"> No adjustment to basis is made for mortality, expense, or other reasonable charges incurred under an annuity or life insurance contract Retroactively eliminates the reduction in basis for the cost of insurance on the sale of a life insurance contract and, thus, eliminated the necessity to bifurcate gain from the sale between ordinary income and capital gain Reverses the position of IRS in Rev. Rul. 2009-13 	For transactions entered into after August 25, 2009	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
1016(a)(23) & 1044	Repeal of tax-free rollover of publicly traded securities gain into specialized small business investment companies <ul style="list-style-type: none"> Repeals the election to rollover tax-free capital gain realized on the sale of publicly-traded securities Prior law allowed individuals, for a taxable year, a rollover limited to (1) \$50,000 or (2) \$500,000 reduced by the gain previously excluded under the provision For corporations, the limits were \$250,000 and \$1 million, respectively 	Applies to sales after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
83(b) & 1061	Recharacterization of certain gains on property held for fewer than 3 years in the case of partnership profits interest held in connection with performance of investment services <ul style="list-style-type: none"> Provides for a three-year holding period in the case of certain net long-term capital gain 	Applies to taxable years beginning after December 31, 2017	Any federal change would flow through to Florida. *

K. Capital Gains Cont'd

	<p>with respect to any applicable partnership interest held by the taxpayer</p> <ul style="list-style-type: none">• Provides that the three-year holding period requirement for long-term capital gain treatment does not change if an individual may have included an amount in income upon acquisition of the applicable partnership interest or made a s. 83(b), IRC, election		
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IRS Guidance

- [Notice 2018-18 - www.irs.gov/pub/irs-drop/n-18-18.pdf](http://www.irs.gov/pub/irs-drop/n-18-18.pdf)
- [IR-2018-37 - www.irs.gov/newsroom/irs-plans-to-issue-regulations-clarifying-limitations-on-carried-interest](http://www.irs.gov/newsroom/irs-plans-to-issue-regulations-clarifying-limitations-on-carried-interest)

L. Tax Accounting

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
<p>263A(i), 447(c), 447(c)(2), 447(d), 448(b)(3), 448(c)(1), 448(c)(4), 448(d)(7), 460(e)(1)(B), 460(e)(1)(B) (ii), 460(e)(2), & 471(c)</p>	<p>Simplified accounting for small businesses</p> <ul style="list-style-type: none"> • Expands universe of taxpayers that may use the cash method of accounting • Defines gross receipts test • Expands the universe of farming C corporations that may use the cash method • Gross receipts limit for cash-method use by farming C corporations (and certain partnerships) is made uniform at \$25 million • Retains the exceptions from the required use of the accrual method for qualified personal service corporations and taxpayers other than C corporations • Exempts certain taxpayers from the requirement to keep inventories • Expands the exception for small taxpayers from the uniform capitalization rules • Expands the exception for small construction contracts from the requirement to use the percentage-of-completion method • Considered a s. 481, IRC, adjustment • Patents, inventions, certain models or designs, and secret formulas or processes are excluded from the definition of a capital asset 	<p>Effective for taxable years beginning after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>
IRS Guidance			
<ul style="list-style-type: none"> ➤ A comparison for businesses - changes in accounting periods and methods of accounting - www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses ➤ Rev. Proc. 2018-40 - www.irs.gov/pub/irs-drop/rp-18-40.pdf ➤ IR-2018-160 - www.irs.gov/newsroom/irs-issues-guidance-on-small-business-accounting-method-changes-under-tax-cuts-and-jobs-act ➤ Small Business Initiative - www.irs.gov/tax-reform-small-business-initiative ➤ Tax Reform Tax Tip 2018-169 - www.irs.gov/newsroom/heres-how-tax-reform-affects-farmers-and-ranchers ➤ How tax reform affects farmers and ranchers - www.irs.gov/newsroom/how-tax-reform-affects-farmers-and-ranchers ➤ Tax Reform Tax Tip 2018-172 - www.irs.gov/newsroom/heres-how-tax-reform-changed-accounting-methods-for-small-businesses ➤ Here's how tax reform changed accounting methods for small businesses - www.irs.gov/newsroom/heres-how-tax-reform-changed-accounting-methods-for-small-businesses 			
<p>451(b) & 451(c)</p>	<p>Certain special rules for taxable year of inclusion (in general)</p> <ul style="list-style-type: none"> • Income inclusion for tax purposes cannot be later than when included for certain financial reporting purposes • Accrual basis taxpayers may defer inclusion of advance payments in income to the end of 	<p>Generally, applies to taxable years beginning after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>

	<p>year after year of receipt if so deferred for financial reporting</p> <ul style="list-style-type: none"> • Codifies the current deferral method of accounting for advance payments for goods, services, and other specified items 		
IRS Guidance			
<ul style="list-style-type: none"> ➤ Notice 2018-35 - www.irs.gov/pub/irs-drop/n-18-35.pdf ➤ Rev. Proc. 2018-29 - www.irs.gov/pub/irs-drop/rp-18-29.pdf ➤ Rev. Proc. 2018-60 - www.irs.gov/pub/irs-drop/rp-18-60.pdf ➤ Notice 2018-80 - www.irs.gov/pub/irs-drop/n-18-80.pdf ➤ IRB 2018-51 - www.irs.gov/pub/irs-irbs/irb18-51.pdf 			

M. Miscellaneous

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
<p>139G, 247, & 6039H</p>	<p>Modifies tax treatment of Alaska Native Corporations and Settlement Trusts</p> <ul style="list-style-type: none"> • Allows a Native Corporation to assign certain payments to a Settlement Trust without having to recognize gross income from those payments, Settlement Trust is required to include those payments in gross income when received • Allows a Native Corporation to elect annually to deduct contributions made to a Settlement Trust (cash value or basis of property). No gain or loss can be recognized on the contribution. Deduction is limited to the amount of its taxable income for that year and any unused deduction may be carried forward 15 additional years. Earnings and profits are reduced by the amount of the deduction • Requires a statement of deducted contributions 	<p>Effective for tax years beginning after December 31, 2016</p>	<p>Any federal change would flow through to Florida. *</p>
IRS Guidance			
<p>➤ IR-2018-16 - www.irs.gov/newsroom/tax-issues-for-alaska-native-american-corporations-and-alaska-native-settlement-trusts</p>			

N. Excise Taxes

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
4261(e)(5)	<p>Exempts certain amounts paid for aircraft management services from the <u>excise taxes</u> imposed on transportation by air</p> <ul style="list-style-type: none"> • Defines exempt payments • Defines applicable services • Provides a pro rata allocation rule in the event a monthly payment made to a management company is allocated in part to exempt services and flights on the aircraft owner's aircraft • Defines a lessee of an aircraft 	Effective for amounts paid after December 22, 2017	No effect
IRS Guidance			
<p>➤ Article - www.irs.gov/businesses/small-businesses-self-employed/exemption-for-amounts-paid-for-aircraft-management-services</p>			

O. Other Changes to Subpart F

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
318 & 958(b)	Modification of stock attribution rules for determining status as a controlled foreign corporation <ul style="list-style-type: none"> Provides “downward attribution” from a foreign person to a related US person in certain circumstances Makes certain transactions ineffective, such as “de-control” under 958(b)(4), IRC, constructive stock ownership rules 	Effective for the last taxable year of foreign corporation beginning before January 1, 2018, and each subsequent year	Any federal change would flow through to Florida. *
IRS Guidance			
➤ IR-2018-79 - www.irs.gov/newsroom/irs-issues-additional-guidance-on-transition-tax-on-foreign-earnings-0 ➤ Notice 2018-26 - www.irs.gov/pub/irs-drop/n-18-26.pdf			
951(a)(1)	Eliminates requirement regarding control <ul style="list-style-type: none"> Eliminates the rule requiring a foreign corporation to be a CFC for an uninterrupted period of 30 days or more during the tax year for its Subpart F income to be taxed to its US Shareholders 	Tax years of foreign corporations beginning after December 31, 2017, and tax years of US shareholders with or within which those tax years of foreign corporations end	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
954(a)(5) & 954(g)	Foreign base company oil-related income not included in foreign base company income <ul style="list-style-type: none"> Eliminates foreign base company oil related income as a category of foreign base company income 	Effective for tax years of foreign corporations beginning after December 31, 2017, and tax years of US shareholders with or within which those tax years of foreign corporations end	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
955	Previously excluded Subpart F income withdrawn from a qualified shipping investment no longer included in US shareholder’s income	Effective for tax years of foreign corporations beginning after December 31,	Any federal change would flow through to Florida. *

O. Other Changes to Subpart F Cont'd

	<ul style="list-style-type: none"> Repeals the provision that required that previously excluded Subpart F income withdrawn from a qualified shipping investment be recaptured 	2017, and tax years of US shareholders in which or with which those tax years of foreign corporations end	
IRS Guidance			
None as of December 14, 2018			

P. Modified Territorial System (other than s. 965, IRC)

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
<p>904(b)(5)</p>	<p>Dividends allowed as a s. 245A, IRC, dividends-received deduction (DRD) are not treated as foreign source income for purposes of the foreign tax credit (FTC) limitation</p> <ul style="list-style-type: none"> • If a domestic corporation that is a US shareholder of a 10% owned specified foreign corporation receives a dividend from that foreign corporation, a deduction is allowed for the foreign-source portion of the dividend • In determining the FTC limitation, the shareholder's taxable income from sources outside the US is determined without regard to: (1) the foreign-source portion of a dividend received from that corporation, and (2) any deductions properly allocable or apportion to income (other than Subpart F or global intangible low-taxed income (GILTI)) with respect to stock of that foreign corporation or that stock to the extent income with respect to the stock is other than amounts includible in Subpart F or GILTI 	<p>Deductions for tax years ending after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>
IRS Guidance			
<ul style="list-style-type: none"> ➤ Tax Reform Guidance for 1120 filers - www.irs.gov/forms-pubs/tax-reform-guidance-for-1120-filers-09-apr-2018 ➤ IR-2018-210 - www.irs.gov/newsroom/irs-issues-proposed-regulations-reducing-potential-income-inclusions-for-certain-domestic-corporations-that-own-stock-in-foreign-corporations ➤ REG-114540-18 - www.irs.gov/pub/irs-drop/reg-114540-18.pdf ➤ IR-2018-235 - www.irs.gov/newsroom/irs-issues-proposed-regulations-on-foreign-tax-credits ➤ REG-105600-18 - www.irs.gov/pub/irs-drop/reg-105600-18.pdf 			
<p>961(d)</p>	<p>Basis of stock in specified 10% owned foreign corporation is reduced to the extent of s. 245A, IRC, DRD when determining loss on disposition</p> <ul style="list-style-type: none"> • If a domestic corporation that is a US shareholder of a 10% owned specified foreign corporation receives a dividend from that foreign corporation, a deduction is allowed for the foreign-source portion of the dividend • For the purposes of determining loss on any disposition of stock of that foreign corporation in that tax year or any subsequent tax year, the basis of the domestic corporation in that stock is reduced (but not below zero) by the amount of the s. 	<p>Distributions made after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>

P. Modified Territorial System (other than s. 965, IRC) Cont'd

	<p>245A, IRC, DRD allowable to the domestic corporation on that stock</p> <ul style="list-style-type: none"> • However, no reduction in basis is required if the stock was already reduced under s. 1059, IRC 		
IRS Guidance			
<ul style="list-style-type: none"> ➤ Tax Reform Guidance for 1120 filers - www.irs.gov/forms-pubs/tax-reform-guidance-for-1120-filers-09-apr-2018 ➤ IR-2018-210 - www.irs.gov/newsroom/irs-issues-proposed-regulations-reducing-potential-income-inclusions-for-certain-domestic-corporations-that-own-stock-in-foreign-corporations ➤ REG-114540-18 - www.irs.gov/pub/irs-drop/reg-114540-18.pdf ➤ IR-2018-235 - www.irs.gov/newsroom/irs-issues-proposed-regulations-on-foreign-tax-credits ➤ REG-105600-18 - www.irs.gov/pub/irs-drop/reg-105600-18.pdf 			
1248 & 964(e)(4)	<p>Amounts treated as dividends under s. 1248 and s. 964(e), IRC, are treated as dividends for purposes of s. 245A, IRC, DRD</p> <ul style="list-style-type: none"> • If a domestic corporation that is a US shareholder of a 10% owned specified foreign corporation receives a dividend from that foreign corporation, a deduction is allowed for the foreign-source portion of the dividend • In the case of the sale or exchange by a domestic corporation of stock in a foreign corporation held for one year or more, any amount received by the domestic corporation which is treated as a dividend by reason of s. 1248, IRC, is treated as a dividend for purposes of applying the s. 245A, IRC, DRD rules • For a controlled foreign corporation (CFC), any amount treated as a dividend under 964(e)(1), IRC, by reason of a sale or exchange by the CFC of stock in another foreign corporation held for one year or more, then (1) the foreign-source portion of the dividend is treated as Subpart F income, (2) is equal to the shareholder's pro rata share of the amount treated as Subpart F income, and (3) the s. 245A, IRC, DRD is allowable in gross income 	For sales or exchanges after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ Tax Reform Guidance for 1120 filers - www.irs.gov/forms-pubs/tax-reform-guidance-for-1120-filers-09-apr-2018 ➤ IR-2018-210 - www.irs.gov/newsroom/irs-issues-proposed-regulations-reducing-potential-income-inclusions-for-certain-domestic-corporations-that-own-stock-in-foreign-corporations ➤ REG-114540-18 - www.irs.gov/pub/irs-drop/reg-114540-18.pdf ➤ IR-2018-235 - www.irs.gov/newsroom/irs-issues-proposed-regulations-on-foreign-tax-credits ➤ REG-105600-18 - www.irs.gov/pub/irs-drop/reg-105600-18.pdf 			
91	Transferred loss amount included in income upon transfer of foreign branch assets to a specified 10% owned foreign corporation	Transfers made after December 31, 2017	Any federal change would

P. Modified Territorial System (other than s. 965, IRC) Cont'd

	<ul style="list-style-type: none"> • If a domestic corporation transfers substantially all of the assets of a foreign branch to a specified 10% owned foreign corporation with respect to which it is a US shareholder after the transfer, the domestic corporation includes in gross income, for the tax year which includes the transfer, an amount equal to the transferred loss amount for the transfer • Defines transferred loss amount • Transferred loss amount is reduced (but not below zero) by the amount of gain recognized • Amounts included in gross income are treated as derived from US sources • Transition rule 		<p>flow through to Florida. *</p>
IRS Guidance			
None as of December 14, 2018			

Q. Other Foreign Provisions

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
902, 960 & 78	<p>Repeal of section 902, IRC, indirect foreign tax credits; and other adjustments to the foreign tax credit to account for participation exemption determination of section 960, IRC, credit on current year basis</p> <ul style="list-style-type: none"> • Repeals the deemed-paid credit with respect to dividends received by a domestic corporation that owns 10% or more of the voting stock of a foreign corporation, s. 902, IRC, (Subpart-F) • Amends the deemed-paid credit applicable to US shareholders of CFCs (deemed to have paid so much of the foreign corporation's foreign income tax as are attributed to the income; any portion of a distribution excluded from gross income is deemed to as having paid so much of the foreign taxes attributed to that portion and have not been deemed to have been paid in a prior year) • Applies existing language of section 78, IRC, to foreign income taxes deemed paid under s. 960(a), (b), and (d), IRC 	Applies to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of US shareholders in which or with which such taxable years of foreign corporations end	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ Tax Reform Guidance for 1120 filers - www.irs.gov/forms-pubs/tax-reform-guidance-for-1120-filers-09-apr-2018 ➤ IR-2018-210 - www.irs.gov/newsroom/irs-issues-proposed-regulations-reducing-potential-income-inclusions-for-certain-domestic-corporations-that-own-stock-in-foreign-corporations ➤ REG-114540-18 - www.irs.gov/pub/irs-drop/reg-114540-18.pdf ➤ IR-2018-235 - www.irs.gov/newsroom/irs-issues-proposed-regulations-on-foreign-tax-credits ➤ REG-105600-18 - www.irs.gov/pub/irs-drop/reg-105600-18.pdf 			
904(g)	<p>Taxpayers who sustain a pre-2018 overall domestic loss can elect to recharacterize as much as 100% of US source income as foreign source income</p> <ul style="list-style-type: none"> • Provides that pre-2018 unused overall domestic losses taken into account under s. 904(g)(1), IRC, for any applicable tax year, a taxpayer may elect to substitute a percentage greater than 50% but not greater than 100% for 50% in foreign tax credits 	Effective for taxable years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			

Q. Other Foreign Provisions Cont'd

<p>904(d)(1) & 904(d)(2)(J)</p>	<p>Separate foreign tax credit limitation basket for foreign branch income</p> <ul style="list-style-type: none"> • Requires foreign branch income to be allocated to a specific foreign tax credit basket • Amends the definition of general category income to include both passive income and amounts includible in gross income under s. 951A, IRC • Provides that business profits of a qualified business units (QBU) shall not include any income • Denies a carryforward and a carryback for taxes paid or accrued with respect to amounts in s. 951A, IRC, income basket 	<p>Effective for taxable years beginning after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>
<p>IRS Guidance</p>			
<p>➤ Reg-105600-18 - www.irs.gov/pub/irs-drop/reg-105600-18.pdf</p>			
<p>863(b)</p>	<p>Source of income from sales of inventory determined solely on basis of production activities</p> <ul style="list-style-type: none"> ➤ Provides that gains, profits, and income from the sale or exchange of inventory property produced partly in, and partly outside, the US is allocated and apportioned on the basis of the location of production with respect to the property 	<p>Effective for taxable years beginning after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>
<p>IRS Guidance</p>			
<p>None as of December 14, 2018</p>			
<p>864(c)(8) & 1446(f)</p>	<p>Treatment of gain or loss of foreign person from sale or exchange of partnership interests</p> <ul style="list-style-type: none"> • Provides that notwithstanding any tax rules, if a nonresident alien individual or foreign corporation owns, directly or indirectly, an interest in a partnership that is engaged in any trade or business in the US, gain or loss on the sale or exchange of all (or any portion of) the interest is treated as effectively connected with the conduct of the trade or business to the extent the gain or loss does not exceed certain limits • To the extent of the portion of the distributive share or zero (situation specific) • Requires that any gain or loss from the hypothetical asset sale by the partnership be allocated to interests in the partnership in the same manner as non-separately stated income and loss • Requires the transferee of a partnership interest to withhold 10% of the amount 	<p>Effective for sales, exchanges or other dispositions on or after November 27, 2017, (other exceptions)</p>	<p>Any federal change would flow through to Florida. *</p>

Q. Other Foreign Provisions Cont'd

	realized on the sale or exchange of a partnership interest (exceptions)		
IRS Guidance			
<ul style="list-style-type: none"> ➤ Notice 2018-08 - www.irs.gov/pub/irs-drop/n-18-08.pdf ➤ IR-2018-81 - www.irs.gov/newsroom/irs-issues-guidance-on-withholding-on-the-transfer-of-partnership-interests-by-foreign-persons ➤ Notice 2018-29 - www.irs.gov/pub/irs-drop/n-18-29.pdf 			
864(e)(2)	<p>Fair market value method of interest expense allocation or apportionment repealed after 2017</p> <ul style="list-style-type: none"> • Allocation and apportionments of interest expense must be determined using the adjusted bases of the assets rather than the fair market value of the assets or gross income • With changes to bonus depreciation and s. 179, IRC, expensing, US assets will often have a fair market value that is greater than tax book value. With the repeal it will tend to reduce the amount of interest allocated to US source income 	Effective tax years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
<ul style="list-style-type: none"> ➤ IR-2018-235 - www.irs.gov/newsroom/irs-issues-proposed-regulations-on-foreign-tax-credits ➤ REG-105600-18 - www.irs.gov/pub/irs-drop/reg-105600-18.pdf 			

R. Anti-Base Erosion and Profit-Shifting Provisions

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
267A	<p>Deduction is disallowed for certain related party amounts paid or accrued in hybrid transactions or with hybrid entities</p> <ul style="list-style-type: none"> Denies a deduction for any disqualified related party amount paid or accrued pursuant to a hybrid transaction or by or to a hybrid entity Defines disqualified related party amount Defines hybrid transaction and hybrid entity Provides that regulations or other guidance will be issued, if necessary 	Applies to taxable years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
367(d)(2), 482, & 936(h)(3)(B)	<p>Limitation on income shifting through intangible property transfers</p> <ul style="list-style-type: none"> Amends the definition of intangible property to include goodwill, going concern value, and workforce in place Requires certain valuation methods Provides authority to specify the method to be used to determine the value of intangible property Codifies use of the realistic alternative principles to determine valuation with respect to intangible property transactions 	Applies to transfers in taxable years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
367(a)(3)	<p>Repeal of active trade or business exception</p> <ul style="list-style-type: none"> Repeals certain reporting requirements when determining gain recognition for transferred eligible property to a foreign corporation for use by the foreign corporation in the active conduct of a trade or business outside of the US 	Transfers after December 31, 2017	No effect
IRS Guidance			
None as of December 14, 2018			
4985(a)(1)	<p>Excise tax on stock compensation of insiders in expatriated corporations increased</p> <ul style="list-style-type: none"> Amends the excise tax so that it is applied at the 20% s. 1(h)(1)(D), IRC, rate to the value of the specified stock compensation held (directly or indirectly) by or for the benefit of 	Corporations first becoming expatriated corporations after December 22, 2017	No effect

R. Anti-Base Erosion and Profit-Shifting Provisions Cont'd

	the individual or a member of the individual's family during the twelve-month period beginning six months before the expatriation date		
IRS Guidance			
None as of December 14, 2018			
1(h)(11)(C) (iii)	<p>Dividends received from post-enactment surrogate foreign corporations not qualified dividend income</p> <ul style="list-style-type: none"> The reduced rate on dividends is denied to dividends from any corporation that becomes a surrogate foreign corporation after date of enactment of the 2017 TCJA, other than a foreign corporation that is treated as a domestic corporation under the corporate expatriation rules 	Effective for dividends received after December 22, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
1297(b)(2) (B), & 1297(f)	<p>Restriction on insurance business exception to passive foreign investment company (PFIC) rules</p> <ul style="list-style-type: none"> Modifies the requirements, for a corporation, for income which is not included in passive income for purposes of the PFIC rules Replaces the 'engaged in an insurance business' test with a test based on the corporation's insurance liabilities Requirement that the foreign corporation would be subject to tax under subchapter L, (1) if it were a domestic corporation, and (2) insurance liabilities constitute more than 20% of its total assets Defines and provides exception of passive income under provision 	Applies to taxable years beginning December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			

S. Insurance

Federal Code	Federal Change	Effective Date	Effect of reform on Florida
810, 844, 172, & 805(a)(4)	Repeals special rules related to net operating losses of life insurance companies <ul style="list-style-type: none"> Repeals the special rules applicable to life insurance companies' loss from operations Requires life insurance companies to calculate net operating losses under s. 172, IRC, (disallowance of carrybacks, indefinite carryforward) Repeals s. 844, IRC 	Effective for losses arising in tax years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
806	Repeals the small life insurance company deduction <ul style="list-style-type: none"> Life insurance companies with assets less than \$500 million are no longer allowed to deduct 60% of tentative life insurance company income up to 3 million 	Effective for tax years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
807(f)	Adjustment for change in computing life insurance reserves <ul style="list-style-type: none"> Amends s. 807(f), IRC, to treat the change in the basis for determining any item listed in s. 807(c), IRC, so that the resulting difference must be taken into account in accordance with the rules under s. 481, IRC 	Effective for tax years beginning after December 31, 2017	No effect
IRS Guidance			
None as of December 14, 2018			
807(c), 807(d), & 807(e)	Computation of life insurance tax reserves <ul style="list-style-type: none"> Amends s. 807(c), (d), and (e), IRC Changes the appropriate rate of interest for discounting reserves held under certain insurance and annuity contracts to the highest rate or rate permitted to be used to discount such reserves by the National Association of Insurance Commissioners (NAIC) Changes the maximum amount of any life insurance reserve that can be deducted for federal tax purposes and adds a similar cap on the maximum deductible life insurance reserve for variable contracts Changes the determination date for reserve methods prescribed by NAIC 	Effective for tax years beginning after December 31, 2017 with transition relief	No effect

	<ul style="list-style-type: none"> Amends the special rules regarding supplemental benefits and substandard risks Adds a new reporting requirement 		
IRS Guidance			
➤ Rev. Rul. 2018-13 - www.irs.gov/pub/irs-drop/rr-18-13.pdf			
812, 805(a)(4), 807	Definitions life insurance company proration for dividends received deduction <ul style="list-style-type: none"> Amends s. 812, IRC, to provide that for purposes of s. 805(a)(4), IRC, the term 'company's share' means 70% and for purposes of s. 807, IRC, the term 'policyholder's share' means 30% 	With respect to any tax year beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
832(b)(5)	Modification of property/casualty proration rules <ul style="list-style-type: none"> Changes the 15% proration factor to an applicable percentage 5.25% divided by the top corporate tax rate for the tax year 	Effective for tax years beginning after December 31, 2017	No effect
IRS Guidance			
None as of December 14, 2018			
846(c)(2), 846(d)(3), 846(e), & 846	Modification of discounting rules for unpaid losses <ul style="list-style-type: none"> Changes the discounting rules applicable to unpaid losses by reducing the number of lines of business to two Amortization period is changed to 60 months Disallows the company election to use its own historical loss payment pattern for discounting purposes 	Effective for tax years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
➤ REG-103163-18 - www.federalregister.gov/documents/2018/11/07/2018-24367/modification-of-discounting-rules-for-insurance-companies			
847	Repeal of s. 847, IRC, and estimated tax payments of insurance companies <ul style="list-style-type: none"> Repeals the election to make a special estimated tax payment equal to the tax benefit attributable to the deduction (the difference between the amount of reserves computed on a discounted basis and the amount computed on an undiscounted basis) 	Effective for tax years beginning after December 31, 2017	No effect
IRS Guidance			
None as of December 14, 2018			

848	Adjustments to certain policy acquisition expenses <ul style="list-style-type: none"> • Extends the amortization period for specified policy acquisition expenses to the 180-month period beginning with the first month in the second half of the tax year • Modifies the specific percentage of net premiums deductible for certain insurance contracts • Adds a special transition rule for specified policy acquisition expenses first required to be capitalized in a tax year beginning before January 1, 2018 	Applies to net premiums for taxable years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
815	New special rule for distributions to shareholders from pre-1984 policyholders surplus account (PSA) <ul style="list-style-type: none"> • Repeals s. 815, IRC • In its place, it provides a phased inclusion in life insurance company taxable income of any remaining PSA balance held by a stock life insurance company determined as of the close of such company's last tax year beginning before January 1, 2018 • Any company with a PSA balance must include the balance in taxable income ratably over an eight-year period beginning with the first tax year beginning after December 31, 2017 	Effective for tax years beginning after December 31, 2017	Any federal change would flow through to Florida. *
IRS Guidance			
None as of December 14, 2018			
6050Y	New tax reporting requirements for life settlement transactions <ul style="list-style-type: none"> • Adds significant new reporting requirements on the acquisition of a life insurance contract or any interest in a life insurance contract in a reportable policy sale (when the acquirer generally has no insurable interest in the life insured under the policy) • Information returns are required by both the acquirer and seller. Additionally, every person who pays reportable death benefits must make an information return 	Effective for reportable policy sales after December 31, 2017, and for reportable death benefits paid after December 31, 2017	No effect
IRS Guidance			
<ul style="list-style-type: none"> ➤ IR-2018-104 - www.irs.gov/newsroom/irs-describes-new-tax-reform-information-reporting-requirements-for-certain-life-insurance-contract-transactions-and-provides-transitional-guidance-delaying-reporting-until-final-regulations-are ➤ Notice 2018-41 - www.irs.gov/pub/irs-drop/n-18-41.pdf 			

S. Insurance Cont'd

<p>101(a)(2)</p>	<p>New exception to transfer for value rule</p> <ul style="list-style-type: none"> New provision to the transfer for value rule that provides the exception to the exclusion from income of death benefits does not apply to a transfer of a life insurance contract or any interest therein which is a reportable policy sale 	<p>Effective for tax years beginning after December 31, 2017</p>	<p>Any federal change would flow through to Florida. *</p>
<p>IRS Guidance</p>			
<p>None as of December 14, 2018</p>			
<p>1016, 7702</p>	<p>Clarification of tax basis of life insurance contracts</p> <ul style="list-style-type: none"> New provision that clarifies that no adjustment can be made to the basis of any annuity or life insurance contract for mortality, expense, or other reasonable charges incurred 	<p>Effective for transactions entered into after August 25, 2009</p>	<p>Any federal change would flow through to Florida. *</p>
<p>IRS Guidance</p>			
<p>None as of December 14, 2018</p>			

Please note the box below applies to all asterisks (*) under “Effect of reform on Florida” column:

* Changes to the computation of federal taxable income will flow through to Florida since Rule 12C-1.013(1)(a), F.A.C., states that “taxable income,” as defined by section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due (generally Line 30 of federal Form 1120 (*U.S. Corporation Income Tax Return*)).

T. References and IRS Tax Reform Resources

References:

- Joint Explanatory Statement, <https://docs.house.gov/billsthisweek/20171218/Joint%20Explanatory%20Statement.pdf>
- Conference Report, <https://www.congress.gov/115/crpt/hrpt466/CRPT-115hrpt466.pdf>
- IRS website: <https://www.irs.gov/>

IRS Tax Reform Resources:

- Tax Reform Provisions that Affect Businesses, <https://www.irs.gov/newsroom/businesses>
- News Releases, <https://www.irs.gov/newsroom/tax-reform-news>
- Tax Cuts and Jobs Act: A comparison for businesses, <https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses>
- Tax Reform for Small Business, <https://www.irs.gov/tax-reform-small-business-initiative>
- International Taxpayers and Businesses, <https://www.irs.gov/newsroom/international-taxpayers-and-businesses>
- IRS Videos, Tax Reform for You, <https://www.irsvideos.gov/>
- IRS YouTube channel, <https://www.youtube.com/user/irsvideos>
- IRS Multimedia Center (links to Twitter, LinkedIn, Instagram, etc.), <https://www.irs.gov/newsroom/multimedia-center>

V. Appendix

CHAPTER 2018-119

House Bill No. 7093

An act relating to the corporate income tax; amending s. 220.03, F.S.; adopting the 2018 version of the Internal Revenue Code; amending s. 220.13, F.S.; revising the definition of the term “adjusted federal income” relating to adjustments related to federal acts; providing legislative findings; requiring the Department of Revenue to make a certain examination, monitor guidance by the Internal Revenue Service, conduct workshops, and develop a certain process regarding the Tax Cuts and Jobs Act of 2017; requiring the department to submit a specified report to the Governor and Legislature by a certain date; requiring the department to provide certain status reports to the Legislature on specified dates; requiring the department to consult with the Revenue Estimating Conference in developing required reports; requiring the 2019 Legislature to consider the report concerning the automatic tax rate adjustment mechanism; creating s. 220.1105, F.S.; providing definitions; providing for the adjustment of the corporate tax rate based on net collections exceeding adjusted forecasted collections for fiscal years 2018-2019 through 2020-2021; specifying the treatment of net collections amounts that exceed adjusted forecasted net collections for fiscal years 2018-2019 through 2020-2021; amending s. 220.11, F.S.; revising the adjustment of the tax rate imposed; amending s. 220.63, F.S.; revising the adjustment of the franchise tax rate imposed on banking and savings associations; providing emergency rulemaking authority; providing for retroactive operation; 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, 2018 ~~2017~~, 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, ~~2018~~ 2017. 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. Paragraph (e) 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:

(e) *Adjustments related to federal acts.*—Taxpayers shall be required to make the adjustments prescribed in this paragraph for Florida tax purposes with respect to certain tax benefits received pursuant to the Economic Stimulus Act of 2008, the American Recovery and Reinvestment Act of 2009, the Small Business Jobs Act of 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, the American Taxpayer Relief Act of 2012, the Tax Increase Prevention Act of 2014, ~~and the Consolidated Appropriations Act, 2016, and the Tax Cuts and Jobs Act of 2017.~~

1. There shall be added to such taxable income an amount equal to 100 percent of any amount deducted for federal income tax purposes as bonus depreciation for the taxable year pursuant to ss. 167 and 168(k) of the Internal Revenue Code of 1986, as amended by s. 103 of Pub. L. No. 110-185, s. 1201 of Pub. L. No. 111-5, s. 2022 of Pub. L. No. 111-240, s. 401 of Pub. L. No. 111-312, s. 331 of Pub. L. No. 112-240, s. 125 of Pub. L. No. 113-295, ~~and s. 143 of Division Q of Pub. L. No. 114-113, and s. 13201 of Pub. L. No. 115-97,~~ for property placed in service after December 31, 2007, and before January 1, ~~2027~~ 2021. For the taxable year and for each of the 6 subsequent taxable years, there shall be subtracted from such taxable income an amount equal to one-seventh of the amount by which taxable income was increased pursuant to this subparagraph, notwithstanding any sale or other disposition of the property that is the subject of the adjustments and regardless of whether such property remains in service in the hands of the taxpayer.

2. There shall be added to such taxable income an amount equal to 100 percent of any amount in excess of \$128,000 deducted for federal income tax purposes for the taxable year pursuant to s. 179 of the Internal Revenue Code of 1986, as amended by s. 102 of Pub. L. No. 110-185, s. 1202 of Pub. L. No. 111-5, s. 2021 of Pub. L. No. 111-240, s. 402 of Pub. L. No. 111-312, s. 315 of Pub. L. No. 112-240, and s. 127 of Pub. L. No. 113-295, for taxable years beginning after December 31, 2007, and before January 1, 2015. For the taxable year and for each of the 6 subsequent taxable years, there shall be subtracted from such taxable income one-seventh of the amount by which taxable income was increased pursuant to this subparagraph,

notwithstanding any sale or other disposition of the property that is the subject of the adjustments and regardless of whether such property remains in service in the hands of the taxpayer.

3. There shall be added to such taxable income an amount equal to the amount of deferred income not included in such taxable income pursuant to s. 108(i)(1) of the Internal Revenue Code of 1986, as amended by s. 1231 of Pub. L. No. 111-5. There shall be subtracted from such taxable income an amount equal to the amount of deferred income included in such taxable income pursuant to s. 108(i)(1) of the Internal Revenue Code of 1986, as amended by s. 1231 of Pub. L. No. 111-5.

4. Subtractions available under this paragraph may be transferred to the surviving or acquiring entity following a merger or acquisition and used in the same manner and with the same limitations as specified by this paragraph.

5. The additions and subtractions specified in this paragraph are intended to adjust taxable income for Florida tax purposes, and, notwithstanding any other provision of this code, such additions and subtractions shall be permitted to change a taxpayer's net operating loss for Florida tax purposes.

Section 3. The Legislature recognizes that the Tax Cuts and Jobs Act of 2017 will have significant effects on the state corporate income tax and on corporate taxpayers when it is fully implemented. To better understand these effects, the Legislature finds the following actions are necessary:

(1) The Department of Revenue shall 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 Internal Revenue Code by this act.

(2) The Department of Revenue shall monitor guidance provided by the Internal Revenue Service and other tax authorities and advisory groups, and shall conduct at least two public workshops to gather public input. In addition, the department shall develop a process outside of the public workshops for receiving public input regarding the Tax Cuts and Jobs Act of 2017 and its potential effects on the state corporate income tax and the businesses that pay the tax.

(3) By February 1, 2019, the Department of Revenue shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of appropriate legislative committees. At a minimum, the report must include the following:

(a) A comprehensive discussion of the potential effects of the Tax Cuts and Jobs Act of 2017 on the state corporate income tax structure and revenues.

(b) Options for changes the Legislature could make to state tax law which may be needed to integrate state law with federal law.

- (c) An estimate of the potential fiscal impact of each option.
- (d) A compilation of the input received from the public through the public workshops and otherwise.
- (e) Any other information the Department of Revenue determines will assist the Legislature in evaluating the impact of the Tax Cuts and Jobs Act of 2017 on the state corporate income tax structure and revenues.
- (4) The Department of Revenue shall submit status reports to the chairs of appropriate legislative committees on August 3, 2018, and November 16, 2018. At a minimum, the status reports must include a brief description of the department's activities and any relevant guidance issued by the Internal Revenue Service.
- (5) The Department of Revenue shall consult with the Revenue Estimating Conference on the development of the required reports.
- (6) The 2019 Legislature shall consider the report required by subsection (3) to determine whether adjustments to the automatic tax rate adjustment mechanism under s. 220.1105, Florida Statutes, are needed.

Section 4. Section 220.1105, Florida Statutes, is created 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” means the total amount of taxes collected under this chapter by the department in 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, 2019, the Office of Economic and Demographic Research shall determine net collections for the 2018-2019 fiscal year.
- (b) “Forecasted net collections” means the amount of net collections forecasted for the 2018-2019 fiscal year by the Revenue Estimating Conference on February 23, 2018.
- (c) “Adjusted forecasted collections” means forecasted net collections for 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 the 2018-2019 fiscal year. If the net collections exceed the adjusted forecasted collections, the tax rate imposed for taxable years beginning on or after January 1, 2019, shall be the tax rate imposed for taxable years beginning on or after January 1, 2018, multiplied by the quotient of the adjusted

forecasted collections divided by the net collections. 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.

(3) By October 1, 2019, 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) Any amount by which net collections exceed adjusted forecasted collections for 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:

1. “Eligible taxpayer” means 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.

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

4. “Total eligible tax liability” means the sum of final tax liabilities of all eligible taxpayers.

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

6. “Taxpayer refund” means the taxpayer refund share multiplied by the excess collections.

(b) No later than February 15, 2020, the department shall determine total eligible tax liability, the taxpayer refund share for each eligible taxpayer, and the taxpayer refund for each eligible taxpayer.

(c) No later than March 1, 2020, the department shall refund a taxpayer refund to each eligible taxpayer.

(5) Tax rate adjustments pursuant to this section are repealed for taxable years beginning on or after January 1, 2020.

Section 5. Subsection (2) of section 220.11, Florida Statutes, is amended to read:

220.11 Tax imposed.—

(2)(a) The tax imposed by this section shall be an amount equal to 5½ percent of the taxpayer’s net income for the taxable year, except as provided in paragraph (b).

(b) The tax rate imposed in paragraph (a) shall be adjusted as provided in s. 220.1105.

Section 6. Subsection (2) of section 220.63, Florida Statutes, is amended to read:

220.63 Franchise tax imposed on banks and savings associations.—

(2)(a) The tax imposed by this section shall be an amount equal to 5½ percent of the franchise tax base of the bank or savings association for the taxable year, except as provided in paragraph (b).

(b) The tax rate imposed in paragraph (a) shall be adjusted as provided in s. 220.1105.

Section 7. (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, 2021.

Section 8. This act shall take effect upon becoming a law and operate retroactively to January 1, 2018.

Approved by the Governor March 23, 2018.

Filed in Office Secretary of State March 23, 2018.

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PUBLIC MEETING
HELD ON AUGUST 22, 2018

Transcribed by:
CLARA C. ROTRUCK
Court Reporter

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PUBLIC MEETING

MS. EAGLE: Okay, we will go ahead and get started. Good morning, my name is Chelsea Eagle, I will be the facilitator for today's meeting. Chelsea Eagle, I will be the facilitator for today's meeting.

My role as facilitator is to preside in a neutral fashion. I am joined by Mark Hamilton, the Department's General Counsel and Anthony Jackson who will serve as our technical assistant.

Today is August 22nd, 2018, and this is a public meeting scheduled under Subsection (1) of Section 120.525 Florida Statutes. This meeting is held pursuant to Section 3 of Chapter 2018-119, laws of Florida.

The purpose of this meeting is to allow interested parties to present comments on the impact of the Federal Tax Cuts and Jobs Act of 2017 on Florida corporate income tax and on Florida businesses. The Department has identified 13 topics from the Tax Cuts and Jobs Act with the potential to have a significant impact on Florida.

A list of these topics along with copies
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1 of the agenda and Section 3 of 2018-119 laws of
2 Florida are available at the front of the room.
3 For those at the computer, they are also posted
4 with today's agenda on the Department's website
5 at Florida Revenue.com slash CIT review.

6 We will take comments on each agenda item
7 from anyone present. For anyone present we ask
8 that you step up to the podium when you want to
9 speak on an agenda item. Please state your
10 name and whom you present.

11 I will now ask Anthony Jackson to explain
12 the process that we will use for taking
13 electronic comments on agenda items.

14 MR. JACKSON: Good morning, ladies and
15 gentlemen. If you are attending this meeting
16 using the option telephone with audio pin and
17 you have a question or comment, send an e-mail
18 to CIT Review at Florida Revenue.com to let me
19 know you wish to speak.

20 We will address you by name and I will
21 give you a phone when it is your turn to speak.
22 If you are using the option telephone with no
23 audio pin, you must e-mail your question or
24 comment directly to CIT Review at Florida
25 Revenue.com. Please use the subject line,

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1 August 22 meeting.

2 For the comments we ask that you add your
3 name and whom you represent and your e-mail.
4 We will read your comment out loud and the
5 court reporter will enter it into the record.
6 If you are attending this hearing using your
7 computer, raise your hand using the icon on the
8 grab tab left of your control panel and we will
9 address you when it is your turn to speak.

10 Please state your name and whom you
11 represent and the court reporter will enter it
12 into the record along with your question or
13 comment. If you per difficulty use the quick
14 check option to send me a message.

15 MS. EAGLE: All visitors need to wear a
16 public meeting badge while in the building.
17 Please return it when the meeting is finished.
18 If there is an emergency evacuation we will
19 walk together to the evacuation zone for your
20 safety.

21 Please mute or turn off any cell phone
22 ringers or other noise making devices. Thank
23 you.

24 Our first agenda item is an overview of
25 the Florida corporate income tax review project

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1 which was created in Chapter 2018-119 laws of
2 Florida. During the 2018 legislative session,
3 the Florida Legislature recognized that federal
4 tax law changes made by the Tax Cuts and Jobs
5 Act of 2017, public law 115-97 would have
6 significant affects on Florida corporate income
7 tax and taxpayers when it is fully implemented.

8 To better understand these affects the
9 Department of Revenue was directed to examine
10 how the Tax Cuts and Jobs Act of 2017 will
11 affect the state corporate income tax as a
12 result of the state's adoption of the 2018
13 Internal Revenue Code.

14 Chapter 2018-119 laws of Florida provides
15 guidance on how the examination is to be
16 conducted and requires a final report to be
17 submitted to the Governor, President of the
18 Senate, Speaker of the House of Representatives
19 and the Chairs of the appropriate legislative
20 committees by February 1, 2019.

21 The examination includes review of IRS
22 guidance, external analyses and the gathering
23 of public comments through a public input
24 process and public meetings, like the one being
25 held today. The chapter law also required the

1 Department to provide a status report on
2 August 3rd, 2018, and requires the Department
3 to provide another status report on
4 November 16th, 2018, to the Chairs of the
5 appropriate legislative committees. The first
6 status report is available on the Department's
7 CIT Review web page.

8 Our second agenda item is to accept public
9 comments on each of the 13 current topics under
10 review. The topics are listed in the order
11 they appear in the Department's August 3rd,
12 2018 status report.

13 I will give a brief explanation of each
14 topic and then open the floor for public
15 comment. When you come forward to give
16 comments, we ask that you begin by stating your
17 name and whom you represent. At the request of
18 a participant we will take two items out of
19 order and receive comments on it them now.

20 The first item we will receive comments on
21 is number 10 on your list of current topics
22 under review by the Department. The 10th topic
23 under review is global intangible low tax
24 income.

25 The Tax Cuts and Jobs Act of 2017 creates

1 Internal Revenue Code Section 951(a) which
2 imposes a tax on the global intangible low tax
3 income of certain U.S. taxpayers and their
4 affiliates for tax years beginning on or after
5 January 1, 2018.

6 Global intangible low tax income is
7 included in a company's gross income and
8 generally treated in a manner similar to
9 subject part (f) income with certain deductions
10 and exemptions.

11 Are there any public comments on this
12 topic? Are there any comments from electronic
13 participants?

14 MR. JACKSON: Mr. Freedman.

15 MR. FREEDMAN: Thank you, can you hear me
16 okay?

17 MS. EAGLE: Yes.

18 MR. FREEDMAN: Okay, great, thanks. This
19 is Carl Freedman, I am the vice-president,
20 general counsel for the Council on State
21 Taxation, and I appreciate very much the
22 opportunity to talk about the global intangible
23 provision, the so-called GILTI provision.

24 And if it is okay with you if I could also
25 talk about the interest limitation provision at

1 the same time. Is that okay, just because I
2 have to make a flight this morning. Is that
3 okay?

4 MR. HAMILTON: Actually, that will be the
5 next topic. We will go right into that, but we
6 want to make sure we get everyone's comments on
7 this first topic.

8 MR. FREEDMAN: Okay, so I will just hold
9 my comments for now to the GILTI provision.

10 MR. HAMILTON: Thank you.

11 MR. FREEDMAN: So just a quick background
12 for those of you unfamiliar, COST is a
13 non-profit trade association based in
14 Washington, D. C. and we have got a membership
15 of about 550 major multi, national multi state
16 businesses. And a significant number of our
17 members do business in Florida and have
18 substantial property, employees and sales in
19 Florida. So we are very interested in, you
20 know, in the conformity or decoupling that
21 Florida is going to end up with in terms of the
22 federal tax reform, the Tax Cuts and Jobs Act.

23 And so I wanted to focus on two items
24 today. So I will focus on the first one. You
25 know, just as a general statement, you know,

1 certainly in conformity with federal income tax
2 laws is quite expensive and, you know, as a
3 general principle it can be very helpful, it
4 can ease compliance by having more uniformity
5 between federal and state rules. And so
6 Florida like the 46 or 47 other states that
7 have corporate income taxes extensively relies,
8 you know, for many of its roles federal income
9 tax.

10 But the issue with something as
11 complicated and sweeping as federal tax reform
12 that was passed by Congress in December of
13 2017, is that it is not really full conformity
14 the way that, you know, the fact that Florida
15 at this point, and I know Florida is
16 considering what it should do because it is
17 such a complicated statute, but by linking to
18 the 2018 Florida Code as it exist, Florida like
19 many other states picks up some, but not all of
20 the changes that occur.

21 And as a general principle the states
22 generally pick up the base broadners, the
23 revenue risers from federal tax reform, but
24 don't pick up the tax credits, and that can
25 have an extremely different result at the state

1 level than it does at the federal level.

2 So that is what I want to highlight in
3 terms of focusing on the GILTI provision which
4 is one of the most important international tax
5 provisions in the Act. I want to highlight how
6 different the outcome would be if Florida
7 conforms to that, that it would be at the
8 federal level from both a policy perspective
9 and an operational perspective and why, you
10 know, from COST's opinion, the opinion of our
11 members, we think Florida should decouple from
12 that provision because it is bad tax policy.

13 And you know, part of this is, as I said,
14 full conformity is one thing, but when you only
15 have partial conformity which is just sort of
16 based on how mechanically the state ties to the
17 Federal Code, that can be -- lead to
18 inadvertent and arbitrary results and it would
19 certainty make it so in the case of GILTI.

20 So we are focusing then in on GILTI.
21 GILTI is one of the major provisions as part of
22 the federal revamping of how it taxes foreign
23 source income. So the federal government is
24 actually narrowing the way it taxes foreign
25 source income, income earned by U.S. multi

1 nationals and other U.S. taxpayers outside the
2 U.S.

3 It is moving from the system where it
4 would tax all of that income, albeit a lot of
5 it on a deferred basis where income is dividend
6 back to the U.S., to not taxing all of it and
7 moving to sort of a quasi territorial system,
8 but taxing just sort of discreet categories of
9 it, and certainly the so-called global and
10 intangible low tax income that we are referring
11 to is GILTI or G-I-L-T-I.

12 The shorthand for it is one of these new
13 categories of foreign source income. So I
14 think the starting proposition here for it is
15 the federal government is actually in the Tax
16 Reform Act, narrowing significantly the way it
17 taxes foreign source income, not taxing all of
18 it as it did in the past, but just taxing 13
19 modest categories of it.

20 If a state like Florida were to adopt the
21 conformed, it would be vastly expanding the way
22 it taxes foreign source income, because most
23 states similar to Florida don't typically tax
24 foreign source incomes, tax only sort of which
25 is in the water's edge or within Florida

1 abroad.

2 So as a starting principle the outcome
3 here would be very different for say if Florida
4 adopts GILTI than the outcome at the federal
5 level.

6 The second big difference is that
7 federally the provision of like GILTI is
8 intended in large part to raise revenues to
9 offset major tax cuts. So I did submit some
10 testimony, but just the highlights of it.

11 The federal government is raising about
12 \$324 billion over a 10-year period from the
13 international tax provisions, GILTI being one
14 of the main ones, and this is helping to offset
15 \$654 billion over 10 years of other business
16 tax cuts. So overall, this tax package is
17 about a 10 percent tax cut for corporations at
18 the federal level.

19 At the state level as we indicated in the
20 study that COST had done with Ernst & Young, if
21 the states like Florida conform to the
22 provisions that are currently in your statute,
23 this would be about a 13 percent tax increase
24 for corporations instead of the 10 percent tax
25 cut that is happening federally.

1 So again, the outcome, and it is just sort
2 of arbitrary just because of the fact that you
3 don't pick up the tax cuts and you pick up the
4 base broadners, such as GILTI. The outcome
5 would be very different in terms of the goals
6 of federal tax reform, which was to increase
7 competitiveness of U.S. companies from a tax
8 perspective internationally and spur growth.
9 And it is quite a different outcome if you end
10 up with a large tax increase instead of a tax
11 cut overall.

12 And third, and then perhaps even the most
13 important is that GILTI as a provision is quite
14 complicated. But there was a goal, there were
15 two goals really federally. One was to raise
16 money to offset tax cuts so that several states
17 don't have a similar need to off cut the tax
18 cuts because you are not giving them.

19 But the other thing was to try to tax not
20 all foreign source income at the federal level,
21 but only foreign source income that was taxed
22 at a lower rate than 13.125 percent. So this
23 is the so-called lower tax part of the bill.

24 And there is sort of a complicated formula
25 that gets to that, but basically your foreign

1 source income of a U.S. company is taxed above
2 13 percent. The federal government is
3 typically not taxing on the going forward
4 basis. If it is taxed below that, they're
5 going to try to pick up the increment with this
6 GILTI provision.

7 And the problem from the state level is
8 that Florida, and Florida is not alone in this,
9 all the states that are considering conforming
10 to GILTI don't provide one of the key
11 provisions that limits the taxation of foreign
12 source income that has already been taxed at a
13 higher level, the 13.125 percent, and that is
14 foreign tax credits.

15 The way the federal government gets there
16 is they allow 80 percent of the foreign tax
17 credits paid on this income to be credited
18 against the income that forms the GILTI bucket
19 before the federal government taxes it. Since
20 the state does not conform to foreign tax
21 credits states have always used apportionment
22 instead of tax credits.

23 Florida if they remain or if they conform
24 to GILTI would end up taxing all of the foreign
25 source income subject to a few carve outs,

1 whether it was in high tax countries or low tax
2 countries, and this clearly was not the intent
3 federally. This would be an unprecedented
4 expansion of the state corporate income tax
5 base if Florida was to do it.

6 So for these reasons already 11 states
7 have decoupled from GILTI and more likely to
8 follow, and among the states that have
9 decoupled from it are some of the sort of
10 competitor states in the southeast with
11 Florida, Georgia has decoupled, North Carolina
12 has decoupled, South Carolina has decoupled and
13 we think many of the states are looking at this
14 and saying, you know, maybe the federal
15 government should do it. That is not our call,
16 but certainly states shouldn't do this because
17 the outcomes are so different at the state
18 level.

19 So we would certainly in conclusion COST
20 would support either legislation or regulatory
21 guidance. It would decouple Florida completely
22 from GILTI and fall with the precedence of a
23 lot of these other states.

24 And you know, I would stress that it is
25 possible to do this. Maybe you could clarify

1 this legislatively because the problem starts
2 with the fact that that just the way Florida
3 accepts the Federal Code you very possibly pick
4 up 951(a) which is the provision that GILTI is
5 in.

6 So you might have to legislatively
7 decouple from it, but several states already,
8 in particular, Kentucky and Connecticut have
9 just done that through regulation just because
10 GILTI is similar to subpart (f) and we didn't
11 tax subpart (f). before. We are going to not
12 interpret our statute as tax GILTI going
13 forward. So it could be done either I think
14 through legislation or regulation.

15 The final point I want to make on GILTI
16 and this is different from the point I will
17 make on the interest provision, but even if
18 foreign were to not agree with our position
19 that this is bad tax policy and tax policy that
20 is inconsistent with the goals of federal tax
21 reform and inconsistent with the way that
22 Florida's tax foreign source income in the
23 past, even if one disagrees with that position,
24 there is also a constitutional impediment here,
25 and that is that if you for the first time tax

1 GILTI income and you are a separate reporting
2 state like Florida, and obviously, I have got
3 almost half the states are still separate
4 reporting states in this country, then you
5 would be taxing the income of foreign
6 subsidiaries, but not similar income of non
7 nexus, domestic subsidiaries of the company
8 that is filing in Florida.

9 And really the Craft case from 1992 is
10 directly on point. You can't do that, that
11 would be a violation of the commerce clause by
12 treating foreign commerce worse than you are
13 treating domestic commerce. And even though
14 the Craft case dealt with foreign dividends,
15 the principle is the same.

16 If you are taxing the income of a foreign
17 subsidiary of a Florida taxpayer and you are
18 not taxing a similar income of a domestic owned
19 subsidiary that doesn't have to file in Florida
20 and do the separate reporting system, that
21 violates the commerce clause.

22 So that is my final point on this, is
23 that, you know, my earlier points were this is
24 just bad public policy and I think that is why
25 at the state level, you know, 11 states have

1 already decoupled from it, but even if you were
2 to think that this is good tax policy for
3 Florida, you are not going to be able to keep
4 this money, because there is going to be
5 litigation and the Craft case is very clear
6 that certainly for a separate reporting state
7 you can't tax GILTI income because of the U.S.
8 constitution's commerce laws.

9 So I will reserve my comments for the
10 interest expense limitations for your next
11 section and I really appreciate the opportunity
12 to speak and I would be certainly glad to
13 answer any questions either right now or, you
14 know, in the near future.

15 MS. EAGLE: Thank you. Are there any
16 additional public comments on this topic?

17 MR. JACKSON: Go ahead, Ms. Smith.

18 MS. SMITH: Hello, this is Diane Smith at
19 (inaudible). I represent what is called the
20 State Tax After Reform Partnership, the STARP
21 Partnership.

22 We represent a collision of 24 of the
23 largest companies in the world on the issue of
24 conformity with federal tax reform.

25 Specifically on GILTI, we echo all of the

1 points that COST, that Carl at COST has made.
2 Specifically we note that Florida has a history
3 of not taxing foreign incomes. Florida has
4 historically had a deduction for subpart (f)
5 income.

6 As Carl noted, we think that it is not
7 necessarily required to have legislation to
8 exclude GILTI from the tax base at this point
9 because it is still to subpart (f) income.

10 Important to note that the Tax Cuts and
11 Jobs Act commerce report specifically noted
12 that GILTI is generally treated similarly to
13 subpart (f) inclusion. So even the federal
14 government recognized that it was in many ways
15 identical to subpart (f). For those reasons we
16 think that Florida can administratively exclude
17 GILTI from the tax base.

18 We also echo Carl's notes about the --
19 that it is an extraordinarily complicated
20 calculation to be made, and as a result of
21 that, the constitutional problems are also
22 exacerbated.

23 I will get to the Craft point in a moment,
24 but to the extent that Florida decides to
25 include GILTI in the tax base, there would have

1 to be some type of constitutional apportionment
2 for that GILTI. Trying to decide when you are
3 looking at foreign entities that are not
4 included on an entity by entity basis, but
5 instead have this complicated netting before
6 GILTI is calculated and then include it in a
7 domestic tax base, Florida would have to decide
8 what portion of each of those entities should
9 be included in the denominator.

10 And then because they are netted before
11 they are included in the tax base there would
12 have to be additional adjustments that would
13 need to be made to the denominator. We think
14 that this is just too complicated for the
15 amounts that would be weighed by Florida in
16 this case.

17 Finally as COST noted, Florida would be
18 engaged in probably years of litigation should
19 GILTI be included in the tax base, because of
20 the Craft case. Carl noted that this is a U.S.
21 Supreme Court case that said that a state
22 cannot treat foreign income differently than
23 domestic income.

24 And in fact, the U.S. Supreme Court has
25 been even harsher in looking at states that

1 discriminate against foreign income as opposed
2 to states that discriminate against purely
3 domestic income from other states.

4 We just don't see any way that a state can
5 include GILTI income and be consistent with the
6 commerce clause of the U.S. Constitution. And
7 thank you, I will have comments on other
8 provisions as well.

9 MS. EAGLE: Thank you. Are there any
10 additional comments from the public on this
11 topic?

12 MR. HAMILTON: I want to take this
13 opportunity to thank Mr. Freedman on behalf of
14 the Council of State Taxation, and also note
15 that we received written comments from
16 Mr. Freedman dated August 20th. Those can be
17 found on the Department's CIT Review website.
18 It is Florida Revenue.com forward slash CIT
19 Review.

20 Additionally, thank you, Ms. Smith, for
21 your comments this morning as well. I just
22 want to acknowledge that we also received
23 written comments from Ms. Smith. I believe we
24 received those late last night, early this
25 morning. Those will be posted in short order

1 so that you can check online for those. Thank
2 you.

3 MS. EAGLE: Okay, the next topic the
4 Department will review comments on at this time
5 is item 12 on your list of current topics under
6 review by the Department.

7 The 12th topic under review is the net
8 interest deduction. The deduction for interest
9 expenses is limited to 30 percent of adjusted
10 taxable income plus business interest income
11 with special elections available for real
12 property trades and businesses.

13 For the first four years after the
14 enactment of the Tax Cuts and Jobs Act of 2017,
15 adjusted taxable income is computed without
16 subtracting depreciation, amortization or
17 depletion in addition to interest and taxes.

18 Beginning in 2022, adjusted taxable income
19 would be decreased by depreciation,
20 amortization or depletion, thus making the
21 computation 30 percent of net interest expense
22 exceeding earnings before interest and taxes.

23 Are there any public comments on this
24 topic? Are there any comments from electronic
25 participants?

1 MR. FREEDMAN: Hi, this is Carl Freedman.
2 Can you hear me now?

3 MS. EAGLE: Yes, we can hear you.

4 MR. FREEDMAN: Thank you again, this is
5 Carl Freedman, vice-president, General Counsel
6 with the Council on State Taxation.

7 Appreciate again you taking this one out
8 of order. And you know, this is again an
9 extremely important provision for businesses,
10 and you know, where COST, since our membership
11 is larger companies, I am not focusing my
12 comments on some of the other provisions which
13 are very important you have under
14 consideration, but really for larger businesses
15 operating in Florida, the two most important
16 provisions are the GILTI one that we just spoke
17 about and the interest one.

18 And what I would like to highlight here,
19 and I did submit this as part of the testimony,
20 but just to give some highlights of why again
21 we think this is a provision that Florida, and
22 for that matter, other states should decouple
23 from, and I think this one unlike GILTI where
24 both myself and Diane had mentioned before, I
25 think that Florida could do something

1 regulatory to say the GILTI income is not part
2 of the Florida Tax Code after linking with the
3 Federal Income Tax Code as of 2018, it is not
4 part of the State Tax Code.

5 This would require decoupling from 163(j)
6 which is the federal provision and probably has
7 to be done legislatively. But the reasons for
8 why we think decoupling is right public policy
9 as opposed to conformity with the new
10 provisions in 163(j), are really similar to the
11 GILTI one.

12 And that is whenever you think of the
13 federal tax policy and it was, you know, a big,
14 big tax reform that had a lot of different
15 pieces that were interconnected. The outcome
16 at the state level of connecting to this
17 interest expense limitation is completely
18 different than the federal outcome, both from
19 the overall police level and from the
20 operational level.

21 So let me just sort of explain that, you
22 know, in sort of a high level, but I would be
23 glad to answer any questions. The first part
24 of it is, you know, 163(j) is a significant
25 base broadner, and in Florida as federally it

1 would lead to about a seven percent on average
2 tax increase per year over the first 10 years
3 of implementation. So that is all the
4 provisions that would affect Florida, you know,
5 in terms of linking on the corporate side.

6 Again, I am talking just about the
7 corporate income tax with the federal tax
8 reform. This would be the largest tax increase
9 on businesses in Florida. Certainly when the
10 states, you know, as they are considering these
11 things and it is exactly why you are having
12 this hearing here, it is not as if the state,
13 you know, legislators met or the Governor or
14 the Department of Revenue met on January 1st,
15 2018 and said, this is a great way for us to
16 raise taxes on our businesses, we think they
17 should be higher.

18 I mean, this is again just sort of
19 inadvertent based on the mechanical conformity
20 with the code and with, you know, Section
21 163(j). So again, as an outcome federally this
22 is completely different because federally
23 163(j) is just a package of base broadeners that
24 are actually used to offset large tax cuts and
25 end up with an overall net tax cut for

1 corporations at the federal level of 10 percent
2 as I indicated, whereas since the states like
3 Florida don't pick up the tax cuts this would
4 lead to, this would be seven percent, the
5 largest element of a potential 13 percent
6 corporate tax increase per year over the first
7 10 years in Florida if Florida were to conform
8 with it.

9 So that is the first part of this that I
10 think is inconsistent from the state
11 perspective compared to a federal perspective,
12 and this is why this is bad tax policy from a
13 state perspective.

14 The second inconsistency is that it
15 clearly this provision, the interest expense
16 limitation basically saying, you know, if you
17 borrow a lot you are going to be limited to
18 roughly 30 percent of that interest, 30 percent
19 of your income can be offset by that interest
20 and the rest you're going to have to carry
21 over. So this was just a way of not denying
22 the interest deduction, but just speeding it
23 out over time.

24 But it was coupled with another provision
25 federally, and that was allowing not just the

1 50 percent bonus depreciation, but 100 percent
2 expensing over a five-year period for most of
3 your capital investments, and that provision
4 was clearly to encourage, you know, growth,
5 economic growth through making it easier for
6 companies to immediately deduct all of their
7 costs of their capital investment as opposed to
8 depreciating that over a series of years.

9 And the reason these two provisions were
10 together federally was the federal government,
11 Congress was saying, look, if we are going to
12 encourage you to invest to make capital
13 improvements, then we are going to allow you to
14 deduct your expense loads immediately, we don't
15 want you borrowing money to pay for those
16 investments and then deducting all of that
17 income right away, because that sort of would
18 be couple dipping in their opinion.

19 Anyway, a lot of the times I think those
20 two provisions together make a lot of sense.
21 The reason I am belaboring this point is that
22 Florida like most states have already decoupled
23 from the provision 168(K) of the Internal
24 Revenue Code that allowed for the accelerated
25 50 percent bonus depreciation as opposed to

1 spreading depreciation over a larger number of
2 years. Half of it could be expensed right
3 away.

4 This new provision is in that same
5 provision and Florida by linking the way it
6 does to the code wouldn't pick up the 100
7 percent expensing. So to pick up the tax
8 increase, the base broader which is the
9 interest limitation without also allowing for
10 the 100 percent expensing is the second element
11 that is completely inconsistent with both the
12 federal and how the federal provision operates
13 in affect. So that is the second reason why I
14 think Florida should decouple from 163(j).

15 And then the final reason is just more of
16 a complexity reason. That the way that 163(j)
17 works is it is intended to be implemented on a
18 consolidated basis. You take all of your U.S.
19 companies enter into a consolidated group, and
20 the intent is really to limit your interest,
21 primarily your external interests which are
22 borrowing from banks, not your sort of internal
23 loans between companies and stuff, because
24 those are at least within the federal
25 consolidated group, those are eliminated.

1 When you, and this is no fault of
2 Florida's of course, but when you implement or
3 try to implement the same provision in a
4 separate reporting state where you may have,
5 likely to have far fewer entities that are part
6 of the federal consolidated group actually
7 doing business and filing in Florida, you can
8 just get some very bizarre complicated results,
9 and it just depends on who is filing as part of
10 the federal consolidated group in Florida, what
11 they are borrowing is. Do they borrow from
12 affiliated members? The internal debt at all
13 that is limited here.

14 What the income is for Florida and so
15 forth. So the impose of 30 percent limitation
16 on debt that is filed by Florida companies not
17 only could actually hurt those companies from
18 an economic growth and competitive perspective,
19 but can just lead to very complex and arbitrary
20 results that have nothing to do with what the
21 results are at the federal consolidated level.

22 So really in sum it is those three
23 reasons. And again, very similar to the reason
24 for GILTI that imposition of these provisions
25 just like they were for GILTI, conformity with

1 the interest expense on the (inaudible)
2 provisions in Section 163(j) leads to, one, a
3 completely different policy result because you
4 are not giving the tax cuts, you are just
5 giving the tax increases. Leads to a much
6 different second policy result because you are
7 not picking up, you are not picking up
8 100 percent expensing, but you are picking up
9 the debt limitation.

10 And then finally it is very, very
11 difficult to implement in a separate reporting
12 state, and needless to say, we have no federal
13 guidance yet on how they're going to implement
14 this, the kind of guidance that you would need
15 to provide.

16 So for all of those reasons there have
17 already been not as many GILTI, but a number of
18 states that have decoupled from this interest
19 provision. And I just want to highlight
20 several of them are your neighboring states
21 that you may be concerned about from sort of a
22 competitive perspective with other southeastern
23 states, mainly Georgia, Mississippi and
24 Tennessee have already decoupled from this
25 interest expense limitation.

1 So again, just to conclude, COST and its
2 members strongly encourage Florida to decouple
3 from both the GILTI provision and the interest
4 expense limitation provision, and not that the
5 we don't have opinions on some of the other
6 provisions, but we do think these are the two
7 most important provisions to businesses that
8 are creating jobs and making investments in
9 Florida, and we think you should follow this
10 suit for many other southeastern states that
11 have already decided to decouple from these
12 provisions.

13 So again I thank you for the time and
14 certainly would welcome any questions, either
15 at this time or in the near future.

16 MS. EAGLE: Thank you. Are there any
17 additional public comments?

18 MR. JACKSON: Go ahead, Ms. Smith.

19 MS. SMITH: Thank you. Again, this is
20 Diane Smith with McDermott on behalf of the
21 STARP Partnership. We echo what Carl had said
22 for COST regarding the decouple from the
23 interest expense limitation. We think it does
24 need to be done legislatively.

25 As Carl noted at the federal level this

1 was a revenue raiser that was intended to be
2 joined with the immediate expensing. As the
3 result of Florida, right now is only following
4 one of those three items. It doesn't have the
5 immediate expensing and it does not have the
6 reduced rates that the federal level has.

7 Carl also noted the complexity problems.
8 I would emphasize that a little bit further.
9 We don't know yet exactly how the federal
10 government is going to go about imposing this
11 interest limitation. We expect some guidance
12 from them.

13 They have suggested that this is going to
14 be calculated at the federal level on a
15 consolidated basis, seems to be the intents of
16 Congress that it is done that way. As a result
17 for states like Florida that don't follow
18 identically the federal consolidated rules, a
19 taxpayer would have to recalculate the interest
20 limitation at the state level.

21 The state would have to decide how that
22 recalculation is done. For example, are they
23 just going to use however the federal
24 government allocated the interest among the
25 consolidated group members? On the other hand,

1 are they going to ask a Florida taxpayer to
2 determine a proforma return as if they were not
3 calculating consolidated at the federal level?

4 And then once these determinations are
5 made you have additional issues, such as at the
6 federal level you are allowed to carry over
7 indefinitely unused interest expense in any
8 particular year. Well, how does that work at
9 the state level, particularly at the federal
10 level because the carry over can be used among
11 the consolidated group members.

12 So you might have very different carry
13 over rules at the state level and the federal
14 level. This type of complexity we think is
15 completely unnecessary because the interest
16 expense is not married with the lower rate and
17 the immediate expensing.

18 As a result of that we think that Florida
19 should have some type of legislative proposal
20 to decouple from the interest expense
21 limitation. Thank you.

22 MS. EAGLE: Thank you. Are there any
23 additional public comments on this topic? We
24 will now return to the order provided in the
25 list of current topics under review by the

1 Department.

2 The next topic under review is the
3 treatment of deferred foreign income upon
4 transition to a participation exemption system
5 of taxation.

6 The Tax Cuts and Jobs Act of 2017 amends
7 Internal Revenue Code, Section 965 to impose a
8 one time corporate income tax transition tax on
9 deferred, untaxed foreign income as if such
10 income had been repatriated to the United
11 States in the business' last tax year beginning
12 before January 1, 2018.

13 Are there any public comments on this
14 topic?

15 MR. HOLCOMB: Good morning, I am Mark
16 Holcomb with Dean, Meed & Dunbar in
17 Tallahassee. I appreciate the informal
18 guidance that the Department issued back in
19 March on repatriation.

20 I think the Department got the right
21 answer with the right analysis that
22 repatriation income is not included in the
23 Florida tax base. It was not a federal taxable
24 income, we don't pick it up from the starting
25 points.

1 I would urge the working group to consider
2 codifying position, because as we know the
3 informal guidance the Department issued is not
4 legal authority that taxpayers can necessarily
5 rely on.

6 And I think in the interest of certainty
7 for taxpayers, in the interest of certainty for
8 the Department in administering the tax code,
9 that that position ought to be codified either
10 in statute or by regulation.

11 I think it is important also that the
12 reasoning of that informal guidance be adopted.
13 And the reason was it is not in the tax base.
14 Not that it was going to be treated as subpart
15 (f) income, because if it was treated as
16 subpart (f) you excluded, you have the expense
17 add back problem and that would be a
18 significant tax increase on Florida taxpayers
19 if the Department were to take that route.

20 So in sum, I think the analysis and the
21 tip was correct and I think that is the
22 position the Department and the working group
23 ought to codify. Thank you.

24 MS. EAGLE: Thank you. Are there any
25 additional comments on this topic? Are there

1 any comments from electronic participants?

2 MR. FREEDMAN: Hi, this is Carl Freedman
3 again from Council on State Taxation. I would
4 like to take the opportunity to talk on this
5 provision as well.

6 We didn't actually in the COST letter
7 testimony we sent in comment on this, but I
8 would like to certainly agree with the prior
9 speaker, that I think the Department has this
10 right that Florida has never taxed foreign
11 dividends in the past.

12 And then part of that is for the same
13 reason that I don't think Florida can tax GILTI
14 which is it would be a violation of foreign
15 commerce clause to do so, to tax that type of
16 an income without taxing some things similar
17 from a domestic perspective.

18 But I think there is something more
19 important than that, and this is where I think
20 there is a nice linkage with the decoupling
21 from the GILTI provision. And that is, is that
22 Florida has addressed in the past or become
23 generally by eliminating taxation as most
24 states have to the water's edge and this is
25 what most, all states have done for the last,

1 you know, 30 years or something. It has
2 limited their taxation trying to accurately
3 reflect what is earned in Florida and not
4 trying to tax Florida based entities or Florida
5 taxpayers on what is earned and taxed abroad.

6 So I think in the case of repatriation and
7 this is where I point out sort of the arbitrary
8 nature of conformity with the federal code
9 which you are rightfully considering right now
10 is that this is (inaudible) in this case
11 taxing, you know, de-informed. So over the
12 last 30 years this is something that Florida
13 has never done.

14 So you don't link to that particular
15 provision that would pick this up, and there is
16 only a minority of states that actually do in
17 that provision. In the case of GILTI, just
18 because of the way you arguably might pick up
19 this new section, 951(a), and I say, arguably,
20 because I do think you can address GILTI and
21 decoupling in a regulation, but you pick up
22 possibly GILTI.

23 You don't pick up repatriation, but the
24 reason to decouple from both and I think
25 rightfully you have already interpreted that

1 you are not -- you are not picking up the
2 repatriation transition tax is because there is
3 no reason at this point to fundamentally change
4 the way that Florida is addressing foreign
5 source income and not subjecting Florida
6 taxpayers to the tax on their foreign source
7 income that is taxed, earned and taxed abroad
8 just because the federal government is changing
9 the way it is taxing foreign source income.

10 And as I indicated before, the federal
11 government is actually likely narrowing the way
12 they are taxing foreign source income, taxing
13 less of it, albeit more of it on a current
14 basis, but less of it overall. Again, no
15 reason for Florida to change the way it is
16 doing what it has done in the past.

17 So for you to continue to do what you have
18 done in the past really requires some sort of
19 guidance on GILTI and/or legislation to make it
20 clear that you are not conforming to that.

21 And in the case of I think the
22 repatriation, I agree with the last speaker
23 that it is reasonably clear I think that you
24 don't tax foreign dividends and wouldn't pick
25 up this provision. But it wouldn't hurt to

1 clarify that by statute so that no taxpayer is
2 confused about that on a going forward basis.

3 Again, I thank you for your time in
4 allowing us to testify.

5 MS. EAGLE: Thank you. Additional
6 comments on this topic?

7 MR. JACKSON: Go ahead, Ms. Smith.

8 MS. SMITH: Hi, once again, Diane with the
9 STARP Partnership. We echo both of the two
10 previous speakers regarding the repatriation.
11 We thank Florida for already issuing guidance
12 on this, but Florida was a leader in actually
13 thinking seriously about how their current code
14 should address the repatriation.

15 If Florida through their Legislature were
16 to change on a going forward basis and decide
17 to tax this 965 income, this would bring up
18 considerable retroactivity problems.

19 This was a one time tax, one time
20 inclusion in income that happened for most
21 taxpayers for the 2017 tax year. A few
22 taxpayers will be included in 2018. But if
23 Florida were through future legislative
24 decision to decide to tax it, it would be
25 retroactive to 2017, and even worse than that,

1 it would be retroactive essentially overruling
2 guidance the Department has already issued.

3 So that would bring up considerable due
4 process problems that could also create
5 substantial litigation. Much like the GILTI
6 that I talked about earlier, the other
7 constitutional problems are if repatriation
8 were going to be included in the tax base there
9 would have to be some type of apportionment
10 that recognized the foreign entities that
11 generated this income.

12 Unlike GILTI, which is on a year by year
13 analysis, repatriation adds additional
14 complexity to the apportionment question
15 because as Carl noted it is going back decades
16 trying to figure out exactly what is the
17 appropriate apportionment for income that goes
18 back decades.

19 I certainly have not come up with an easy
20 and accurate way to do that. And like GILTI,
21 repatriation suffers from the Craft problem in
22 that it would tax foreign income very
23 differently than domestic income.

24 For those reasons we support what Florida
25 has already done regarding the guidance it has

1 issued and think that is the appropriate
2 approach. It would be very nice if we also
3 sought legislation confirming that. Thank you.

4 MS. EAGLE: Thank you. Additional
5 comments on this topic?

6 The next topic under review is the repeal
7 of alternative minimum tax. The Tax Cuts and
8 Jobs Act of 2017 repeals the federal corporate
9 alternative minimum tax for taxable years
10 beginning after December 31st, 2017.

11 The Act also accelerates the use of
12 previously earned federal alternative minimum
13 tax credits by not only allowing these credits
14 to offset the regular federal corporate income
15 tax liability, but also by allowing the credit
16 to be refunded.

17 Are there any public comments on this
18 topic? Are there any comments from electronic
19 participants?

20 The next topic under review is increases
21 in the Section 179 expense amount.

22 Taxpayers may elect to immediately expense
23 certain business assets rather than
24 depreciating them overtime. The Tax Cuts and
25 Jobs Act of 2017 amends Internal Revenue Code

1 Section 179 to increase the deduction from
2 500,000 to \$1 million, and the deduction phase
3 out from \$2 million to \$2.5 million.

4 Are there any public comments on this
5 topic? Are there any comments from electronic
6 participants?

7 The next topic under review is changes to
8 the net operating loss deduction. The Tax Cuts
9 and Jobs Act of 2017 amends Internal Revenue
10 Code Section 172 to eliminate the two-year net
11 operating loss carry back for most taxpayers,
12 extend the carry forward period indefinitely
13 and limit the amount of net operating loss
14 deductions that may be claimed in each year to
15 80 percent of income.

16 Are there any public comments on this
17 topic? Any comments from electronic
18 participants?

19 The next topic under review is bonus
20 depreciation. The Tax Cuts and Jobs Act of
21 2017 extends and modifies the additional first
22 year bonus depreciation deduction through 2026
23 for most property acquired and placed in
24 service after September 27th, 2017.

25 The 50 percent allowance is increased to

1 100 percent of property, for property placed in
2 service before January 1, 2023. After
3 December 31st, 2022, the 100 percent allowance
4 is reduced by 20 percent per calendar year, and
5 eliminated in 2027.

6 Are there any public comments on this
7 topic? Are there any comments from electronic
8 participants?

9 The next topic under review is the repeal
10 of the deduction for domestic production
11 activities.

12 Internal Revenue Code Section 199 provided
13 a reduced tax rate for income from certain
14 domestic production activities. The Tax Cuts
15 and Jobs Act of 2017 repeals the domestic
16 production activities deduction for taxable
17 years beginning after December 31st, 2017.

18 Are there any public comments on this
19 topic? Comments from electronic participants?

20 The next topic under review is base
21 erosion anti abuse tax.

22 The Tax Cuts and Jobs Act of 2017 creates
23 a new base erosion and anti abuse tax in
24 Internal Revenue Code Section 55(a) which is a
25 new minimum tax on large corporations with

1 significant base erosion payments to related
2 foreign parties. The base erosion and anti
3 abuse tax is in addition to the regular federal
4 income tax and is calculated on payments made
5 to related parties.

6 Are there any public comments on this
7 topic? Comments from electronic participants?

8 The next topic under review is
9 amortization of research and experimental
10 expenditures.

11 The Tax Cuts and Jobs Act of 2017
12 eliminates the current deduction for Internal
13 Revenue Code Section 174 expenditures and
14 requires all domestic research expenditures to
15 be amortized over a minimum of five years, and
16 for all foreign research expenditures to be
17 amortized over a minimum of 15 years. The
18 research and development credit is not affected
19 by the Act.

20 Are there any public comments on this
21 topic? Any comments from electronic
22 participants?

23 The next topic under review is the
24 deduction for dividends received from foreign
25 corporations. The Tax Cuts and Jobs Act of

1 2017 provides an Internal Revenue Code Section
2 245(a) that a U.S. corporation that is a
3 10 percent or more owner of certain foreign
4 corporations may claim a 100 percent dividends
5 received deduction for the foreign source
6 portion of dividends received from that foreign
7 corporation.

8 The foreign dividends received deduction
9 is limited to domestic corporations, not real
10 estate investment trusts or regulated
11 investment companies, and may not be included
12 in the computation of the foreign tax credits.

13 Are there any public comments on this
14 topic? Are there any comments from electronic
15 participants?

16 The next topic under review was global
17 intangible low tax income, which we addressed
18 earlier.

19 The next topic under review is the
20 deduction for foreign derived intangible
21 income.

22 The Tax Cuts and Jobs Act of 2017 creates
23 a new provision in Internal Revenue Code
24 Section 250 that gives domestic corporations
25 reduced rates of U.S. tax on their foreign

1 derived intangible income.

2 It provides a lower effective tax rate on
3 high returns related to foreign sales. The
4 calculation is similar to global intangible low
5 tax income, and not returns in excess of
6 10 percent of fixed assets form the basis of
7 the calculation.

8 This is achieved by providing domestic
9 corporations a deduction against foreign
10 derived intangible income subject to certain
11 limitations of 37.5 percent initially, reduced
12 to 21.875 percent for tax years beginning after
13 2025.

14 At a 21 percent corporate tax rate the
15 deduction results in effective rates of
16 13.125 percent and 16.40625 percent
17 respectively.

18 Internal Revenue Code Section 250 also
19 provides a subtraction for 50 percent of global
20 intangible low tax income and for 50 percent of
21 Internal Revenue Code Section 78 dividends.

22 Are there any public comments on this
23 topic? Are there any comments from electronic
24 participants?

25 The next topic under review was the net

1 interest deduction which we addressed earlier.

2 And the final topic under review is
3 changes to the treatment of capital
4 contributions.

5 The Tax Cuts and Jobs Act of 2017 amend
6 Internal Revenue Code Section 118 to provide
7 that certain federal, state and local
8 incentives used to attract companies are
9 treated as current taxable income to those
10 businesses rather than deferred capital
11 contributions.

12 Are there any public comments on this
13 topic? Are there any comments from electronic
14 participants?

15 MR. JACKSON: Go ahead, Ms. Smith.

16 MS. SMITH: Thank you. Once again, this
17 is Diane submit with STARP Partnership. For
18 the capital contributions as noted with some of
19 the other items that increased the tax base,
20 this was one of the trade offs at the federal
21 level for revenue raisers to offset the rate
22 cut.

23 As a result this doesn't happen at the
24 Florida level. We think it would be
25 inappropriate for Florida to continue to

1 conform with the federal increase in the tax
2 base.

3 There is also some inconsistency in states
4 taxing these capital contributions, while at
5 the same time providing capital contribution
6 incentives for companies to expand or to locate
7 within the state.

8 So on the one hand you would have Florida
9 saying, please come to our state to a business,
10 we will give you these incentives, but once we
11 give you these incentives we are also going to
12 tax them.

13 That is an inconsistency that could make
14 Florida less competitive than the other states
15 that choose not to conform. For these reasons
16 we think that Florida should decouple from this
17 federal provision. Thank you.

18 MS. EAGLE: Thank you. Are there any
19 additional comments on this topic? Are there
20 any public comments on topics not presented by
21 the Department? Are there any comments from
22 electronic participants?

23 MR. JACKSON: Go ahead, Ms. Smith.

24 MS. SMITH: Thank you. There is one last
25 item that we think the Department should

1 consider, is that the federal government also
2 started taxing FDIC premiums for finance
3 institutions.

4 It is clear that at the federal level this
5 was purely a revenue raiser. There was no
6 policy reason for starting to include these
7 premiums in the tax base. As a result we think
8 that Florida should look at this provision as
9 well and consider decoupling from the federal
10 rule. Thank you.

11 MS. EAGLE: Thank you. Are there any
12 additional comments?

13 On behalf of the Department I want to
14 thank everyone for participating and sharing
15 your comments with us. Your participation is
16 very helpful during this process.

17 The Department will hold another public
18 hearing to receive input on this project later
19 this year. Information about the second
20 meeting as well as the transcript from today's
21 meeting will be posted on the Department's
22 website at Florida Revenue.com slash CIT
23 Review.

24 Any additional comments you may have after
25 this meeting may be submitted to CIT Review at

1 Florida Revenue.com. All public comments are
2 posted to the Department's website.

3 This concludes the meeting. Thank you.

4 (Whereupon, the meeting was adjourned.)

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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF LEON)

I hereby certify that the foregoing transcript is of a tape-recording taken down by the undersigned, and the contents thereof were reduced to typewriting under my direction;

That the foregoing pages 02 through 50 represent a true, correct, and complete transcript of the tape-recording;

And I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

Dated this 12th day of September, 2018.

CLARA C. ROTRUCK
Notary Public
State of Florida at Large
Commission Expires:
November 13, 2018
Commission NO.: FF 174037

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FLORIDA DEPARTMENT OF REVENUE
PUBLIC MEETING
HELD ON OCTOBER 24, 2018

Transcribed by:
DOREEN M. MANNINO
Court Reporter

1 MS. EAGLE: Good morning. My name is
2 Chelsea Eagle. I will be the moderator for
3 today's meeting. My role as moderator is to
4 preside in a neutral fashion. I'm joined by
5 Mark Hamilton, the Department's General
6 Counsel, and Anthony Jackson, who will serve as
7 our technical assistant.

8 Today is October 24th, 2018, and this is a
9 public meeting scheduled under subsection (1)
10 of section 120.525, Florida Statutes. This
11 meeting is held pursuant to Section 3 of
12 Chapter 2018-119, Laws of Florida.

13 The purpose of this meeting is to allow
14 interested parties to present comments on the
15 impact of the federal Tax Cuts and Jobs Act of
16 2017 on Florida Corporate Income Tax and on
17 Florida businesses.

18 The Department previously identified 13
19 topics from the Tax Cuts and Jobs Act of 2017
20 with the potential to have a significant impact
21 on Florida. These topics were originally
22 presented at the August 22nd, 2018 public
23 meeting. A fourteenth topic was added before
24 this meeting based on comments from the public.
25 A list of the topics, along with copies of the

1 agenda and Section 3 of 2018-119, Laws of
2 Florida, are available at the front of the
3 room. For electronic participants, they are
4 also posted with today's agenda on the
5 Department's website at
6 floridarevenue.com/CITReview.

7 We will take comments on each agenda item
8 from anyone present. For anyone present, we
9 ask that you step up to the podium when you
10 want to speak on an agenda item. Please tell
11 us your name and whom you represent.

12 I will now ask Anthony Jackson to explain
13 the process that we will use for taking
14 electronic comments on the agenda items.

15 MR. JACKSON: Good morning, ladies and
16 gentlemen. If you are attending this meeting
17 using the option "Telephone with AUDIO PIN" and
18 you have a question or a comment, send an email
19 to CITReview@floridarevenue.com to let me know
20 you wish to speak. We will address you by name
21 and unmute your phone when it is your turn to
22 speak.

23 If you are using the option "Telephone
24 with NO AUDIO PIN," you must email your
25 question or comment directly to

1 CITReview@floridarevenue.com. Please use the
2 subject line, "October 24 meeting." For the
3 comment, we ask that you add your name and whom
4 you represent and your email. We will read
5 your comment out loud, and the court reporter
6 will enter it into the record.

7 If you are attending this hearing using
8 your computer, raise your hand using the icon
9 on the Grab Tab, left of your control panel,
10 and we will address you when it is your turn to
11 speak. Please state your name and whom you
12 represent, and the court reporter will enter it
13 into the record along with your question or
14 comment. If you experience difficulty, use the
15 quick "chat" option to send me a message.

16 MS. EAGLE: All visitors need to wear a
17 public meeting badge while in the building.
18 Please return it when the meeting is finished.
19 If there is an emergency evacuation, we will
20 walk together to the evacuation zone for your
21 safety. Please mute or turn off any cell phone
22 ringers or other noisemaking devices.

23 Thank you.

24 Our first agenda item is an overview of
25 the Florida Corporate Income Tax Review

1 Project, which was created in 2018-19, Laws of
2 Florida.

3 During the 2018 legislative session, the
4 Florida Legislature recognized that federal tax
5 law changes made by the Tax Cuts and Jobs Act
6 of 2017 (Public Law 115-97) would have
7 significant effects on Florida corporate income
8 tax and taxpayers when it is fully implemented.
9 To better understand these effects, the
10 Department of Revenue was directed to examine
11 how the Act will affect the state corporate
12 income tax as a result of the state's adoption
13 of the 2018 Internal Revenue Code.

14 Chapter 2018-119, Laws of Florida,
15 provides guidance on how the examination is to
16 be conducted and requires a final report to be
17 submitted to the Governor, President of the
18 Senate, Speaker of the House of Representatives
19 and the chairs of the appropriate legislative
20 committees by February 1, 2019. The
21 examination includes review of IRS guidance,
22 external analyses, and the gathering of public
23 comments through a public input process and
24 public meetings, like the one being held today.

25 The chapter law also required the

1 Department to provide a status report on
2 August 3rd, 2018, and requires the Department
3 to provide another status report on November
4 16th, 2018, to the chairs of the appropriate
5 legislative committees. The first status
6 report is available on the Department's CIT
7 Review webpage.

8 Our second agenda item is to accept public
9 comments on each of the fourteen current topics
10 under review. The topics are listed in the
11 order they appear in the Department's August
12 3rd, 2018 status report, with the recently
13 added topic at the bottom of the list. I will
14 give a brief explanation of each topic and then
15 open the floor for public comment. When you
16 come forward to give comments, we ask that you
17 begin by stating your name and whom you
18 represent.

19 At the last meeting, certain topics
20 received more public interest than others. To
21 facilitate comments on the most popular topics,
22 the Department will take some items out of
23 order and receive comments on them now. The
24 first item we will receive comments on is
25 Number 14 on your list of current topics under

1 review by the Department. This new topic is
2 Like-Kind Exchanges (also known as
3 "ten-thirty-one exchanges").

4 The Tax Cuts and Jobs Act of 2017 amends
5 Internal Revenue Code section 1031 to limit the
6 nonrecognition of gain in like-kind exchanges
7 to exchanges of real property not held
8 primarily for sale. As under pre-enactment
9 law, real property located in the US is not
10 considered like-kind to real property located
11 outside the US.

12 Effective January 1, 2018, exchanges of
13 machinery; equipment; vehicles; art work;
14 collectibles; patents and other intellectual
15 property; and intangible business assets no
16 longer qualify for like-kind exchange
17 treatment.

18 Are there any public comments on this
19 topic?

20 MR. HOGAN: Good morning. My name is
21 Steven Hogan, I'm with the Ausley McMullen Law
22 Firm.

23 With regard to this topic on 1031
24 exchanges, we submitted written comments
25 yesterday. I know they haven't been put up on

1 the website, but I hope you all have gotten
2 them. And mostly we'll defer to written
3 comments, but I'll just give a quick overview
4 of what's in those written comments just for
5 sake of summarizing the issues. And I don't
6 know if the Department is offering questions to
7 people that are giving public comments, but if
8 there are any, I'd be happy to address any that
9 might come up.

10 So, as you said, the Tax Cuts and Jobs Act
11 eliminated the 1031 exchanges for tangible
12 property and intangible property used in a
13 trader business. This comment that we have
14 here today is mostly focussed on the tangible
15 property issue. So a company that sells
16 tangible personal property that was used in
17 their trader business, could formulate, avoid
18 recognizing any gain on the sale of that
19 property, if they were replacing that property
20 with like-kind property and buying it, they
21 would be following the 1031 regulations. So
22 that was how it used to be. But with the
23 change, with the Tax Cuts and Jobs Act, the
24 1031 exchange process was eliminated for
25 tangible property. So that's no longer

1 something that can be used for anything other
2 than real property. So now what that means for
3 taxpayers is that taxpayers that have been in
4 the business routine, shall we say, of selling
5 the tangible personal property or tangible
6 property that they were using in their business
7 and then replacing it with new tangible
8 property to also be used in a business, now
9 they're in a situation where they have to all
10 of a sudden recognize gain on the sale of their
11 old property. And they can't avoid the
12 recognition of it under 1031 as they always
13 could since that section has been in place.
14 Now, that means that they have a bubble of
15 gain, essentially that was unexpected, now that
16 they have to deal with.

17 At the federal level, the 1031 issue that
18 I've just described is offset somewhat by the
19 fact that the Tax Cuts and Jobs Act has
20 also given taxpayers a new bonus appreciation
21 amount where when a taxpayer purchases new
22 property to be used in a trader business, they
23 can take a depreciation deduction worth up to
24 100% of what they paid for that replacement
25 property. So what this means in effect is that

1 a company that sells their old property, that
2 sells their old property, they're going to have
3 to recognize gain on that -- on that sale of
4 the old property, but they can also wipe it out
5 with the deduction. Let's say that they're
6 selling property and replacing it one-to-one
7 with new property, that presumably it costs
8 more than the stuff that they just sold because
9 it was -- the stuff was older, Right, so
10 they're able to wipeout at the federal level
11 all this unexpected gain that would have of
12 otherwise had existed. So there is no real
13 bubble problem of tax liability at the federal
14 level.

15 Now, when you drop down to the Florida
16 level, though, there's an issue because in the
17 Florida Statutes in 220.13, the Florida
18 Statutes instruct taxpayers when they're
19 calculating their Florida corporate income tax
20 liability, that any bonus depreciation that
21 they took under section 168(k) of the Internal
22 Revenue Code, has to be added back into their
23 Florida corporate income tax base. So all the
24 bonus depreciation that they may have used to
25 wipeout the unexpected gain at the federal

1 level, has to be added back in. So they can't
2 take that bonus depreciation at the Florida
3 level.

4 What they can take in that same section of
5 220.13, what they can take is one seventh of
6 the bonus depreciation amount that they would
7 have otherwise taken. So instead of the 100%,
8 they can take one seventh of 100%. So they can
9 cut the gain down that they're recognizing on
10 the sale of the old property. They can cut it
11 by one seventh. And then in year 2, they can
12 use another one seventh; year 3, one seventh;
13 all the way up for seven years. So it's not
14 like this bonus depreciation deduction goes
15 away. It's just stretched out. It's a timing
16 issue. So that creates a problem at the
17 Florida level for such taxpayers in this
18 situation, this unexpected situation where they
19 have a bubble of tax liability at the Florida
20 level right now that they can't offset with the
21 bonus depreciation or, frankly, anything else.
22 Well, let's cap it at the bonus depreciation
23 and not worry about extraneous factors.

24 So that means the taxpayers in this
25 situation are going to face a serious cash flow

1 issue because all of a sudden, they have this
2 surprise liability in Florida that they're
3 going to have to pay in cash money to the
4 Florida Department of Revenue.

5 Now, is this something that can be fixed
6 by the Department internally? I don't think
7 so. I think it's a statutory fix that would
8 need to be done because the statute says very
9 clearly that this one seventh depreciation
10 issue is the way things are done in Florida,
11 and the Department can't rewrite the statute,
12 of course. But in the report to the
13 legislature, we hope that the Department of
14 Revenue would raise this issue so that the
15 legislature is inclined to take action on this
16 issue. They will at least have input from the
17 Department.

18 I think that concludes my comments unless
19 there are any questions, if you all are
20 offering questions.

21 MR. HAMILTON: I have no questions. I
22 want to thank you for your comments. And just
23 for everybody's benefit, I will confirm that
24 the Department did receive your written
25 comments yesterday, and those are in the

1 process of being posted. For anyone that's
2 interested, they will be posted later.

3 MR. HOGAN: Thank you.

4 MS. EAGLE: Thank you.

5 Are there any additional comments from the
6 public?

7 (No response.)

8 Are there any comments from electronic
9 participants?

10 (No response.)

11 The next topic the Department will receive
12 comments on is number 10 on your list of
13 current topics under review by the Department.

14 The tenth topic under review is Global
15 Intangible Low-Taxed Income.

16 The Tax Cuts and Jobs Act of 2017 creates
17 Internal Revenue Code section 951A, which
18 imposes a tax on the global intangible
19 low-taxed income of certain US taxpayers and
20 their affiliates for tax years beginning on or
21 after January 1st, 2018. Global intangible
22 low-taxed income is included in a company's
23 gross income and generally treated in a manner
24 similar to Subpart F income, with certain
25 deductions and exemptions.

1 Are there any public comments on this
2 topic?

3 MS. O'CONNOR: Good morning. My name is
4 Victoria O'Connor, and I'm Senior Tax Counsel
5 here on behalf of Anheuser-Busch Companies.

6 Prior to the enactment of Federal Tax
7 Reform, Florida earnings were either taxed
8 through the Subpart F rules as a deemed
9 dividend or when earnings were paid back into
10 the United States with an actual dividend. In
11 both instances the federal tax was offset by
12 foreign tax credits to avoid double taxation.
13 Typically, states like Florida limited their
14 taxation to income earned domestically.
15 Foreign income was generally considered outside
16 the purview of a state's jurisdiction to tax,
17 thus, states generally decoupled from Subpart F
18 provisions and provided dividend received
19 deductions for dividends from foreign
20 corporations. Florida was no exception.

21 With federal tax reform, in an effort to
22 shift to a quasi-territorial regime, Congress
23 enacted Section 951A to function as a minimum
24 tax on global income. It created a new
25 category of income called Global Intangible

1 Low-Taxed Income, otherwise known as GILTI,
2 such that a tax of at least 13% was paid on
3 certain foreign earnings. Mechanically to
4 achieve this minimum effect of tax, 50% of the
5 controlled form corporation's foreign taxable
6 income is reduced by 80% of the foreign tax
7 credit used. Florida does not recognize, nor
8 use foreign tax credits. Use of foreign tax
9 credits was unnecessary given Florida's
10 historic approach to only taxing domestic
11 income. Without the utilization of foreign tax
12 credits, Florida will therefore include 50% of
13 foreign income in the Florida tax base
14 regardless of how that income is taxed in the
15 foreign jurisdiction. Conforming to the GILTI
16 provisions is problematic for several reasons
17 and would result in an unprecedented expansion
18 of the Florida tax base to include foreign
19 earnings.

20 First, this would be a break with
21 Florida's longstanding approach of only taxing
22 domestic earnings of corporations that have a
23 connection or a nexus with the state. Under
24 its own definition, GILTI does not include
25 income of controlled foreign corporations that

1 is effectively connected with the United
2 States. As such, GILTI will always be foreign
3 income that has no nexus with the state.
4 Moreover, a state tax on foreign income, like
5 this one, is likely prohibited by the foreign
6 Commerce Clause under US Supreme Court decision
7 in Kraft General Foods versus The Iowa
8 Department of Revenue and Finance. This
9 decision prohibits a state from taxing foreign
10 earnings differently than they would tax
11 domestic earnings, if similarly situated. By
12 conforming to GILTI, Florida will be taxing
13 foreign earnings with no nexus; whereas,
14 similar domestic earnings with no nexus in
15 Florida would remain untaxed.

16 Second, because Florida does not recognize
17 foreign tax credits, it would only be
18 conforming to a portion of the federal GILTI
19 calculation. This results an inclusion of
20 income that has already been subject to foreign
21 taxation offering higher tax rates. For this
22 reason, the state's application of GILTI would
23 be inconsistent with the intent and limitation
24 of the GILTI rule. The resulting tax would
25 violate fundamental principles of taxation

1 aimed to prevent double taxation. From a
2 federal tax perspective, GILTI is similar to
3 Subpart F income, including being treated as a
4 deemed dividend, included on schedule C in the
5 federal income tax return and reported as a
6 dividend. Conforming to GILTI would treat
7 similar provisions asymmetrically by not
8 allowing Florida's standard dividends received
9 deduction to apply. Similar to other sections,
10 section 163(j), which we'll talk about shortly,
11 GILTI expands tax base as a paid for to allow
12 significant reduction in the corporate income
13 tax rate. Absent such a reduction in Florida's
14 own corporate tax rate, conforming to GILTI is
15 merely an increase in corporate taxes in the
16 state.

17 For these reasons we strongly urge the
18 state to completely decouple from GILTI.

19 Thank you.

20 MS. EAGLE: Thank you.

21 Are there any additional comments from the
22 public?

23 (No response.)

24 Are there any comments from electronic
25 participants?

1 MR. JACKSON: You go ahead, Ms. Quinn.

2 MS. QUINN: Hi, my name is Katie Quinn. I
3 am a lawyer in the firm McDermott, Will &
4 Emery, and I'm here on behalf of the STAR
5 Partnership.

6 I wanted to echo Ms. O'Connor's comments
7 on Florida's decoupling from GILTI. And I just
8 wanted to add a few other comments.

9 First, the STAR Partnership has made a
10 written comment back in September, and Diann
11 Smith from the STAR Partnership attended the
12 last public hearing and made comments, but I
13 won't repeat hers. But we do reemphasize
14 those. But I do have a few additional
15 comments.

16 So, as Victoria said, Florida does provide
17 a dividend received deduction for foreign
18 dividends including traditional Subpart F
19 income. Now, for federal purposes, again as
20 Victoria said, GILTI is treated similar to
21 subpart F income, and subpart F income for most
22 federal tax purposes are treated like a
23 dividend.

24 And I just wanted to address IRS's forms
25 that were recently released. And on the draft

1 form, the IRS provides that GILTI is reported
2 as a dividend on schedule C of the 1120, which
3 sort of indicates and emphasizes that the IRS
4 considers subpart F income -- I'm sorry -- the
5 IRS considers GILTI to be a dividend, so
6 Florida should also be considered GILTI to be a
7 dividend that's subject to the 100% DRD.

8 And my second comment is that since our
9 last meeting, South Carolina has also decoupled
10 from the GILTI provision. So Florida's
11 neighboring states, Virginia, North Carolina,
12 South Carolina and Georgia, all decoupled or
13 provide a dividend received deduction for GILTI
14 income.

15 Now, I also just wanted to clear up some
16 misconceptions that, you know, I sort of heard
17 in the tax world recently, that, you know, a
18 bunch of states -- I think I've heard 15 states
19 do tax GILTI. And I don't know where that
20 information is coming from, but that's
21 completely wrong. There is very few states
22 that have actively decided to tax a material
23 portion. The rest of the states have a DRD
24 that, you know, that could apply. If the state
25 hasn't spoken on it, a lot of tax departments,

1 the Department of Revenue, are coming out and
2 saying that GILTI is a dividend treated subject
3 to the state's DRD; thereby, excluding the
4 GILTI from the state tax base. So I just
5 wanted to clear up any misconception that
6 states are actively, you know, pulling out and
7 trying to tax GILTI because that's just not the
8 case. Thank you.

9 MS. EAGLE: Thank you.

10 Are there any additional comments?

11 (No response.)

12 The next topic the Department will receive
13 comments on is item 12 on your list of current
14 topics under review by the Department.

15 The twelfth topic under review is the Net
16 Interest Deduction.

17 The deduction for interest expenses is
18 limited to 30% of "adjusted taxable income"
19 plus business interest income, with special
20 elections available for real property trades
21 and businesses. For the first four years after
22 the enactment of the Tax Cuts and Jobs Act of
23 2017, adjusted taxable income is computed
24 without subtracting depreciation, amortization,
25 or depletion in addition to interest and taxes.

1 Beginning in 2022, adjusted taxable income will
2 be decreased by depreciation, amortization, and
3 depletion, thus making the computation 30% of
4 net interest expense exceeding earnings before
5 interest and taxes.

6 Are there any public comments on this
7 topic?

8 MS. O'CONNOR: Hello again. This is
9 Victoria O'Connor, Senior Tax Counsel on behalf
10 of Anheuser-Busch Companies.

11 Section 163(j), as amended by the Federal
12 Tax Reform, limits a taxpayer's ability to
13 deduct interest borne expenses to 30% of
14 adjusted taxable income. The result of this
15 provision and isolation is to raise the cost of
16 borrowing to the taxpayer.

17 For capital-intensive companies, the most
18 immediate consequence of these increased
19 borrowing costs will be to limit the ability to
20 invest in new projects. Congress's rationale
21 in limiting the interest deductibility was to
22 offset the significant reduction in the federal
23 corporate tax rate from 35% to 21%, as well as
24 the immediate expensing provisions of newly
25 deployed assets. Florida has enacted no

1 similar offsets. The corporate tax rate
2 remains the same, and Florida typically has
3 decoupled from bonus depreciation. By
4 conforming to section 163(j), Florida is simply
5 implementing a tax increase on business and
6 investment in state.

7 Costs recent -- the coalition -- excuse
8 me. Costs recently noted that the provision
9 alone is estimated to increase the Florida
10 Corporate tax base by an average of more than
11 7% over the next ten years. This was part of a
12 study that ELI put together looking at the
13 impact of federal corporate tax reform on the
14 states. This puts Florida at a disadvantage
15 with its neighbors in the southeast. States
16 such as Georgia, Tennessee, South Carolina and
17 Mississippi have elected not to conform with
18 federal tax reform on section 163(j), and we
19 invite Florida to do the same.

20 Unfortunately, when coupled together, the
21 adoption of the GILTI provisions spoke about
22 before and section 163(j), is going -- will
23 render Florida a less attractive place for
24 business investment. In light of this, many
25 states have opted out of these provisions.

1 You've heard the states mentioned, including
2 other states in the southeast region such as
3 Georgia, Kentucky, North Carolina and South
4 Carolina. Conforming to these two provisions
5 would make Florida an outlier resulting in a
6 competitive disadvantage with its closest
7 neighbors. Florida, though, can remain
8 competitive and cover any budget shortfalls
9 without having to raise taxes from new
10 provisions. The ELI study also mentioned that
11 the entire -- the -- conforming to the entire
12 federal tax reform will -- is increased -- will
13 increase the tax base and tax collections by
14 about 13% for Florida, which is above the
15 general average that ELI discussed. The
16 section 163(j) GILTI provisions make up only a
17 portion of that 13%.

18 For the reasons cited above, we strongly
19 urge the legislative body to completely
20 decouple from both of these provisions. In
21 doing so, we believe Florida will reaffirm its
22 widely recognized reputation as a state that
23 aligns its tax policies with international
24 norms and keep the state competitive for local
25 growth and investment for years to come.

1 Thank you.

2 MS. EAGLE: Thank you.

3 Are there any additional comments from the
4 public?

5 MR. GOLDMAN: Good morning. I'm Bob
6 Goldman with Dean Mead Law Firm here in
7 Tallahassee.

8 I hope you don't mind. I just wanted to
9 ask a question. After listening to comments
10 here today and looking at comments that you've
11 received in the past at the last workshop,
12 you've gotten some pretty persuasive arguments
13 for decoupling this -- this new interest
14 deduction limitation, and I'm -- from this
15 interest deduction limitation. And I'm
16 wondering if either from comments you've
17 received or your internal discussions, if any
18 policy position has been identified which would
19 support incorporating the same limitation in
20 Florida.

21 MR. HAMILTON: Today's workshop is for
22 receiving public comments. We're still in the
23 process of taking public comments. Obviously,
24 one of the things that's most important to the
25 Department is we don't dictate tax policy.

1 That's for the legislature to determine. We're
2 in the process of finalizing our next status
3 report, which is due on the 16th, and we're
4 taking additional comments at this time. So
5 thank you for any comments you'd like to
6 provide us.

7 MR. GOLDMAN: Okay. Well, I thought I
8 read that we could ask questions.

9 MR. HAMILTON: Today's not for questions.

10 MR. GOLDMAN: Okay. All right. Thank
11 you.

12 MR. HAMILTON: Thank you.

13 MS. EAGLE: Thank you.

14 Are there any additional comments from the
15 public?

16 (No response.)

17 Are there any comments from electronic
18 participants?

19 MR. JACKSON: Go ahead, Ms. Quinn.

20 MS. QUINN: Thank you. This is Katie
21 Quinn again from the firm McDermott, Will,
22 Emery on behalf of the STAR Partnership.

23 Again, I want to echo Victoria's comment
24 that decoupling from 163(j) will keep Florida
25 competitive, a competitive state for

1 businesses. Florida's neighboring states,
2 Georgia most recently, South Carolina and
3 Tennessee, have affirmatively decoupled from
4 163(j), and, you know, there are more
5 states -- most other states that have not
6 enacted legislation in response to federal tax
7 reform. So, you know, we think it's likely
8 that a lot more states will ultimately decouple
9 in next year's legislative session.

10 The other issue in Florida that we
11 emphasis in our -- the comments that were
12 submitted on September 17th, and that Diann
13 discussed at the last meeting, is that
14 conforming to 163(j) will create significant
15 complexities, particularly because Florida is
16 generally a separate return state. The
17 taxpayers each file -- every -- you know, every
18 entity each file its own return, unlike the
19 federal consolidated return where the
20 corporations file as a group, so this will
21 create just complexities computing whether an
22 interest loan exists, how the suspended
23 interest is carried forward by each individual
24 taxpayer. And I think that this is something
25 that if Florida is going to conform to 163(j),

1 that the tax department will have to really
2 consider how this can be fairly administered,
3 and it still creates real complexities.

4 So, again, like, you know, this is what
5 other states have been considering, Georgia,
6 South Carolina, when they've decided to
7 decouple, just, you know, the real
8 complexities. So we would urge Florida to
9 follow in their footsteps and decouple as well.

10 MS. EAGLE: Thank you.

11 Are there any additional comments?

12 (No response.)

13 We will now return to the order provided
14 in the list of current topics under review by
15 the Department.

16 The next topic under review is the
17 Treatment of Deferred Foreign Income Upon
18 Transition to a Participation Exemption System
19 of Taxation.

20 The Tax Cuts and Jobs Act of 2017 amends
21 Internal Revenue Code section 965 to impose a
22 one-time transition tax on deferred (untaxed)
23 foreign income as if such income had been
24 repatriated to the United States in the
25 business's last tax year beginning before

1 January 1, 2018.

2 Are there any public comments on this
3 topic?

4 (No response.)

5 Are there any comments from electronic
6 participants?

7 (No response.)

8 The next topic under review is the Repeal
9 of Alternative Minimum Tax.

10 The Tax Cuts and Jobs Act of 2017 repeals
11 the federal corporate alternative minimum tax
12 for taxable years beginning after December 31,
13 2017. The Act also accelerates the use of
14 previously earned federal alternative minimum
15 tax credits by not only allowing those credits
16 to offset the regular federal corporate income
17 tax liability, but also by allowing the credit
18 to be refunded.

19 Are there any public comments on this
20 topic?

21 (No response.)

22 Are there any comments from electronic
23 participants?

24 (No response.)

25 The next topic under review is Increases

1 in the Section 179 Expense Amount.

2 Taxpayers may elect to immediately expense
3 certain business assets rather than
4 depreciating them over time. The Tax Cuts and
5 Job Acts of 2017 amends Internal Revenue Code
6 section 179, to increase the deduction from
7 \$500,000 to \$1 million and the deduction
8 phase-out from \$2 million to \$2.5 million.

9 Are there any public comments on this
10 topic?

11 (No response.)

12 Any comments from electronic participants?

13 (No response.)

14 The next topic under review is Changes to
15 the Net Operating Loss Deduction.

16 The Tax Cuts and Jobs Act of 2017 amends
17 Internal Revenue Code section 172 to eliminate
18 the two-year net operating loss carryback for
19 most taxpayers, extend the carryforward period
20 indefinitely, and limit the amount of net
21 operating loss deduction that may be claimed in
22 each year to 80% of income.

23 Are there any public comments on this
24 topic?

25 (No response.)

1 Any comments from electronic participants?

2 (No response.)

3 The next topic under review is Bonus
4 Depreciation.

5 The Tax Cuts and Jobs Act of 2017 extends
6 and modifies the additional first-year bonus
7 depreciation deduction through 2026 for most
8 property acquired and placed in service after
9 September 27th, 2017. The 50% allowance is
10 increased to 100% for property placed in
11 service before January 1, 2023. After December
12 31, 2022, the 100% allowance is reduced by 20%
13 per calendar year and eliminated in 2027.

14 Are there any public comments on this
15 topic?

16 (No response.)

17 Any comments from electronic participants?

18 (No response.)

19 The next topic under review is the Repeal
20 of the Deduction for Domestic Production
21 Activities.

22 Internal Revenue Code section 199 provided
23 a reduced tax rate for income from certain
24 domestic production activities. The Tax Cuts
25 and Jobs Act of 2017 repeals the domestic

1 production activities deduction for taxable
2 years beginning after December 31, 2017.

3 Are there any public comments on this
4 topic?

5 (No response.)

6 Any comments from electronic participants?

7 (No response.)

8 The next topic under review is Base
9 Erosion Anti-Abuse Tax.

10 The Tax Cuts and Jobs Act of 2017 creates
11 a new base erosion anti-abuse tax in Internal
12 Revenue Code section 59A, which is a new
13 minimum tax on large corporations with
14 significant base erosion payments to related
15 foreign parties. The base erosion and
16 anti-abuse tax is assessed in addition to the
17 regular federal income tax and is calculated on
18 payments made to related entities.

19 Are there any public comments on this
20 topic?

21 (No response.)

22 Any comments from electronic participants?

23 (No response.)

24 The next topic under review is
25 Amortization of Research and Experimental

1 Expenditures.

2 The Tax Cuts and Jobs Act of 2017
3 eliminates the current deduction for Internal
4 Revenue Code section 174 expenditures, and
5 requires all domestic research expenditures to
6 be amortized over a minimum of five years and
7 for all foreign research expenditures to be
8 amortized over a minimum of fifteen years. The
9 Research and Development Credit is not affected
10 by the Act.

11 Are there any public comments on this
12 topic?

13 (No response.)

14 Any comments from electronic participants?

15 (No response.)

16 The next topic under review is the
17 Deduction for Dividends Received from Foreign
18 Corporations.

19 The Tax Cuts and Jobs Act of 2017 provides
20 in Internal Revenue Code section 245A that a US
21 corporation that is a 10% or more owner of a
22 foreign corporation may claim a 100%
23 dividends-received deduction for the foreign
24 source portion of dividends received from that
25 foreign corporation. The foreign

1 dividends received deduction is limited to
2 domestic corporations (not including Real
3 Estate Investment Trusts or Regulated
4 Investment Companies) and may not be included
5 in the computation of the foreign tax credit.

6 Are there any public comments on this
7 topic?

8 (No response.)

9 Any comments from electronic participants?

10 (No response.)

11 The text topic under review was Global
12 Intangible Low-taxed Income, which we addressed
13 earlier.

14 The next topic under review is the
15 Deduction for Foreign-Derived Intangible
16 Income.

17 The Tax Cuts and Jobs Act of 2017 creates
18 a new provision in Internal Revenue Code
19 section 250 that gives domestic corporations
20 reduced rates of US tax on their
21 foreign-derived intangible income. It provides
22 a lower effective tax rate on high returns
23 related to foreign sales. The calculation is
24 similar to Global Intangible Low-Taxed Income
25 in that returns in excess of 10% of fixed

1 assets form the basis of the calculation.

2 This is achieved by providing domestic
3 corporations a deduction against
4 foreign-derived intangible income (subject to
5 certain limitations) of 37.5% initially,
6 reduced to 21.875% for tax years beginning
7 after 2025. At a 21% corporate tax rate, the
8 deduction results in effective rates of 13.125%
9 and 16.40625% respectively. Internal Revenue
10 Code section 250 also provides a subtraction
11 for 50% of Global Intangible Low-Taxed Income
12 and for 50% of Internal Revenue Code section 78
13 dividends.

14 Are there any public comments on this
15 topic?

16 (No response.)

17 Any comments from electronic participants?

18 (No response.)

19 The next topic under review was the Net
20 Interest Deduction, which we addressed earlier.

21 The final topic under review is Changes to
22 the Treatment of Capital Contributions.

23 The Tax Cuts and Jobs Act of 2017 amends
24 Internal Revenue Code section 118 to provide
25 that certain federal, state and local

1 incentives used to attract companies are
2 treated as current taxable income to those
3 businesses rather than deferred capital
4 contributions.

5 Are there any public comments on this
6 topic?

7 (No response.)

8 Any comments from electronic participants?

9 MR. JACKSON: Go ahead, Ms. Quinn.

10 MS. QUINN: Hello. This is Katie Quinn
11 again from McDermott, Emery on behalf of the
12 STAR Partnership.

13 We wanted to again emphasize our written
14 comments that conforming to IRC section 118 as
15 amended by the Tax Cuts and Jobs Act
16 effectively would impose tax on contributions
17 by governmental entities and civic groups that
18 are designed to attract and obtain businesses.
19 If Florida wants to use the incentive to
20 attract and obtain businesses, it imposes tax
21 on those effected, significantly reduces the
22 effectiveness of such policy, and recently
23 South Carolina decoupled from section 118,
24 thereby, making South Carolina a more
25 competitive state than Florida. And as we

1 discussed the last time, Tennessee, South
2 Carolina and Mississippi have all decoupled.
3 And there's another provision where, you know,
4 states are still thinking about it, so we think
5 next year it's likely that additional states
6 will decouple from IRC section 118.

7 MS. EAGLE: Thank you.

8 Are there any additional comments from the
9 public?

10 (No response.)

11 As we addressed topic fourteen, Like-Kind
12 Exchanges, earlier, this concludes the
13 discussion of topics currently under review by
14 the Department.

15 Are there any public comments on topics
16 not presented by the Department?

17 MR. BROWN: Good morning. French Brown
18 with Dean Mead here in Tallahassee.

19 Just a couple of procedural questions or
20 comments. One is obviously addressing this is
21 the second public workshop that was required
22 under the law for the Department to handle. I
23 know that I've had a lot of questions from
24 clients, and I'm sure the public would be very
25 interested to know when the Department is going

1 to stop accepting written comments. Obviously,
2 the report is due February 1st. There's going
3 to have to be some deadline. But if the
4 Department can provide guidance to the public
5 about when those comments need to be in, as
6 people are still formulating their comments and
7 getting them to the Department.

8 The second question is, one of the other
9 requirements in the report is that the
10 Department conduct an estimate for the
11 potential fiscal impact for each one of these
12 14 issues. I'm sure the public would be very
13 interested to hear how the Department
14 anticipates maybe formulating that, to be able
15 to put that and what that process is going to
16 look like, if there's going to be public
17 involvement and so on for that portion of the
18 report.

19 Thank you.

20 MR. HAMILTON: Thank you.

21 MS. EAGLE: Are there any additional
22 comments from the public?

23 (No response.)

24 Any comments from electronic participants?

25 (No response.)

1 On behalf of the Department, I want to
2 thank everyone for participating and sharing
3 your comments with us. Your participation is
4 very helpful during this process.

5 The transcript from today's meeting will
6 be posted on the Department's website at
7 floridarevenue.com/CITReview as soon as it is
8 received. It normally takes about two weeks
9 from the meeting to be transcribed.

10 Any additional comments you may have after
11 this meeting may be submitted to
12 CITReview@floridarevenue.com. All public
13 comments are posted to the Department's
14 website.

15 This concludes the meeting.

16 (Whereupon, the meeting was adjourned at
17 9:43 a.m.)

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C E R T I F I C A T E

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STATE OF FLORIDA)
COUNTY OF LEON)

I, Doreen Mannino, Court Reporter, do
hereby certify that I was authorized to and did report
in stenotypy and electronically the foregoing
proceedings, and that the foregoing pages constitute a
true and correct transcription of my recording thereof.

IN WITNESS WHEREOF, I have hereunto affixed
my hand the 10th day of November 2018 at Tallahassee,
Leon County, Florida.

Doreen M. Mannino

PUBLIC COMMENT #1

Debbie Longman

From: GVD PARTNERS <gvdpartners@gmail.com>
Sent: Thursday, May 3, 2018 10:32 AM
To: CITReview
Subject: CIT Review Comments

Hi,
It has absolutely no impact on my job creation.
Will not hire any one.
Prefer to keep the saving for myself.

What we need is the expansion of ACA to small companies like mine so can provide health care coverage to my employees.

Best

Gilles Viger
GVD Partners, llc

PUBLIC COMMENT #2

Debbie Longman

From: w kempton <wnkenterprises@gmail.com>
Sent: Thursday, May 3, 2018 11:40 AM
To: CITReview
Subject: Tax cuts of 2017

Great for the owner. This is putting more money in his pocket. Salaries have not increased and there will not be any new hires. In fact there will probably be cut backs.

PUBLIC COMMENT #3

Debbie Longman

From: Beomseok Seo <beomseok.seo@gmail.com>
Sent: Saturday, May 5, 2018 4:56 PM
To: CITReview
Subject: Re: Florida Corporate Income Tax Review

Doesn't help small businesses at all with higher rate...mostly good for big corporations.

On Thu, May 3, 2018 at 10:25 AM, e-Mail Subscription Administrator <webmail@floridarevenue.com> wrote:

In response to [Chapter 2018-119, Laws of Florida](#), the Florida Department of Revenue is conducting research on the impact of the federal Tax Cuts and Jobs Act of 2017 on Florida businesses and the Florida Corporate Income Tax. The Department of Revenue is currently soliciting public comments on this topic. If you would like to provide feedback on the effect of the Tax Cuts and Jobs Act of 2017, please visit the Department's [Corporate Income Tax Review web page](#). Additional information is provided through the web page, including links to relevant materials and specific information about how to contact the Department to submit comments.

Florida Department of Revenue, [5050 W Tennessee St Bldg L, Tallahassee, FL 32399-0112](#)

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Best regards,
B. Ben Seo
919-809-2776

PUBLIC COMMENT #4

Debbie Longman

From: John Mascaro, CPA <john.mascaro@saltmarshcpa.com>
Sent: Wednesday, May 16, 2018 4:56 PM
To: CITReview
Subject: TCJA FL Comments

Corporate Income Tax Review
c/o Director of Legislative and Cabinet Services
Department of Revenue
P.O. Box 5906
Tallahassee, Florida 32314-5906

To Whom It May Concern:

While **not specifically impacted by the Tax Cuts & Jobs Act** we would hope and presume that for purposes of the Florida corporate income tax return F-1120, an Other Subtraction will be permitted for the **federal employment retention wage credit** afforded as result of hurricanes or other storms that impacted Florida taxpayers who closed down their offices due to the storm(s), yet retained Florida workers on their payroll during that time. As you know, for federal purposes, taxpayers generating such employment related federal tax credits must also reduce the federal deduction for wages/salaries for the year generated for federal purposes and thereby increases federal taxable income (the starting point for the Florida F-1120 return) income tax computation. As you are surely also aware, the **federal employment retention credit**, while similar to other federal employment credits, is a new credit and is why we raise the issue.

Not to allow a Florida Other Subtraction for the **federal employment retention credit** would seem contrary to the spirit of the Florida statute and Regulations in this regard which also allows for a Florida Other Subtraction, for example, in the case of Work Opportunity Tax Credits.

Just hoping to point this out unless it has already been addressed.

Best regards and respectfully submitted,

John Mascaro

John Mascaro, CPA | Technical Director, Tax Research and Planning

Saltmarsh
Saltmarsh, Cleaveland & Gund

CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

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PUBLIC COMMENT #5

Debbie Longman

From: Evan Hoffman <ehoffman@ofii.org>
Sent: Wednesday, June 13, 2018 3:10 PM
To: CITReview
Subject: CIT Review Comments
Attachments: OFII comment letter to Corporate Income Tax Review.pdf

To whom it may concern,

Please find attached comments from the Organization for International Investment (OFII) urging the state to decouple from IRC Section 163(j).

Thank you!

Best regards,

Evan Hoffman
Director, State Government Affairs
Organization for International Investment
1225 Nineteenth Street, N.W.
Suite 501
Washington, DC 20036
T 202.659.1903 | **M** 908.217.6378
[OFII](#) | [FOLLOW](#) | [LIKE](#)



June 13, 2018

Corporate Income Tax Review
c/o Director of Legislative and Cabinet Services
Department of Revenue
P.O. Box 5906
Tallahassee, Florida 32314-5906

To whom it may concern:

On behalf of the Organization for International Investment (OFII), I urge the state to decouple from the new interest expense deductibility limitations under IRC §163(j). Decoupling from this provision would remove a corporate tax increase, alleviate compliance concerns and ensure the state remains competitive for international investment.

OFII is a trade association representing the U.S. subsidiaries of international companies, including over 80 Florida employers. OFII's membership list is enclosed. OFII advocates for non-discriminatory treatment of U.S. subsidiaries and promotes policies that will encourage them to grow in the United States.

International companies are significant to the U.S. economy. They employ 327,200 Florida workers.¹ In the past five years, jobs provided by international firms in Florida grew by 40.5 percent vs. the state's overall private-sector growth rate of 15.6 percent. Nationwide, international companies produce 23 percent of U.S. exports, fund 16 percent of U.S. research and development efforts, account for 20 percent of the U.S. manufacturing workforce and pay 24 percent higher compensation than the economy-wide average.

Enclosed is OFII's policy principles document, which outlines several reasons for why states should decouple from IRC §163(j) to ensure international competitiveness. This issue is even more important to Florida for the following reasons:

- Conforming to IRC §163(j) represents a significant corporate tax increase by limiting taxpayers' ability to deduct interest expense. Analysis shows that conforming to IRC §163(j) would increase the federal corporate income tax base by 6.4 percent.² In any year, base broadening to this extent would be realized only after thoughtful debate in the state legislature to understand whether higher taxes achieve worthwhile policy goals.
- Congress limited interest deductibility to pay for a lower federal corporate income tax rate, accelerated depreciation and immediate expensing. Florida should therefore

¹ Data is from the U.S. Department of Commerce's Bureau of Economic Analysis. Released October 2017.

² "The Impact of Federal Tax Reform on State Corporate Income Taxes," prepared by EY for the Council on State Taxation, and its affiliate, the State Tax Research Institute. Released March 5, 2018.

decouple from IRC §163(j) because the state already decouples from federal bonus depreciation and expense deductions to the extent that such deductions exceed \$128,000.³

- Florida taxpayers file state returns on a separate entity basis, but are preparing to determine interest limitations for federal returns on a federal consolidated group basis.⁴ This ambiguity may make state compliance to IRC §163(j) difficult for taxpayers, lead to tax increases and increase administrative costs for taxpayers and tax authorities.
- Florida has excelled at attracting international investment. More than 1,210 global employers have operations in Florida, and almost 5 percent of the state's workforce is employed by international investors. Conforming to IRC §163(j) would increase the cost of capital and raise taxes on Florida employers. By decoupling, Florida would keep its competitive edge.

Other states are seizing the opportunity to improve their business environments this year. Connecticut, Georgia, Indiana, Tennessee and Wisconsin decoupled from the interest expense limitations in IRC §163(j).⁵ In addition, legislation decoupling from IRC §163(j) also passed the South Carolina House unanimously and will be considered in a special session on June 27.⁶ As many of these states compete with Florida for jobs and investment in the region, the state should join these states in decoupling from IRC §163(j) to remain competitive.

Thank you for considering this request. If you have questions, please contact me at ehoffman@ofii.org or (202) 659-1903.

Sincerely,



Nancy McLernon
President and CEO, Organization for International Investment

³ H.B. 7093, Sec. 2, amending Fla. Stat. §220.13(1)(e)1.

⁴ The U.S. Treasury Department issued a notice explaining that they intend to issue rules regarding how interest limitation and its carryforward will be determined at least on a federal consolidated group basis. However, even with this notice, Florida taxpayers file on a separate entity basis, which will differ from their federal consolidated group, creating complexities and uncertainties.

⁵ Georgia decoupled from IRC §163(j) in H.B. 918, enacted March 2. Wisconsin decoupled from IRC §163(j) in A.B. 259, enacted April 3. Indiana decoupled from IRC §163(j) in H.B. 1316, enacted May 14. Connecticut decoupled from IRC §163(j) in S.B. 11, enacted May 31. Tennessee decoupled from IRC 163(j) in SB 2119, enacted May 21.

⁶ The South Carolina House passed H.B. 5341 unanimously, which decouples from IRC §163(j). This bill is part of a special session to be held on June 27.

Decouple from IRC §163(J) to Be Competitive for International Investment

International Investment Grows America's Economy

- **Supporting Millions of High-Quality Jobs:** International companies employ 6.8 million U.S. workers providing compensation that is 24 percent higher than the economy-wide average.
- **Growing America's Manufacturing Sector:** International firms are responsible for one-in-five of all U.S. manufacturing jobs. In fact, two-thirds of the manufacturing jobs created in the past few years can be attributed to FDI.
- **Fueling American Innovation:** American scientists and engineers employed by international companies are leading our nation's innovation advantage. International employers spend more than \$57 billion on research and development activities, or 16 percent of America's private-sector R&D.
- **Exporting American-Made Goods:** U.S. workers of international companies produce 23 percent of U.S. exports, shipping nearly a billion dollars in goods a day to customers around the world.
- **Importing World-Class Workforce Training Programs:** These companies also "import" world-class workforce training programs and help spur U.S. productivity.
- **FDI Makes America's Economy More Resilient:** After all, international companies help broaden the U.S. economy, open new markets and give other countries a stake in America's economic success.¹

Conformity Done Right Will Increase Competitiveness for International Investment

The new federal tax law drops the federal corporate income tax rate to 21 percent and adds new base broadeners. Given this seismic shift in tax policy, conformity to all Internal Revenue Code provisions could have unintended state-level policy consequences as federal base broadeners were carefully considered and implemented alongside the rate reduction to achieve policy objectives. Without a review of these state-level unintended consequences, conforming to the new tax code in its entirety could reduce a state's international competitiveness.

Therefore, states should decouple from the new interest expense limitations imposed under IRC §163(j) to best position themselves for international investment. Decoupling from IRC §163(j) is also smart tax policy for the following reasons:

- States would act consistently with the federal tax law's policy objective of increasing competitiveness for investment and spurring economic growth and job creation.
- States would remove threats of multiple taxation and ensure fair apportionment of income.
- States would avoid creating computational uncertainty and unnecessary administrative complexity for both taxpayers and taxing authorities.

¹ All data is the latest available from the U.S. Department of Commerce, released October 2017.

The new federal tax law limits interest deductibility to 30 percent of a taxpayer's adjusted taxable income. This rule applies to almost all taxpayers² and to both related party and unrelated party interest expense. It also allows for unlimited carryforwards of disallowed interest expense. States should decouple from IRC §163(j) for the following reasons:

- **Taxpayers could face higher effective state tax rates through conformity to IRC §163(j):** Congress imposed tighter interest expense limitations to pay for a lower federal tax rate, accelerated depreciation and immediate expensing. Unless states also lower rates and conform to the new federal bonus depreciation and immediate expensing rules, conforming to IRC §163(j) would misalign with congressional intent and could increase every state taxpayer's effective tax rate, as described below.³
 - First, taxpayers face tighter interest limitations to help pay for a lower federal corporate income tax rate. A corporate taxpayer's state tax liability may increase significantly if a state conforms to IRC §163(j) without a simultaneous lowering of the state's corporate income tax rate.
 - Second, as a preliminary matter, states that decouple from the new bonus depreciation and immediate expensing rules in IRC §168(k) and §179 should also decouple from the IRC §163(j) interest limitations. Congress clearly intended the interest expense limitation rule to work concurrently with new bonus depreciation and immediate expensing rules. Together, these rules encourage businesses to invest immediately in the United States, but without over-relying on debt financing. However, most states decouple from federal bonus depreciation schedules and immediate expensing rules. Therefore, conforming to §163(j) without conforming to IRC §168(k) and §179 would misalign with Congress's intent and result in corporate state tax increases.
- **Taxpayers and tax administrators would face significant federal and multistate complexity if the states conform to IRC §163(j):** The new federal tax law applies the new 30 percent interest deductibility limitation at the "taxpayer" level – a term undefined in the statute. To date, the U.S. Department of Treasury has not issued guidance regarding how the interest limitation and its carryforward will be determined.⁴ Therefore, many taxpayers could be confused by how the interest limitation will apply because their state filing group may differ from their federal filing group.⁵ This ambiguity would make state compliance to IRC §163(j) almost impossible for taxpayers. States that conform to IRC §163(j) could end up increasing administrative costs for both taxpayers and taxing authorities.

² It does not apply to real estate, public utilities, farmers or "floor plan financing" (essentially, automobile dealership inventory carrying costs).

³ *The Impact of Federal Tax Reform on State Corporate Income Taxes*, prepared by EY for the Council on State Taxation, and its affiliate, the State Tax Research Institute. Released March 5, 2018. The report shows that state corporate income tax bases will increase by 12 percent on average over a 10-year period, with significant variations between the states. The report cites conformity to IRC §163(j) as one provision, among many cited, that will contribute to this increase in state corporate income taxes.

⁴ While guidance has yet to be issued, federal tax policy officials have publicly announced that the U.S. Treasury Department will issue guidance confirming that the interest limitation and its carryforward will, at a minimum, be determined at the federal consolidated group level. They have also indicated that the guidance will provide clear rules for allocating the interest expense limitation, consistent with other long-standing and existing consolidated group attribute allocation rules (e.g., deferred intercompany transactions, consolidated IRC §382 loss limitation rules, separate return limitation year (SRLY) rules) intended to fairly allocate the limitation among members of the group respecting separate entity reporting. However, even with this guidance, a taxpayer's state filing group, which may be on a standalone or a group basis, may differ from its federal filing group. This would create similar complexities and uncertainties.

⁵ A taxpayer's state reporting group often looks different than its federal filing group. For instance, over twenty states require taxpayers to file separate company returns under which group reporting is not allowed. In many cases, a taxpayer's state reporting group includes many more entities than its federal filing group. For example, depending upon a taxpayer's unitary group, members of multiple federal consolidated groups could be members of the same state reporting group, or the state could require worldwide or water's-edge reporting that includes foreign corporations that are expressly excluded from the federal consolidated group. A taxpayer's state group could also include fewer or more entities than its federal group. For instance, the federal group may consist of multiple state unitary groups or a state may only allow a group report for corporations which have nexus with the state or may exclude corporations engaged in certain kinds of business from the group because they are not subject to state income taxes (e.g., insurance companies and banks).

- **In addition to the complexity, conforming to IRC §163(j) may result in tax costs unintended by the federal provision:** If the U.S. Department of Treasury clarifies that IRC §163(j) should apply on a group basis, state application of IRC §163(j) on any other basis may result in an interest disallowance where none would occur at the federal level. Companies structure their debt financing knowing that their taxable income is computed on a consolidated basis at the federal level, which is why Treasury is expected to clarify that the new IRC §163(j) limit will apply at least at a consolidated level. If states were to apply these limits differently, taxpayers could see more significant limitations on interest expense deductibility or higher state taxes. In addition, applying limitations differently would create complex and costly administration for both taxpayers and taxing authorities.
- **Taxpayers' interest deductibility is already limited by states, making conformity to IRC §163(j) unnecessary:** Most states already limit or otherwise disallow interest deductions for their own tax policy purposes. In many cases, the states were far ahead of the federal government in this area and their rules may be even more restrictive. For example, many states limit the deductibility of interest paid to related parties through addback requirements. These are effective tools that prevent state tax base erosion. They also provide narrow exceptions, which include among others, for interest paid to related parties in countries that have a comprehensive tax treaty with the United States or that is subject to tax by another jurisdiction. It is unclear how the new interest expense limitation rules in IRC §163(j) would conflict with existing state addback rules. If states conform to IRC §163(j), a possibility exists of duplicate limitation on interest deductibility, resulting in double taxation of the affected state taxpayers. Decoupling from IRC §163(j) would minimize this uncertainty and unnecessary complexity.
- **Decoupling from IRC §163(j) would keep states competitive for international investment:** Consider how international companies grow and expand in the United States. They often borrow from a related party or bank to finance investment in the United States. Imposing tighter interest limitations at the state level, without offering a lower tax rate or providing accelerated depreciation and immediate expensing, would increase the cost of capital and impose a higher threshold to be profitable. This new hurdle could result in an investment being altered in a way that firms no longer see the return needed to justify the investment. They then could make that investment in another state.

For additional information on OFII or with questions about conformity, please contact Evan Hoffman, director of state government affairs, at ehoffman@ofii.org.

About OFII

OFII is the only organization in Washington focused exclusively on supporting the international business. OFII members are among the largest international companies with operations in the United States. While more than 60 percent of all international companies in the United States have fewer than 1,000 U.S. employees, OFII members each employ on average of more than 12,000 Americans. OFII advocates for fair, non-discriminatory treatment of foreign-based companies and promotes policies that will encourage them to establish U.S. operations, which in turn increases American employment and U.S. economic growth.

2018 OFII Membership List

ABOUT OFII The Organization for International Investment is a not-for-profit business association in Washington, D.C., representing the U.S. operations of many of the world's leading international companies. OFII advocates for fair, non-discriminatory treatment of foreign-based companies and promotes policies that will encourage them to establish U.S. operations, increase American employment and boost economic growth to ensure the United States remains the top location for global investment. For more information, please visit www.OFII.org.

A

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B

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Garmin International, Inc.
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L'Oréal USA, Inc.
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LVMH Moët Hennessy Louis
Vuitton
LyondellBasell

M

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Mahindra
MAHLE Industries
Magna International
Mallinckrodt
Marubeni America Corporation
Marvell Semiconductor
Mazda
McCain Foods USA
Medtronic, Inc.
Michael Kors
Michelin North America, Inc.
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Mizuho Bank, Ltd.

N

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Nestlé USA, Inc.
The Nielsen Company
Nissan
Nokia
Nomura Holding America, Inc.
Novartis Corporation
Novo Nordisk Pharmaceuticals

O

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Ørsted North America Inc.

P

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Pearson Inc.
Permobil
Pernod Ricard USA
Philips North America LLC

Philips Lighting North America
Corp.
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Q

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Rassini International Inc.
RELX Group
Restaurant Brands International
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S

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Safran USA
Samsung
Sanofi US
SAP America
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Schott North America
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Siemens Corporation
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T

Takeda North America
The Tata Group
Tate & Lyle

TE Connectivity
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W

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WPP Group USA, Inc.

Z

Zurich Insurance Group

PUBLIC COMMENT #6

Debbie Longman

From: Rees, Jonathan <Jonathan.Rees@anheuser-busch.com>
Sent: Thursday, August 16, 2018 6:18 PM
To: CITReview
Cc: O'Connor, Victoria; Gerjoi, Isabela; Lopez, Naomi
Subject: Anheuser-Busch Comment Letter - FDOR Review of the Tax Cuts and Jobs Act of 2017
Attachments: AB Florida Comment Letter.pdf

Good afternoon,

Anheuser-Busch Companies respectfully submits the following comment letter urging the state to decouple from the new interest expense limitations under IRC §163(j), as amended under the Tax Cuts and Jobs Act (2017).

Thank you,



Jonathan Rees
Senior Manager, State Affairs

Anheuser-Busch
PO Box 836
Tallahassee, FL 32302

Mobile: 850.570.0043
Email: Jonathan.Rees@Anheuser-Busch.com

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Anheuser-Busch
One Busch Place
St. Louis, MO 63118
Anheuser-busch.com



ANHEUSER-BUSCH

Via Electronic mail and First Class Mail

Corporate Income tax Review
c/o Director of Legislative and Cabinet Services
Department of Revenue
P.O. Box 5906
Tallahassee, FL 32314-5906

August 16, 2018

Dear Director,

Anheuser-Busch Companies respectfully submits the following comment letter and urges the state to decouple from the new interest expense limitations under IRC §163(j), as amended under the Tax Cuts and Jobs Act (2017) (“TCJA”). Decoupling from this provision would reverse a corporate tax increase and ensure the state remains competitive without causing undue harm to the tax revenues of the State of Florida.

Anheuser-Busch is one of America’s most iconic companies and honored to be the leader of the U.S. beer industry. We are proud of our history and heritage and remain committed to brewing the great-tasting, high-quality beers that have satisfied beer drinkers for generations. We operate more than 100 facilities across 27 states and employ more than 18,000 colleagues nationwide. In the Southeast region, we employ more than 1,600 people at our two breweries in Cartersville, GA, and Jacksonville, FL. Our Jacksonville brewery produces more than a dozen Anheuser-Busch brands, including Budweiser and Bud Light—two of the world’s best-selling beers, and the brewery distributes primarily locally to the southeast. In Florida alone, Anheuser-Busch employs more than 980 people with a payroll of \$94 million.

We are confident in the future of American brewing and are committed to the communities where we live and work, which is why we have made \$1.2 billion in investments in Florida since 1969. In 2015, we announced a \$175 million investment to our local Metal Container Corporation (MCC) plant, which celebrated the new expansion in 2017 and includes the production of the popular aluminum bottle. The investment expanded our presence and created roughly 75 new jobs at the facility. Last year, we announced an \$11 million investment to our Jacksonville brewery to expand upon our aluminum bottle capabilities and improve energy efficiency.

As a strong supporter of Florida’s economy, Anheuser-Busch supports tax reform that will lead to increased investment, job growth, and keeping Florida competitive. However, on March 23, 2018, Florida House Bill 7093 was enacted, which conformed to the Federal law and included amended section 163(j) that imposes limitations on interest deductibility. Conforming to the TCJA will result in an increase in taxes, leading to a higher cost of capital for investments and an increase in administrative costs, reducing Florida’s competitive advantage. An EY study published by the Council on State taxation (COST) predicts that in conforming to the TCJA, states will, on average, see an increase of the corporate tax base of 12 percent, with Florida coming in with *an above-average increase* of 13 percent.

LinkedIn: <https://www.linkedin.com/company-beta/4510>

Facebook: <https://www.facebook.com/AnheuserBusch/>

Instagram: @anheuserbusch



ANHEUSER-BUSCH

Florida can remain competitive, keep tax rates low, and cover budget short falls without having to raise taxes due to the overall impact of the TCJA. By conforming and decoupling from IRC §163(j), Florida would reaffirm its widely-recognized reputation as a state that aligns its tax policies with international norms, keeping the state competitive for local growth and investment.

Thank you for your work to keep Florida friendly to taxpayers and open for business.

Sincerely,

Isabela Gerjoi B. de Souza
VP, Income Taxes

PUBLIC COMMENT #7

Debbie Longman

From: Ferdinand Hogroian <FHogroian@cost.org>
Sent: Monday, August 20, 2018 10:59 AM
To: CITReview
Cc: Karl Frieden
Subject: Comments for August 22 Corporate Income Tax Review Public Meeting
Attachments: 08202018 COST FL Corporate Tax Conformity Letter.pdf

Florida Department of Revenue, Corporate Income Tax Review
c/o Ms. Debra J. Longman, Director of Legislative and Cabinet Services

Dear Ms. Longman,

Attached please find testimony from Karl Frieden, Vice President & General Counsel at the Council On State Taxation (COST), for consideration at the Department's August 22 Corporate Income Tax Review public meeting. Mr. Frieden also intends to provide oral comments telephonically at that meeting.

Sincerely,

Ferdinand S. Hogroian, Senior Tax & Legislative Counsel
Council On State Taxation (COST)
122 C St., N.W., Suite 330, Washington, DC 20001
(W) (202) 484-5228
FHogroian@cost.org



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Frances B. Sewell
NextEra Energy, Inc.

Andrew H. Solomon
L3 Technologies, Inc.

Karl A. Frieden

Vice President, General Counsel
(202) 484-5215
kfrieden@cost.org

August 20, 2018

Florida Department of Revenue
Corporate Income Tax Review
c/o Ms. Debra J. Longman, Director of Legislative and Cabinet Services

Via e-mail: CITReview@floridarevenue.com

Re: August 22 Public Workshop – Topics Under Review, Items J. (Global Intangible Low-Taxed Income) and L. (Net Interest Deduction)

Dear Ms. Longman:

On behalf of the Council On State Taxation (COST), I write to provide COST's research and analysis regarding conformity issues for Florida with federal tax reform (the Tax Cuts and Jobs Act of 2017). COST appreciates that the Department's August 3, 2018 Status Report cites our research on the corporate income tax base impact of state conformity to federal tax reform.¹

In this testimony, I wish to highlight two critical issues to corporate taxpayers, included as Items J. and L. in the Department's Status Report: global intangible low-taxed income, or GILTI, under I.R.C. Sec. 951A; and limitations on the net interest deduction under I.R.C. Sec. 163(j). For the reasons cited below, COST believes the Department should recommend that the Legislature decouple from both of these federal corporate tax provisions.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 550 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. COST has a significant number of members that own property, have employees, and make substantial sales in Florida.

¹ *The Impact of Federal Tax Reform on State Corporate Income Taxes*, by EY for the State Tax Research Institute (STRI), March 2018, available at: <https://cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/cost-federal-tax-reform-3-1-2018-cost-v2.pdf>. STRI is a subsidiary of COST.

Global Intangible Low-Taxed Income

Over the last 30 years, states have generally limited their corporate income tax base to the water's edge (*i.e.*, to income earned in the U.S.). With federal tax reform, the federal government is moving from the taxation of all foreign source income primarily on a “deferred” basis to taxing a more limited range of foreign source income – including global intangible low-taxed income (GILTI) – primarily on a “current” basis. However, federal taxation of GILTI is very different than state taxation of GILTI from both a policy and a practical outcome perspective.

First, Congress is raising \$324 billion over 10 years from the international tax reform provisions (including GILTI) to help pay for \$654 billion over 10 years in other business tax reform cuts. The states, by contrast, do not conform to the federal corporate tax rate cuts and therefore have no reason to expand their tax base to make up for the lost revenue. Conforming to the GILTI provisions would represent a selective and arbitrary conformity that harms a segment of Florida businesses competing internationally, without advancing any compelling tax policy goal for the state.

Second, at the federal level, the focus of the GILTI provision is to include in the federal income tax base “low-taxed” foreign source income – basically income that is taxed in foreign countries at less than 13.125 percent. To achieve this practical outcome the federal government imposes a tax rate of 10.5 percent (one-half of the federal statutory rate) on the GILTI income and allows a credit for 80 percent of foreign taxes paid on such income. However, state corporate income tax laws in Florida and in other states do not allow for foreign tax credits, and therefore all of the GILTI income, from low and high-tax countries, would be subject to state corporate income tax. This would constitute a vast and unprecedented expansion of the state corporate income tax base to include previously untaxed foreign earnings.

As a result, to date, eleven states have decoupled from the GILTI provisions and more are likely to follow. Among the states decoupling (by new legislation or administrative action) from GILTI are Connecticut, Georgia, Hawaii, Indiana, Kentucky, Michigan, North Carolina and Wisconsin. Further, Illinois, Montana, and South Carolina do not include GILTI in their corporate tax base due to existing decoupling from the Internal Revenue Code.

For these reasons, COST supports legislation or regulatory guidance that would decouple Florida completely from GILTI. However, even without decoupling legislation, Florida is likely foreclosed from taxing GILTI under the U.S. Constitution's Commerce Clause. U.S. Supreme Court precedent forbids discriminatory taxation against foreign commerce (*see Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue and Finance*, 505 U.S. 71 (1992)). Because Florida does not tax similar domestic income earned by U.S. subsidiaries of Florida corporate taxpayers, GILTI is likely beyond Florida's taxing authority.

Interest Expense Limitation

Corporate tax “base broadeners” under federal tax reform funded, in part, the substantial reduction in federal corporate tax rates to make the U.S. more competitive internationally. As noted above, these rate reductions do not flow through to the states, and therefore updating

Florida's conformity results in a substantial corporate income tax increase. The largest component of this base increase over the 10-year period is the interest expense limitation under I.R.C. Sec. 163(j) that will increase the Florida corporate tax base by an average of more than 7% over the next 10-year period. This outcome is inadvertent and arbitrary, based solely on mechanical state conformity with the federal corporate tax base broadeners but not the federal corporate tax cuts.

The state-specific outcomes are inconsistent in other ways with the goals of federal tax reform. For example, the new federal law provides for immediate expensing of capital assets, but Florida is already decoupled from federal "bonus" depreciation. Therefore, this benefit, available at the federal level, is not available to Florida taxpayers for their capital investments, but Florida taxpayers at the same time are limited in their ability to deduct interest expense on financing such investments.

Moreover, the I.R.C. Sec. 163(j) provisions are not tailored to abusive or distortive intercompany lending. Rather, the provisions limit interest expenses across the board, for both intercompany and third-party borrowing, and thus impact all borrowing by Florida taxpayers for both business operations and investment/expansion, *without exception*. This result harms Florida's competitiveness, especially in light of the actions (or policy) of other southeastern states to decouple from the provisions (see, *e.g.*, Georgia, Mississippi, and Tennessee).

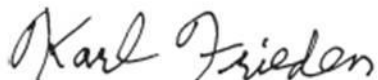
Applying the interest expense limitation in Florida will also significantly increase the complexity of corporate tax compliance, and much remains to be determined, both at the federal level and by the Florida Department of Revenue, on how to implement this provision. It is uncertain how the interest expense limitation will be computed and reflected in federal consolidated return filings, and commensurately how to determine if, and in what amount, the limitation would apply at the separate state filing level. No state has answered these questions to date (and answers to these questions will depend on federal guidance yet to be issued). For all of the above reasons, COST supports legislation that would decouple Florida completely from the interest expense limitation.

Conclusion

Florida should consider decoupling from provisions of federal tax reform that would otherwise inadvertently expand the corporate tax base and harm Florida's competitiveness for business investment and growth, such as "GILTI" and the interest expense limitation, which together would expand the Florida corporate tax base by an average of 10% over the next ten-year period.

I am happy to answer any questions regarding this testimony or COST's research on this issue.

Respectfully,



Karl A. Frieden

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

PUBLIC COMMENT #8

Debbie Longman

From: Quinn, Kathleen <Kquinn@mwe.com>
Sent: Tuesday, August 21, 2018 6:11 PM
To: CITReview
Cc: McLoughlin, Alysse; Smith, Diann; Kranz, Stephen P; Carstens, Eric
Subject: Comments re Florida's Response to TCJA
Attachments: STAR Florida DOR.pdf

Dear Sir or Madam,

On behalf of the State After Tax Reform (STAR) Partnership, attached please find comments and suggestions regarding Florida's treatment of certain provisions of the federal tax reform bill (the Tax Cuts and Jobs Act) passed by Congress in December 2017. We plan on participating in the Public Hearing tomorrow to discuss the issues raised in our letter.

Please contact us with any questions or if you would like to discuss.

Kathleen M. Quinn
Associate

McDermott Will & Emery LLP · 340 Madison Avenue · New York, NY 10173-1922
Tel +1 212 547 5718 · Fax +1 212 547 5444

[Website](#) | [vCard](#) | [Email](#) | [Twitter](#) | [LinkedIn](#) | [Blog](#)

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Please visit <http://www.mwe.com/> for more information about our Firm.

August 21, 2018

VIA CERTIFIED MAIL AND EMAIL

Corporate Income Tax Review
c/o Director of Legislative and Cabinet Services
Department of Revenue
PO Box 5906
Tallahassee, Florida 32314-5906

Dear Sir or Madam:

We represent the State Tax After Reform (“STAR”) Partnership, a coalition of 24 companies that was formed to help the business community navigate the state legislative, executive, and regulatory reaction to the federal tax reform bill passed in December 2017, the Tax Cuts and Jobs Act (“TCJA”).¹ We are writing to express our comments and suggestions regarding Florida’s response to the TCJA.

As a preliminary matter, if Florida conforms to certain provisions from the TCJA, the result will be an increased cost of doing business in Florida. Conforming to IRC section 163(j)(the interest expense deduction limitation), IRC section 951A (the taxation of global intangible-low taxed income (“GILTI”)), and IRC section 118 relating to capital contributions may hamper Florida’s ability to remain competitive against other states like Georgia and Virginia, which effectively decouple from such provisions.

Deemed Repatriated Foreign Earnings: We support Florida’s current treatment of deemed repatriated foreign earnings. As a result of Florida’s recent guidance, 2018 conformity legislation, and existing statutes, Florida excluded foreign earnings deemed repatriated under IRC section 965 from the state tax base. Excluding deemed repatriated foreign earnings from the tax base is consistent with historic policy in Florida. Generally, states do not include world-wide income in the tax base. Inclusion of deemed repatriated foreign earnings is contrary to this policy because it would be taxation of income earned in a foreign trade or business. Furthermore, excluding such foreign earnings avoids significant apportionment complexity and potential disputes. Finally, as the tax on deemed repatriated foreign earnings was a one-time imposition adopted by the federal government in 2017, Florida would risk retroactivity problems should it seek to change its current treatment.

¹ Please visit our website (www.star-partners.org) for more information about the STAR Partnership and our work.

Assuming Florida continues to exclude such income, Florida should work with the business community to provide clarifying guidance regarding whether there are expenses related to this income.

GILTI (IRC § 951A): We suggest Florida confirm that GILTI is deductible as income treated similarly to Subpart F income. Florida law provides a deduction from the state tax base for amounts included in taxable income under IRC section 951, referred to as Subpart F income. The Florida Legislature or Florida Department of Revenue should clarify that this deduction applies to GILTI because GILTI is treated similarly to Subpart F income for federal income tax purposes. In fact, the TCJA conference report specifies that GILTI is generally treated similarly to Subpart F inclusions. H.R. Rep. No. 115-466 (2017).

Excluding GILTI from the tax base is consistent with historic policy in Florida. Generally, states do not include world-wide income in tax base. Inclusion of foreign earnings is contrary to this policy because such inclusion would result in taxation of income earned in a foreign trade or business. Furthermore, at the federal level, taxation of GILTI is supposed to reach only that income attributable to “low-tax” foreign jurisdictions; this is accomplished by use of foreign tax credits. Florida does not apply foreign tax credits, so including such income would result in taxing much more than income earned in low-tax jurisdictions. Furthermore, providing a 100% deduction for amounts included in income under IRC section 951A avoids significant apportionment complexity and potential disputes.

Assuming Florida excludes such income, Florida should work with the business community to provide clarifying guidance regarding whether there are expenses related to this income.

Interest Expense Limitation: Florida should decouple from the interest expense limitation of IRC section 163(j). Unlike the federal interest expense limitation being added at the federal level as a companion to the expensing provisions and the rate reduction, Florida has not included similar provisions. Federal drafters coupled interest expense limitations with the rate cut and expensing provisions to ensure that taxpayers do not get a double benefit by purchasing certain assets that are eligible for expensing by means of excessive borrowings that would result in an interest expense deduction. Therefore, because Florida decouples from the expensing provisions, it is both logical and fair that it should also decouple from the interest expense limitation.

Conformity may also require additional resources to respond to the increased complexity caused by having to apply the federal interest expense deduction limitations of 163(j) in Florida. For example, because Florida is generally a separate return state, separate computations would be needed for each separate return filed in the state. Furthermore, the Florida Legislature or Department of Revenue will need to spend a significant amount of time drafting rules concerning a myriad of issues, including: whether carried-forward interest expense will be based on the taxpayer’s apportionment in the year that the interest expense is paid or in the year that the interest expense is used; how to account for the carried-forward interest expense when there is a change of ownership in the taxpayer; and whether to address the likely double taxation when intercompany interest income is taxed, while the related interest expense is subject to the limitation disallowance.

The limitation provides no material benefit to the state because Florida already has provisions in place to address improper interest deductions, such as the application of transfer pricing principles. This can all be avoided by decoupling from IRC section 163(j).

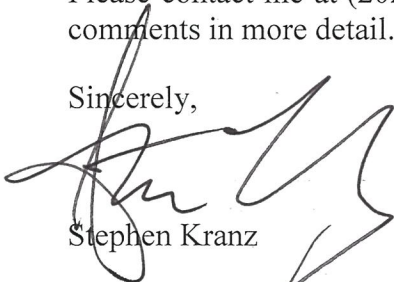
Expensing: Florida should revisit its historic decoupling from federal depreciation provisions and conform to IRC section 168(k). The federal government has provided companies with the ability to immediately deduct the cost to purchase certain assets in an attempt to stimulate the economy and encourage companies to make capital investments. Florida should do the same as decoupling negatively impacts companies with a significant presence in Florida. Such an approach would similarly make Florida an attractive location for investment.

Capital Contributions: Florida should conform to IRC section 118 as it was in effect prior to the Tax Cuts and Jobs Act. Conforming to the current version of IRC section 118 taxes corporations on contributions by governmental entities and civic groups such that state and local governmental incentives to attract and retain businesses would be taxable to the receiving corporation. If a state wants to use incentives to attract and retain businesses, imposing tax on such incentives reduces the effectiveness of such policy.

FDIC Premiums: Florida should decouple from IRC section 162(r). This federal provision disallowing a deduction for FDIC fees was included purely as a means of raising revenue to offset other provisions that reduced the overall amount of corporate federal income taxes that will be paid to the federal government. Because taxpayers are not benefitting from an overall tax reduction in Florida, there is no rationale for limiting the deductibility of FDIC fees. Furthermore, this provision negatively impacts institutions with a significant presence in Florida.

Please contact me at (202) 756-8180 if you have any questions or would like to discuss any of our comments in more detail.

Sincerely,



Stephen Kranz

Partner, McDermott Will & Emery

PUBLIC COMMENT #9

Debbie Longman

From: Carolyn Johnson <cjohnson@flchamber.com>
Sent: Friday, September 7, 2018 3:43 PM
To: CITReview
Subject: Florida Chamber Submission
Attachments: DOR Letter- TCJA.pdf

Please see the attached letter regarding the implementation of the federal Tax Cuts and Jobs Act in Florida.

Carolyn Johnson

Director of Business, Economic Development & Innovation Policy
Florida Chamber of Commerce
136 S. Bronough Street, Tallahassee, FL 32301

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Join the Conversation to Secure Florida's Future.



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September 6, 2018

Corporate Income Tax Review
c/o Director of Legislative and Cabinet Services
Florida Department of Revenue
PO Box 5906
Tallahassee, FL 32314

RE: Impact of the Tax Cuts and Jobs Act of 2017

Dear Corporate Income Tax Review Group:

The Florida Chamber of Commerce appreciates the further examination of the Tax Cuts and Jobs Act as laid out by the Legislature during the 2018 legislative session. Earlier this year, Florida became a \$1 trillion economy and Florida boasts the 4th best tax climate for businesses in the country. Florida has outpaced the nation in job growth over the last year, and Florida's unemployment rate is at its lowest in a decade. This has happened not by accident, but instead is due to a Governor, Cabinet and Legislature that have focused on sound pro-business policies, including keeping taxation low and looking at opportunities to grow the economy.

Overall, the Tax Cuts and Jobs Act has had a positive impact to businesses and individuals, but how Florida conforms to its provisions will determine its full impact in Florida. On behalf of our members, we appreciate the study areas laid forth by the Department of Revenue, and specifically recommend the state decouple from Global Intangible Low-Taxed Income (GILTI) provisions and the net interest deduction under I.R.C. Sec. 163(j).

According to the Ernst & Young LLP study commissioned by the Council on State Taxation (COST), it is estimated that Florida's tax base will expand by 13 percent as a result of the Tax Cuts and Jobs Act. The two largest "base broadeners" are GILTI and net interest deduction, which account for about 10 percent of the base expansion. These provisions were considered by Congress as a means to pay for other tax decreases contained in the package. We recommend that the state decouple from these two provisions to avoid an unintentional tax increase.

Additionally, as other states make decisions related to the Tax Cuts and Jobs Act, or decrease their corporate income tax rates as a result, it is important that Florida remain competitive. Many states, including Georgia, have decoupled from base broadening measures and reduced corporate tax rates. Florida has currently provided for a tax cut mechanism for the 2019 tax year as well as a "refund" of excess collections for 2018-2019. As other states are making permanent corporate rate reductions, Florida should also consider a permanent rate reduction to offset any tax increases as a result of the Tax Cuts and Jobs Act. Furthermore, conforming to provisions like GILTI and the net interest deduction would only broaden Florida's tax base when other states are taking action to avoid taxing companies more.

We have an opportunity to remain competitive and encourage the growth and investment of businesses in Florida. As you review these new changes to the Internal Revenue Code, we recommend the state decouples from GILTI and the net interest deduction.

Securing Florida's Future

Regards,



Frank C. Walker, III
Vice President of Government Affairs

CC: Bob Grammig, Chair, Florida Chamber of Commerce
Mark Wilson, President & CEO, Florida Chamber of Commerce
David Hart, Executive Vice President, Florida Chamber of Commerce

PUBLIC COMMENT #10

Debbie Longman

From: Jake Farmer <Jake@frf.org>
Sent: Monday, October 1, 2018 2:39 PM
To: CITReview
Cc: Melissa Ramba; Scott Shalley
Subject: CIT Review Comments
Attachments: FRF TCJS Comments.GILTI letter.pdf

To whom it may concern:

The Florida Retail Federation respectfully submits the following comment letter urging the state to decouple from the newly amended limitations on interest expense provided in IRC §163(J).

Jake Farmer

Legislative & Communications Coordinator
Florida Retail Federation | Georgia Retailers
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Tallahassee, FL 32301
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"The Voice of Florida & Georgia Retailing"
@FloridaRetail @GeorgiaRetail

October 1, 2018

Via Electronic Mail

Corporate Income Tax Review
c/o Debra Longman, Director of Legislative and Cabinet Services
Department of Revenue
P.O. Box 5906
Tallahassee, Florida 32314-5906

Re: Florida Retail Federation Comment on Corporate Income Tax Review

Dear Ms. Longman:

On behalf of the Florida Retail Federation (FRF), I strongly advise the Department decouple from the newly amended limitations on interest expense provided in IRC §163(J). Failure to decouple from this provision will punish retailers and other business establishments who borrow capital in order to invest in their Florida operations. I also advise the Department to provide clarification that Global Intangible Low-Taxed Income (GILTI) may be excluded from the state base for purposes of Florida's Corporate Income Tax. Such clarification would be consistent with the historic policy of not taxing income from international sources and avoid broader constitutional questions, which are sure to arise.

The Florida Retail Federation represents a diverse collection of retailers ranging from small, locally owned operations to large, international brands and is the voice for 270,000 retail establishments located throughout the state of Florida. FRF members are constantly looking to grow their businesses and occasionally have to make difficult choices in light of ever-increasing competition.

Interest Deduction Limitation

For many retailers, the interest deduction is a strong incentive for expansion and capital investment here in the State of Florida. If the state does not decouple from the limitation on interest expense, many of our smaller members may have to forego growth opportunities while other members may decide to invest in states that have already decoupled from this provision.

Further, leaving the limitation on interest expense intact presents a significant tax increase to Florida retailers and poses a complex administrative challenge for a sector with significant overhead costs. When combined with Florida's decoupling from bonus depreciation, the inclusion of the interest deduction is a one-two punch. Taken together, these outcomes hurt Florida's image as a tax-friendly state for large and small businesses alike.



Global Intangible Low-Taxed Income

The federal government imposes a tax on GILTI at a rate of 10.5% in order to recapture income taxed at an artificially low rate largely due to tax credits. However, Florida does not recognize foreign tax credits and therefore all GILTI income would be taxable for purposes of Florida's Corporate Income Tax. The sudden inclusion of GILTI under Florida's Corporate Income Tax would be a significant tax increase for FRF members with an international presence, who are also some of Florida's largest employers. Similar to the discussion above, this outcome could cause large retailers to shift operations to one of the many states who have already decoupled from the Tax Cuts and Jobs Act's GILTI provisions.

The inclusion of GILTI in the corporate tax base also raises significant constitutional concerns. An attempt by Florida to tax foreign-earned income would likely be met with a lawsuit under the Commerce Clause of the U.S. Constitution, and defense of such litigation would ultimately cost taxpayers even more.

In conclusion, I urge the Department to encourage investment in Florida by decoupling from the limitation on interest expense provided in IRC §163(J) and keep Florida a tax-friendly state by excluding GILTI from its Corporate Income Tax base.

Sincerely,

R. Scott Shalley
President & CEO
Florida Retail Federation

PUBLIC COMMENT #11

Debbie Longman

From: French Brown <FBrown@deanmead.com>
Sent: Friday, October 19, 2018 10:11 AM
To: CITReview
Cc: Debbie Longman; Mark Hamilton; Michael Minton
Subject: Corporate Income Tax Review
Attachments: DOR Letter - 10-16-2018 (O2236580x9F8AD).pdf

Dear Debbie,

The Tax Section of the Florida Bar respectfully submits the following comments regarding the Department's review of the 2017 Tax Cuts and Jobs Act.

We look forward to the Department's report. Please let us know if you have questions.



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October 16, 2018

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VIA E-MAIL

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Corporate Income Tax Review
c/o Debra Longman, Director of Legislative and Cabinet Services
Department of Revenue
P.O. Box 5906
Tallahassee, Florida 32314-5906

TREASURER

Brian M. Malec
Orlando
407-841-1200
BMalec@deanmead.com

Dear Ms. Longman,

IMMEDIATE PAST CHAIR

Joseph Barry Schimmel
Miami
(305) 670-0201
jschimmel@miamitaxlaw.com

The Tax Section of the Florida Bar respectfully submits the following comments regarding the state's review of the impacts of the Tax Cuts and Jobs Act of 2017 (TCJA). The Tax Section identified a number of changes made by the TCJA, which merit further review by the Department and ultimately, the Florida Legislature. The identified TCJA changes include:

BOARD LIAISON

Dennis G. Kainen
Miami
(305) 374-5544
dkainen@wkm-law.com

- Net Interest Deduction Limitation
- Repatriated Foreign Income
- Global Intangible Low-Taxed Income
- Certain Capital Contributions
- Exempt Entities
- Research and Experimentation Deduction
- Net Operating Loss Limitation

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Greg Marks
Steven Hadjiligiou
Mark Brown
D. Michael O'Leary
Shawn Wolf

Organized in 1952, the purpose of the Tax Section is to further the tax knowledge and practice of interested members in federal and state tax law; develop standards for ethical and competent practice of tax law by lawyers; develop and maintain proper professional relationships between tax lawyers, non-lawyer groups and lawyer groups; and, improve the operation of federal and state tax laws, rules and regulations, to accomplish legitimate legislative objectives and improve the administration of tax law. The Tax Section strives to protect the public and to assist the public in obtaining the services of a qualified professional in this extremely complicated and complex area of the law. Therefore, we submit the following comments.

PROGRAM ADMINISTRATOR

Leslie Reithmiller
The Florida Bar
(850) 561-5625
lreithmiller@floridabar.org

Florida Should Decouple from the Net Interest Deduction Limitation

Historically, interest on a business or investment related debt was, in most instances, a deductible expense of the borrower. However, the TCJA created a new interest expense deductibility limitation under section 163(j) of the Internal Revenue Code (IRC) for deductions for business interest expenses. In general, this section now applies to all business entities and limits a taxpayer's interest expense deductions for a taxable year to the sum of 30 percent of adjusted taxable income plus the amount of any business interest. For purposes of the new limitation, "adjusted taxable income" is determined in a manner similar to earnings before interest, tax, depreciation, and amortization (EBIDTA) for tax years prior to January 1, 2022 and similar to earnings before interest and tax (EBIT) for tax years on or after January 1, 2022. Thus, for tax years 2022 and later, the narrower definition will generally result in a smaller business interest deduction.

Regardless, the new deduction limitation to section 163(j) will result in an increase of federal taxable income and more Florida Corporate Income Taxes paid. An analysis commissioned by the Council on State Taxation (COST) suggests this limitation would increase the federal corporate tax base by 6.4 percent. Such an increase would result in a \$143M+ tax increase on Florida's corporations in 2018-2019. This tax increase would be recurring and is projected to grow to more than \$220M per year after the definition of adjusted taxable income changes in 2022.

Many in Congress have suggested this new interest limitation was intertwined with the additional bonus depreciation benefits for taxpayers contained in the TCJA. However, when states, like Florida, *already* decouple from federal bonus depreciation the scale shifts disproportionately to burden Florida corporations making investments. Therefore, the Florida Legislature should consider decoupling from the interest limitation in section 163(j). Other states including Georgia, Tennessee, Connecticut, Indiana, and Wisconsin have already chosen to decouple from the federal interest limitation. Florida should decouple too.

Florida Should Codify Its Treatment of One-Time Deemed Repatriated Foreign Income

The TCJA amended section 965 to impose a one-time tax on the foreign income of a deferred foreign income corporation. The new language requires that such a corporation must increase its "Subpart F" income for the last taxable year which begins before January 1, 2018, by the amount of the corporation's accumulated post-1986 deferred foreign income determined as of November 2, 2017, or December 31, 2017, whichever is greater.

U.S. shareholders of such corporations (including U.S. corporations that are shareholders of foreign income corporations) may have to include this increased income amount in their taxable income for the affected years. *See* IRC § 951 (inclusion of Subpart F income in the taxable income of U.S. shareholders of foreign income corporations).

The IRS has instructed taxpayers to compute the income subject to this one-time tax on a statement attached to the federal return, with only the resultant tax liability reported on Schedule J and, consequently, included on line 31 of the federal return. See IRS Publication 5292 (April 6, 2018) (explaining the separate calculation method and the requirement for a taxpayer to file a separate “IRC 965 Transition Tax Statement” for the 2017 tax year). Based on guidance from the IRS regarding these reporting mechanics, the Department issued informal guidance in the form of a Taxpayer Information Publication (TIP) See TIP 18C01-01 (April 27, 2018).¹ The TIP explains that the Department takes the position that foreign income subject to the one-time federal tax is generally not subject to Florida corporate income tax.

The Tax Section agrees with the Department’s conclusion. The Legislature should codify the Department’s informal pronouncement, in the interests of clarity and certainty for both the Department and taxpayers. Unless the Legislature reverses course and requires an addition of deemed repatriated foreign income to the Florida tax base, these amounts should be excluded from Florida corporate income tax for most taxpayers.²

Florida Should Exclude Global Intangible Low-Taxed Income (GILTI)

New section 951A imposes tax on income received by U.S. shareholders from controlled foreign corporations in excess of a deemed return on the tangible assets of that foreign entity. An effective tax rate lower than the normal federal corporate tax rate is achieved through certain deductions under section 250 of the IRC, which are “special deductions” reported on line 29 of the federal return.

Roughly a dozen states have thus far decoupled from GILTI. Unless the Florida Legislature specifically excludes GILTI from the Florida tax base, conformity with TCJA would result in a substantial revenue increase to the state (preliminary estimates of \$73 million - \$118 million for tax years 2018 and 2019). If the Legislature accepts this revenue increase, the Section 250 deductions should automatically be picked up since Florida conforms to line 30 of the federal return as the starting point for determining taxable income.

If the Legislature does not exclude GILTI from the Florida tax base, federal constitutional limitations prohibiting discrimination against foreign commerce and limiting the state tax base may prevent Florida from taxing this income in any event. Even if Florida were not prohibited from taxing GILTI, other federal constitutional requirements may affect the apportionment of that income. In order to provide clarity and certainty to Florida’s corporations and avoid potential constitutional challenges, Florida should specifically exclude GILTI.

Florida Should Decouple from the Federal Treatment of Certain Capital Contributions

Generally, cash and property contributed to a corporation are not considered income to the corporation. Although contributions in aid of construction (CIAC) by customers (and potential customers) were generally excluded from this tax-free treatment, the exclusion permitted tax-

¹ Available online at https://revenue.law.floridarevenue.com/LawLibraryDocuments/2018/04/TIP-121710_TIP%2018C01-01%20FINAL%20RLL.pdf.

² Per the Department’s TIP, real estate investment trusts (REITs) may be an exception.
O2235054.v1

free treatment of contributions of property by governmental units or civic groups as incentives to locate or expand corporate facilities.

The TCJA substantially narrowed the conditions for tax-free treatment. In addition to continuing the general taxable treatment of CIAC, the law now expressly provides that contributions by government entities and civic groups (other than as shareholders) are included in gross income. Adopting this federal change at the state level will result in Florida taxing, and therefore discouraging, the projects which it seeks to promote and encourage. This contradictory position may result in fewer public-private-partnerships that further the public interest. Therefore, Florida should consider decoupling from the changes to section 118.

Florida Should Address Adverse Changes to Exempt Entities

The TCJA included two provisions that will significantly impact the taxation of tax exempt organizations: 1) section 512(a)(6) created a new "silo-ing" rule in calculating unrelated business taxable income (UBTI) such that tax exempt organizations with multiple unrelated business activities can no longer offset income from one unrelated activity with losses from another unrelated activity; and 2) section 512(a)(7) provided certain fringe benefits provide by an organization will be classified as unrelated business income (UBI).

If Florida applies the silo-ing rule, it will create confusion and difficulty for taxpayers and the State as income and losses from the conduct of multiple unitary businesses within a single legal organization are generally permitted to offset one another for Florida corporate income tax purposes. Additionally, the methodology for determining the amounts sourced to Florida is through the allocation and apportionment rules will create difficulty. Therefore, Florida should consider decoupling from the changes to section 516(a)(6).

With respect to the new fringe benefit rules under section 512(a)(7), there are two consistency and administrative burden concerns. The first is that since providing a fringe benefit is not technically a receipt from an unrelated business activity, many tax exempt organizations that never dealt with UBI will now find themselves with taxable income and filing obligations at both the federal and state levels. This is an unnecessary burden on many tax exempt organizations that do not engage in, or generate revenue from, an unrelated business activity. In addition, it is unclear how this UBI would be sourced for Florida allocation and apportionment purposes. This particular UBI is arguably apportionable income arising in the regular course of its trade or business, but it is not a "gross receipt" and therefore would not be included in either the numerator or the denominator of the sales factor. Therefore, Florida should consider decoupling from the changes to section 516(a)(7). At a minimum, guidance would be required if the Florida laws were not decoupled from the changes to section 512(a)(7) to address how this form of UBI would be treated under the allocation and apportionment rules.

Florida Should Continue to Strongly Encourage Research and Experimentation in the State

Historically, Florida strongly encourages corporations to invest in research and development in the State. See Section 220.196, Florida Statutes, which was initially enacted in 2011 and expanded in recent years. Florida's research and development credit applies to new expenses eligible for the federal research and development credit in section 41 of the IRC.

While the TCJA did not change the federal credit for new research and development activities, the Act resulted in significant changes to the research and experimentation deduction contained in section 174. Currently, taxpayers have an option of how to treat research and experimentation expenditures under section 174 – direct expensing of expenditures when paid or incurred, or capitalization and amortization over no less than sixty months from when the taxpayer first begins to derive benefit from the research and experimentation. Under the TCJA, taxpayers will have far fewer options and far less flexibility in treating these expenditures. For tax years beginning after December 31, 2021, taxpayers must capitalize and amortize all research and experimentation expenditures paid or incurred in connection with their trade or business. The straight-line recovery periods are five years and fifteen years for domestic and foreign incurred expenditures, respectively.

If the Florida Legislature wants to continue to encourage research and experimentation in the State, it may choose to reinstate the option for corporations to directly expense such expenses when paid or incurred for Florida corporate income tax purposes.

Florida Should Remove the Net Operating Loss Limitation

A Net Operating Loss (NOL) occurs when a taxpayer's business deductions exceed gross income in a tax year. Prior to the TCJA, an NOL generally was required to be carried back to the two preceding tax years, with any excess NOL then carried forward over to the 20 succeeding tax years. For regular federal tax purposes, the NOL was eligible to offset up to 100 percent of the taxable income of a tax year within the carryback and carryforward periods. For Florida purposes, NOLs are not able to be carried back, but are eligible to offset up to 100 percent of the taxable income for the carryforward period.

The changes made by the TCJA limit the use of NOLs. For NOLs arising in tax years beginning after December 31, 2017, the TCJA limits the NOL deduction to 80 percent of taxable income. Additionally, the TCJA eliminated the two-year carryback period for new NOLs, but allows NOLs to be carried forward indefinitely.

The 80 percent limitation will require taxpayers to pay tax on at least 20 percent of its income regardless of the fact that the business's deductions exceed gross income. For example, if at the end of a year a business has an after-tax income of \$100,000, even if it has a NOL of \$200,000, the NOL will be limited to 80 percent of the \$100,000 resulting in \$20,000 of taxable income. Therefore, the Florida Legislature should consider decoupling from the 80 percent NOL limitation included in the TCJA in order to continue to allow full utilization of NOLs.

THE FLORIDA BAR

On behalf of the Tax Section, I hope these comments will be useful as the state conducts its review and incorporation of the TCJA into Florida's corporate income tax code. Please contact me at (772) 464-7700 if you have any questions or would like to discuss any of our comments in more detail.

Sincerely,

A handwritten signature in blue ink, appearing to read "Minton", with a long horizontal flourish extending to the right.

Michael D. Minton, Chair

PUBLIC COMMENT #12

Debbie Longman

From: Steve Hogan <shogan@ausley.com>
Sent: Tuesday, October 23, 2018 10:27 AM
To: CITReview
Cc: Bob Pierce
Subject: CIT Review Comments
Attachments: Fla CIT Comments re 1031 & Bonus Depreciation - Final 10-23-18.pdf

Please find comments attached regarding the Florida Department of Revenue's review of the 2017 federal Tax Cuts and Jobs Act.

Sincerely,
-Steve Hogan

Steven M. Hogan

AUSLEY | McMULLEN

123 S. Calhoun Street | Tallahassee, FL 32301

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AUSLEY McMULLEN

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October 23, 2018

Via U.S. Mail and Electronic Mail

Corporate Income Tax Review
c/o Director of Legislative and Cabinet Services
Florida Department of Revenue
P.O. Box 5906
Tallahassee, Florida 32314-5906
Email: CITReview@floridarevenue.com

Re: Comments on Florida CIT Impacts from the Tax Cuts and Jobs Act of 2017
1031 Exchanges and Bonus Depreciation

Dear Sir or Madam:

The following comments are offered pursuant to the Florida Department of Revenue's request for public comment on the impact of the Federal Tax Cuts and Jobs Act of 2017, Public Law No. 115-97 (the "TCJA"), on Florida's corporate income tax. These comments focus on the changes made by the TCJA on exchanges of like-kind property under IRC 1031 and related issues involving bonus depreciation. We appreciate your consideration of these issues.

Summary

Section 1031 of the Internal Revenue Code allows taxpayers to defer recognizing gain on exchanges of like-kind property held for use in a trade or business. The TCJA limited section 1031 to exchanges of real property. This new limitation prevents taxpayers from deferring recognition of gain on exchanges of tangible property held for use in a trade or business.

This change in IRC 1031 will cause unexpectedly large short-term Florida corporate income tax liability for taxpayers that cannot avail themselves of the federal bonus depreciation rules under current Florida law. This short-term issue can be solved in a revenue-neutral way by allowing such taxpayers to use the federal bonus depreciation rules to calculate their Florida tax liability for a limited time.

The TCJA's Changes to Section 1031

Section 1031 of the Internal Revenue Code allows taxpayers to defer recognition of gain on sales of property held for productive use in a trade or business if certain conditions are met. The main condition under IRC 1031 is that the property sold must be "exchanged" for property of a "like kind" that is also to be held for productive use in a trade or business. The exchange must occur within specified timeframes. *See* IRC § 1031(a).

The TCJA amended section 1031 by restricting its use to real property. P.L. 115-97, § 13303(a) (striking the term "property" in IRC 1031(a)(1) and replacing it with the term "real property"). Before this

change was made, section 1031 could be used for exchanges of real property as well as tangible and intangible property that otherwise met the requirements of the statute.

Because of this change, taxpayers that previously used section 1031 to defer recognition of gain when replacing tangible property used in their business will now have to recognize “gain” on those sales. For taxpayers that turn over a large volume of tangible property in the course of their business, the gain that must now be recognized will be significant.

The Impact of Section 1031 and Bonus Depreciation on Florida CIT

Florida imposes corporate income tax (“CIT”) on the “net income” of certain taxpayers. § 220.11(1), Fla. Stat.¹ This “net income” figure is calculated based on the taxpayer’s “adjusted federal income.” § 220.12, Fla. Stat. The taxpayer’s “adjusted federal income” is calculated pursuant to section 220.13, Florida Statutes. The starting point for the calculation is the taxpayer’s “taxable income” as defined under the Internal Revenue Code. § 220.13(1), (2), Fla. Stat.

Section 1031 previously allowed taxpayers to defer recognition of gain from exchanges of like-kind tangible property held for productive use in a trade or business. Under the TCJA, taxpayers can no longer use section 1031 to defer gains on such exchanges. This means that taxpayers in this situation will have a larger amount of “taxable income” under the Internal Revenue Code. Because of this, these taxpayers will begin their calculation of the “net income” subject to Florida CIT with a larger figure. This will lead to a larger Florida CIT liability.

Though the section 1031 deferral has been eliminated for tangible property, the effect of this change at the federal level is mitigated somewhat by the “bonus depreciation” deductions allowed under IRC 168. However, taxpayers cannot apply the same bonus depreciation deductions in Florida when calculating their “net income” for Florida CIT purposes. § 220.13(1)(e)1., Fla. Stat. The taxpayers must instead “stretch” the depreciation deduction from their Florida net income over seven years. *Id.* Use of this “one-seventh” depreciation method results in a short-term “bubble” of Florida CIT liability where no corresponding liability exists at the federal level.

This problem can be solved in a revenue-neutral way by allowing such taxpayers to use federal bonus depreciation, rather than the “one-seventh” method, when calculating their net income for Florida CIT purposes.

A. Federal Bonus Depreciation Deductions

The Internal Revenue Code allows taxpayers to take “depreciation deductions” to reduce their federal adjusted gross income. These deductions generally constitute “a reasonable allowance” for the exhaustion, wear and tear, and obsolescence of property used in the trade or business or held for the production of income. IRC § 167(a).

For certain tangible property, taxpayers can take an additional first-year depreciation deduction pursuant to section 168. This additional first-year depreciation deduction is commonly referred to as “bonus depreciation.”²

The TCJA increased the amount of bonus depreciation that taxpayers may deduct. Depending on the date the tangible property is placed in service, the bonus depreciation deduction may be as much as

¹ Discussion of the types of entities subject to Florida CIT is outside the scope of this comment.

² Taxpayers may elect not to take the bonus depreciation deduction if they so choose. IRC § 168(k)(7).

100% of the cost of the property. This means that the taxpayer can take as a deduction an amount equal to the entire cost of the tangible property in the year it is placed in service. IRC § (k)(1), (6).³

B. Florida’s “One-Seventh” Depreciation Method

Any amounts deducted by a taxpayer under the bonus depreciation rules must be “added back” to the taxpayer’s federal taxable income for Florida CIT purposes. § 220.13(1)(e)1., Fla. Stat. (“There shall be added to such taxable income an amount equal to 100 percent of any amount deducted for federal income tax purposes as bonus depreciation for the taxable year pursuant to ss. 167 and 168(k) of the Internal Revenue Code, as amended[.]”).

Because of this provision, taxpayers that reduce their federal adjusted gross income through bonus depreciation deductions must inflate their income for Florida CIT purposes by adding those deductions back into their calculation of the “net income” subject to Florida CIT.

Florida then creates a “one-seventh” depreciation deduction method for taxpayers affected by this provision. Instead of bonus depreciation, taxpayers may deduct one-seventh of the bonus depreciation amount each year over a seven year period. § 220.13(1)(e)1., Fla. Stat. (“For the taxable year and for each of the 6 subsequent taxable years, there shall be subtracted from such taxable income an amount equal to one-seventh of the amount by which taxable income was increased pursuant to this subparagraph, notwithstanding any sale or other disposition of the property that is the subject of the adjustments and regardless of whether such property remains in service in the hands of the taxpayer.”). In this way, the bonus depreciation deduction is “stretched out” over seven years.

C. Federal Bonus Depreciation and 1031 Exchanges

Under the old 1031 exchange rules, a normal transaction would involve a taxpayer selling tangible property and purchasing new tangible property of a “like kind” to that which was sold. Section 1031 would allow the taxpayer to defer recognizing gain on the sale of the tangible property. The taxpayer could also take a depreciation deduction under the old versions of sections 167 and 168 for part of the cost of the replacement property.

With the TCJA changes to 1031 exchanges, taxpayers that sell old tangible property used in their business cannot defer recognition of the gain on those sales even if those taxpayers immediately purchase new tangible property to replace it.

However, such taxpayers can take a bonus depreciation deduction at the federal level of up to 100% of the cost of the replacement property in the year the property is placed in service.⁴ In most cases, the cost of the replacement property will be greater than the gain realized on the sale of the old property. Because of this, such taxpayers would normally be able to offset all, or nearly all, of the gain recognized on the sale of the old property through bonus depreciation deductions.⁵

For taxpayers in this situation, the TCJA’s changes to section 1031 were offset by the corresponding increase to the bonus depreciation deduction. Such taxpayers will therefore not be subject

³ Taxpayers may elect to deduct 50% of the cost rather than 100% if they so choose. IRC § 168(k)(10).

⁴ This comment presumes that the tangible property at issue qualifies for section 168 bonus depreciation.

⁵ This dynamic occurs when all or most of the “old” tangible property is replaced by “new” tangible property. If more old property is sold than is replaced, the bonus depreciation deductions may not be sufficient to offset the entire gain.

to an unexpectedly large increase to their adjusted gross income at the federal level. This offset does not exist, however, in Florida.

D. Increase in Florida CIT Due to Section 1031 Changes & Florida's One-Seventh Rule

Under the TCJA, taxpayers that routinely sell old tangible property used in their trade or business while replacing it with new tangible property can no longer use section 1031 to defer recognition of their gain on the sale of the old property. However, due to the federal bonus depreciation rules, the deduction allowed on the cost of the new property is available to offset the increase in adjusted gross income at the federal level that the taxpayer would otherwise have to pay tax on.

The bonus depreciation offset available at the federal level is not available for Florida CIT purposes. Because Florida replaced the bonus depreciation rule with the "one-seventh" rule, taxpayers must stretch the deduction out over seven years.

This means that taxpayers will have to recognize the gain on their sales of tangible property that occurred during the taxable year. Such taxpayers can only offset those gains by one-seventh of the price of the replacement property. This will result in a "bubble" of tax liability in "year one" with no way for taxpayers to offset it.

In this way, Florida is imposing tax on a larger amount of income now, while imposing tax on a much smaller (or nonexistent) amount of income in the future. The TCJA has therefore caused a bubble of immediate Florida CIT liability for taxpayers in this position.

E. A Revenue-Neutral Solution

The fact that the bonus depreciation deduction is not eliminated by Florida, but is instead spread out over time, means that the taxpayer is not actually losing the amount of this deduction. As the deduction is taken in one-seventh increments over subsequent years, the taxpayer will have correspondingly lower Florida CIT liability in those subsequent years. For taxpayers that regularly turn over their business property at a rapid rate, the one-seventh deduction increments will eventually eliminate all, or nearly all, of the gain recognized in future years.

Though the tax reality of this situation is revenue-neutral over time, the business reality is that a spike in Florida CIT liability in the current year will be extremely difficult for taxpayers to pay. The promise of future deductions, and perhaps an elimination of Florida CIT in future years, is of little comfort to taxpayers that are caught in the bubble created by the TCJA. The immediate liability may cause serious cash-flow problems for Florida businesses in this situation.

A revenue-neutral solution could be found through a legislative change allowing taxpayers in this situation to use bonus depreciation under sections 167 and 168 to offset their "net income" calculations for Florida CIT for a limited amount of time. Correspondingly, such taxpayers would not be able to use any fraction of this bonus depreciation amount in future years. Therefore, Florida's CIT tax basis would remain the same over the course of time, while easing the cash-flow problems Florida businesses may otherwise have to contend with.

This solution is revenue-neutral because no new deductions are being added. Instead, the timing of the Florida depreciation deductions would be changed to match federal law for taxpayers impacted by the TCJA changes described in this comment.

Conclusion

The TCJA's changes to section 1031 and the bonus depreciation rules, when read together with Florida's CIT statutes, has put taxpayers in a situation where they have a large Florida CIT liability in the short-term, with the deductions only "catching up" over a seven year period. This presents a cash-flow problem for Florida businesses that will impede their ability to invest in new jobs and economic growth, while generating no new revenue for the state. This short-term problem can be solved in a revenue-neutral way by allowing taxpayers to use the federal bonus depreciation rules to calculate their Florida tax liability for a limited amount of time.

Thank you for your consideration of these issues.

Sincerely,

/s/ Robert A. Pierce _____

Robert A. Pierce
Steven M. Hogan

Ausley McMullen

PUBLIC COMMENT #13

Debbie Longman

From: French Brown <FBrown@deanmead.com>
Sent: Monday, November 19, 2018 4:46 PM
To: CITReview
Cc: Debbie Longman; Mark Hamilton; McKinley, Will; Vans Stevenson; Angela Miele
Subject: Corporate Income Tax Review
Attachments: Florida-MPAA Letter to DOR-168k Nov 19.pdf

Dear Debbie,

The Motion Picture Association of America, Inc. respectfully submits the following comments regarding the Department's review of the 2017 Tax Cuts and Jobs Act.

Please let us know if you have questions.

French Brown
850-459-0992 (Mobile)



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November 19, 2018

VIA EMAIL

Corporate Income Tax Review
c/o Debra Longman, Director of Legislative and Cabinet Services
Department of Revenue
P.O. Box 5906
Tallahassee, Florida 32314-5906

Dear Ms. Longman:

The Motion Picture Association of America, Inc. (MPAA)¹ respectfully submits the following comments requesting that the State address an unintended consequence of Florida's decoupling from §168(k), as amended by the Tax Cuts and Jobs Act (2017). MPAA represents the leading distributors and producers of motion pictures and television programs worldwide. The MPAA represents seven member companies. If Florida decouples from bonus depreciation under Internal Revenue Code (IRC) §168(k) for film and television producers and does not allow those taxpayers to recover the cost of films and television programs under the income forecast method of §167(g), it will have a significant adverse impact on the industry of the MPAA members.

As background, MPAA members historically used an amortization/depreciation method to recover the cost of film and television productions known as "income forecast" for Federal income tax, Florida, and most states' tax purposes. This method closely corresponded to the productive life of the film or television program and has been the historic common practice for both tax purposes and financial statement purposes for many years. When the Tax Cuts and Jobs Act was enacted in late 2017, the following sequence of events occurred:

1. At the Federal level, bonus depreciation was enacted under §168(k) for most assets, including, for the first time, qualified film and television productions.

¹*Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; Warner Bros. Entertainment Inc., and CBS Corporation as an associate member.*

2. Florida then de-coupled in early 2018 from §168(k) across-the-board and replaced it with a 7 year straight line depreciation for all assets covered by §168(k) without regard to whether the assets were previously subject to Florida's historic practice of de-coupling from bonus depreciation and without regard to their actual economic lives.
3. As a result, Florida's 7 year asset life now sweeps in qualified film and television productions, which had not previously been subject to Florida's de-coupling from bonus depreciation. This 7 year straight line depreciation now forces film and television producers to amortize their creative content under a method that bears no relation to the historic tax method used for both Federal and Florida purposes (i.e., income forecast).

Accordingly, as discussed herein, we respectfully request that Florida consider retaining its historic allowance of the income forecast method of depreciation for qualified film and television productions now eligible at the Federal level for bonus depreciation under §168(k). The income forecast method is not an accelerated method like bonus depreciation and it does more accurately correspond to the economic life of the underlying asset. This historic method for qualified film and television productions has the further advantage of having no adverse impact on Florida's tax revenues because, like other assets under §168(k), bonus depreciation will not be allowed.

These adverse tax consequences occur based on the form, not the substance, of the specific changes in the Tax Cuts and Jobs Act. Congress's decision to include film and television in IRC §168(k) instead of §181 or some other full expensing provision had no substantive federal effect. However, Florida's action to decouple from §168(k) will substantively effect film and television producers with respect to the costs incurred to produce and acquire films.

Understanding the Federal Provisions

The federal concept of "bonus depreciation" started in 2002 when Congress allowed additional depreciation deductions for qualified property placed in service under IRC 168(k). The level of bonus depreciation was increased to 50% of the adjusted basis of the qualifying property in the Economic Stimulus Act of 2008. Thereafter, Florida decoupled from the federal bonus depreciation by requiring corporations to add back the full amount deducted in a year for federal purposes and then deducting a fraction of that amount over seven years on a straight-line basis. Delaying the federal deduction mitigated the negative impact on Florida's corporate income tax revenues.

From year-to-year, Congress continued allowing bonus depreciation, sometimes increasing the percentage allowed. Florida usually followed each Congressional change and decoupled from the bonus depreciation. In no case were film and television productions treated as qualified property under §168(k) prior to the Tax Cuts and Jobs Act. However, the amendments to IRC §168(k) made in the Tax Cuts and Jobs Act modified and extended bonus depreciation for previously-qualified assets, eliminated the limited bonus depreciation available to certain film and television productions under §181 and extended bonus depreciation under §168(k) to certain film and television productions. The MPAA requests that Florida consider the adverse impact of requiring films and television productions to be amortized straight line over seven years and

modifying Florida law to permit this limited class of property to be amortized under the income forecast method. The State would still achieve the same benefit of precluding film and television producers from writing off qualified productions in the first year.

Unlike all other tangible personal property subject to full expensing under 168(k) that was previously depreciated under the modified accelerated cost recovery system, films and television productions were amortized under a method that reflected the useful economic life of this intangible property. Long before the Tax Cuts and Jobs Act, Congress recognized the unique income earning characteristics in films and television programs by allowing cost recovery using an income forecast method. This method is based on the income earning potential of a film which may vary as a direct result of its popularity. IRC §167(g) allows a film or television program to forecast total income by including all anticipated income from any source through the end of the 10th taxable year following the year in which the property is placed in service. Therefore, in the case of a film, such income includes income from foreign and domestic theatrical, television, and other releases and syndications; income from video tape releases, sales, rentals, and syndications; and incidental income associated with the property. Use of the income forecast method is elected on a property-by-property basis. Once elected, the income forecast method is a method of accounting that may not be changed without the consent IRS Commissioner. Depreciation under the income forecast method pursuant to IRC §167(g) was not altered by the Tax Cuts and Jobs Act except that producers may now elect to fully expense qualified films and television productions under §168(k).

In 2004, §181 was enacted as part of the American Jobs Creation Act. It provided a more accelerated method of depreciating qualified films and television productions than §167(g). IRC §181 authorized an immediate deduction for costs incurred for such productions that satisfy certain criteria including the requirement that at least 75% of compensation costs be incurred in the United States. Historically, this provision has **never** been altered by the Florida's corporate income tax laws. In other words, in prior years when Florida taxpayers were required to add back bonus depreciation and recover the costs over seven years straight line, the same treatment was never required for qualified films and television programs to the extent their costs were recovered under §181. Any deduction under §181 on a producer's federal return would flow to the Florida return.

However, the Tax Cut and Jobs Act recently expanded the term "qualified property" for bonus depreciation in IRC §168(k) to include qualified film and television programs to the extent they otherwise satisfy the requirements of §181. While §181 still exists in the Internal Revenue Code, the actual expensing provision is now incorporated in the bonus depreciation provisions of §168(k). Full bonus depreciation will now apply under §168(k) for qualified productions that are placed in service after September 27, 2017.

If Florida does not modify its decoupling from §168(k) for qualified productions to permit these productions to be depreciated under §167(g), significant adverse consequences will follow for MPAA members. The MPAA is not requesting special treatment to allow for full expensing in Florida but only request that in lieu of seven year straight line depreciation, they be allowed to use the income forecast method to reflect the unique characteristics of films and television productions as compared to tangible personal property.

The Proposed Solution

The MPAA believes and respectfully requests that Florida modify its bonus depreciation adjustments to exclude qualified property under §168(k)(2)(A)(IV) and §168(k)(2)(A)(V) of the Internal Revenue Code of 1986, as amended, and to require such property to be depreciated instead under §167(g). These subparagraphs apply to qualified film or television productions and qualified live theatrical productions, respectively. This proposed modification would ensure that Florida's adoption of the Tax Cuts and Jobs Act and Florida's decoupling from historical bonus depreciation provisions would not inadvertently and negatively impact MPAA's members.

Please contact me at 202-378-9140 if you have any questions or would like to discuss any of our comments in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Vane Swanson". The signature is fluid and cursive, with a large, sweeping initial "V" and a long, horizontal stroke extending to the right.

Acronyms

ADS – Alternative Depreciation System
AMT – Alternative Minimum Tax
AMTI – Alternative Minimum Taxable Income
ATI – Adjusted Taxable Income
BEAT – Base Erosion and Anti-Abuse Tax
CFC – Controlled Foreign Corporation
CIT – Corporate Income Tax
COGS – Cost of Goods Sold
DEI – Deduction Eligible Income
DII – Deemed Intangible Income
DOR – Department of Revenue
DPAD – Domestic Production Activities Deduction
DRD – Dividends Received Deduction
EBITDA – Earnings before Interest, Tax, Depreciation and Amortization
FAC – Florida Administrative Code
FDDEI – Foreign Derived Deduction Eligible Income
FDIC – Federal Deposit Insurance Corporation
FDII – Foreign Derived Intangible Income
FDOR – Florida Department of Revenue
FS – Florida Statutes
GDS – General Depreciation System
GILTI – Global Intangible Low Taxed Income
IRC – Internal Revenue Code
IRS – Internal Revenue Service
JCT – Joint Committee on Taxation
LB&I – Large Business and International
MACRS – Modified Accelerated Cost Recovery System
NOL – Net Operating Loss
PFIC – Passive Foreign Investment Company
PL – Public Law
QBAI – Qualified Business Asset Investment
QPAI – Qualified Production Activities Income
QPP – Qualified Production Property
REC – Revenue Estimating Conference
REIT – Real Estate Investment Trust
RIC – Regulated Investment Company
SFY – State Fiscal Year
STFC – Specified Ten Percent Owned Foreign Corporation
TCJA – Tax Cuts and Jobs Act
TIP – Tax Information Publication
UBTI – Unrelated Business Taxable Income