The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL:	CS/SB 1240
INTRODUCER:	Commerce and Tourism Committee and Senator Gruters
SUBJECT:	Corporate Income Tax Credit
DATE:	February 4, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1240 grants eligible car rental, leasing, or financing companies a $2 million tax credit against their Florida corporate taxes paid for the 2018 taxable year. To be eligible for the tax credit, these companies must have deferred gains on the sale of personal property for corporate federal income tax purposes under s. 1031 of the Internal Revenue Code during the August 1, 2016-August 1, 2017 taxable year, and incurred a specific rise in tax liability in the August 1, 2017-August 1, 2018 taxable year.

II. Present Situation:

Annual Adoption of the Internal Revenue Code

Florida imposes a 5.5 percent tax on the taxable income of corporations and financial institutions doing business in Florida.[1] A corporation calculates its taxable income for Florida tax purposes by starting with its taxable income determined for federal tax purposes.[2] This means that a corporation paying taxes in Florida receives the same treatment in Florida as is allowed in determining its federal taxable income.

[1] Sections 220.11(2) and 220.63(2), F.S.

[2] *See generally* s. 220.13(2), F.S.

Bonus Depreciation

The Internal Revenue Code (IRC, or the Code) allows a taxpayer to deduct the cost of long-term business assets by deducting a portion of the cost over the useful life of the property (depreciation).[3] Since taxpayers deduct for depreciation in calculating their federal taxable income, the deduction is already included when the taxpayer begins calculating its Florida taxable income.

For the past decade, federal legislation has granted an additional, first-year depreciation deduction (bonus depreciation).[4] The legislation has generally authorized 50 or 100 percent of the cost of qualifying property to be deducted in the first year of depreciation. Currently, some level of bonus depreciation is authorized through 2026.

Generally, the entire cost of an asset is depreciable over time. Therefore, bonus depreciation deductions do not increase the total amount that can be deducted as depreciation; bonus depreciation merely accelerates the depreciation deduction. That being said, the immediate fiscal impact of bonus depreciation can substantially reduce corporate income tax receipts in the near term. As an example, the Revenue Estimating Conference determined that bonus depreciation granted by the Tax Increase Prevention Act of 2014 would reduce Fiscal Year 2015-2016 General Revenue receipts by $180 million.[5]

Due to the near term fiscal impact that bonus depreciation deductions would have on Florida, the Legislature has chosen to "decouple" from these deductions by requiring taxpayers to add back the amount of bonus depreciation to their taxable income for Florida purposes and then subtract 1/7th of that amount over seven years.[6] This treatment has the effect of giving the taxpayer the benefit of bonus depreciation, but requiring the taxpayer to "spread" that benefit over a 7-year period.

The following chart provides a list of recent federal acts that have granted bonus depreciation and the Florida law that "decoupled" from the bonus depreciation provisions.[7]

Federal Act	**Applies to Taxable Years beginning on or after January 1 of:**	**Bonus Depreciation Amount**	**Florida Law that "Decoupled"**
The Economic Stimulus Act of 2008	2008	50 percent	Chapter 2008-206, L.O.F.

3 *See generally* ss. 167 and 168, IRC.
4 *See* the Economic Stimulus Act of 2008, Pub. L. No. 110-185; the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5; the Small Business Jobs Act of 2010, Pub. L. No. 111-240; the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312; the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240; the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295; the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113; and the Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97.
5 Revenue Impact Conference Impact Statement, Proposed Language, January 26, 2015, *available at:* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/page17-18.pdf (last visited Feb. 4, 2020).
6 *See* chs. 2008-206, 2009-192, 2011-229, 2013-46, 2015-35, 2016-220, and 2018-119, L.O.F.
7 In some instances, the Florida law also decoupled from increased first-year expensing provisions included in the federal act; however, first-year expensing is not directly relevant to the issue in the bill being analyzed.

The American Recovery and Reinvestment Act of 2009	2009	50 percent	Chapter 2009-192, L.O.F.
The Small Business Jobs Act of 2010	2010	100 percent	Chapter 2011-229, L.O.F.
The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010	2011	50 percent	
	2012	50 percent	
The American Taxpayer Relief Act of 2012	2013	50 percent	Chapter 2013-46, L.O.F
The Tax Increase Prevention Act of 2014	2014	50 percent	Chapter 2015-35, L.O.F.
The Consolidated Appropriations Act, 2016[8]	2015	50 percent	Chapter 2016-220, L.O.F.
	2016	50 percent	
	2017	50 percent	
Tax Cuts and Jobs Act of 2017	2018	100 percent	Chapter 2018-119, L.O.F.
	2019	100 percent	
	2020	100 percent	
	2021	100 percent	
	2022	100 percent	
	2023	80 percent	
	2024	60 percent	
	2025	40 percent	
	2026	20 percent	
	2027	0 percent	

The Tax Cuts and Jobs Act of 2017

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act of 2017 (TCJA).[9] The TCJA made significant changes to federal income tax provisions related to individuals, corporations, and the treatment of foreign income. As shown in the chart above, the TCJA extended bonus depreciation through taxable years beginning before January 1, 2027.[10]

Section 1031 Exchanges

Generally, when a taxpayer sells an asset, the Code requires the taxpayer to recognize as income any gain on the sale.[11] One exception to this general recognition rule is provided by section 1031 of the Code, for transactions commonly known as "like-kind exchanges" or "1031 exchanges."

[8] The Consolidated Appropriations Act, 2016, also provided bonus depreciation amounts for 2018 and 2019 of 40 percent and 30 percent, respectively; however, the Tax Cuts and Jobs Act increased those percentages to 100 percent for both years.
[9] Pub. Law No. 115-97 (December 22, 2017)
[10] For simplicity, the chart above shows the TCJA's bonus depreciation provisions as applying to taxable years beginning January 1, 2018; however, the TCJA also applied its bonus depreciation provisions to qualifying property acquired after September 27, 2017. *See* Tax Cuts and Jobs Act of 2017, s. 13201, Pub. L. No. 115-97.
[11] *See* s. 62(a)(3), IRC

Prior to the TCJA, s. 1031 of the Code provided that a taxpayer shall not recognize gain or loss when business property was exchanged for business property of a like kind.[12] Thus, a business that was regularly exchanging old business equipment for new business equipment might avoid having to recognize any relevant income at the federal level by exchanging the old equipment for new equipment, rather than selling the old equipment and buying new equipment in separate transactions. For example, this type of transaction could be used by a rental car company that regularly updates its rental fleet.[13] So, companies that were using s. 1031 of the Code to avoid recognizing income when business equipment was exchanged, would not be required to recognize income at the federal level. When the income was not recognized at the federal level, that income would likewise not be recognized for Florida tax purposes.

Importantly, the TCJA amended s. 1031 of the Code to limit use of the provision to exchanges of realty. Therefore, corporations must report any gain or loss as part of their income moving forward. The effect of losing the ability to use s. 1031 of the Code may be mitigated at the federal level because the TCJA provides 100 percent bonus depreciation deduction on the new equipment purchase. For Florida tax purposes, companies are now required to report their income earned on like-kind exchanges and then "spread" the bonus depreciation amount over seven years.

III. Effect of Proposed Changes:

The bill creates s. 220.197, F.S., which provides a $2 million credit against the 2018 state corporate income tax of certain motor vehicle rental, motor vehicle leasing, and motor vehicle financing companies. A corporation is eligible for a $2 million credit if it deferred gains on the sale of its personal property assets under s. 1031 of the Internal Revenue Code for the purposes of federal income tax during its taxable year that began on or after August 1, 2016, but before August 1, 2017, and it is:

- A car rental or leasing company that is classified under NAICS[14] industry group code 53211, that had a final tax liability of more than $15 million for its taxable year beginning on or after August 1, 2017, and before August 1, 2018. This tax liability must also be at least 700 percent greater than its final tax liability from its prior tax year; or
- A car sales financing establishment or car leasing company, classified under NAICS industry group code 522220 and 532112, respectively, that had a final tax liability of more than $15 million for its taxable year beginning on or after August 1, 2017, and before August 1, 2018. This tax liability must also be at least $15 million greater than its final tax liability from the prior tax year.

The bill fixes the NAICS references used in s. 220.197, F.S., to the version published in 2007 by the Office of Management and Budget, Executive Office of the President.

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[12] *See* s. 1031(a)(1), IRC (2016)

[13] Gerald Auten, David Joulfaian, and Romen Mookerjee, *Recent Trends in Like-kind Exchanges*, 1 (August 1, 2017), *available at* https://ssrn.com/abstract=3049029 or http://dx.doi.org/10.2139/ssrn.3049029. "Indeed, the most common like-kind exchanges are now those involving the 'trade-in' of vehicles and replacement vehicles and vehicle fleets, e.g., by rental car companies, farmers, and businesses."

[14] The NAICS is the North American Industry Classification System developed by the Office of Management and Budget for use by Federal statistical agencies to classify business establishments for the collection, analysis, and publication of statistical data related to the U.S. business economy. U.S. Census Bureau, *Introduction to NAICS*, https://www.census.gov/eos/www/naics/ (last visited Feb. 4, 2020).

The bill operates retroactively to January 1, 2018, and takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some motor vehicle rental, leasing, or financing companies may qualify for a $2 million credit against their Florida taxes for the 2018 taxable year.

C. Government Sector Impact:

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

The Department of Revenue will incur expenses related to creating and issuing a Taxpayer Information Publication (TIP) to alert eligible taxpayers about the 1031 exchange tax credit.[15]

[15] Florida Department of Revenue, *SB 1240 Agency Analysis* at 4 (Dec. 29, 2019), on file with the Committee on Commerce and Tourism.

VI. Technical Deficiencies:

Section 220.02(8), F.S., provides the order in which credits may be applied against a corporation's income tax to reduce its overall tax burden; the bill does not provide guidance regarding the order in which the 1031 exchange tax credit should be applied.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 220.197 of the Florida Statutes:

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on February 4, 2020:
The CS reduces the total tax credit available from $10 million to $2 million per taxpayer.

B. Amendments:

None.