
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 5, 1998 Revised: _____

Subject: Sponsored research and development

| | <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u> |
|----|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 1. | <u>Maclure</u> | <u>Austin</u> | <u>CM</u> | <u>Favorable/CS</u> |
| 2. | <u> </u> | <u> </u> | <u>ED</u> | <u> </u> |
| 3. | <u> </u> | <u> </u> | <u>WM</u> | <u> </u> |
| 4. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| 5. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |

I. Summary:

This committee substitute provides that certain property and payroll dedicated to sponsored research activities conducted in conjunction with a state university shall be excluded from the formula used to calculate what portion of the adjusted federal income of a corporation that engages in business inside and outside Florida will be apportioned to Florida for state corporate income tax purposes.

This committee substitute substantially amends section 220.15 of the Florida Statutes.

II. Present Situation:

Chapter 220, F.S., is Florida's corporate income tax code, the stated intent of which is to levy a tax on all corporations and other artificial entities that derive from the state attributes not inherent in natural persons, such as perpetual life, transferable ownership, and limited liability for all owners (s. 220.02(1), F.S.). The rate for such tax generally is 5.5 percent on the taxpayer's net income for the taxable year (s. 220.11, F.S.).

Florida law uses a taxpayer's adjusted federal income as the starting point for calculating that taxpayer's Florida net income. Section 220.12, F.S., defines net income as the taxpayer's adjusted federal income, or the amount of the adjusted federal income that is apportioned to Florida, plus non-business income, less child-care facility start-up costs, and less a statutory exemption. In the case of a taxpayer that does business within and without the state of Florida, a portion of that taxpayer's adjusted federal income is apportioned to Florida for state tax purposes. Under s. 220.15, F.S., that portion is determined by multiplying such a taxpayer's adjusted federal income by an apportionment fraction composed of three factors: a sales factor representing 50 percent of

the fraction, a property factor representing 25 percent of the fraction, and a payroll factor representing 25 percent of the fraction.

The sales factor is calculated by dividing the total sales of the taxpayer in Florida by the total sales of the taxpayer everywhere (s. 220.15(5), F.S.). The property factor is calculated by dividing the average value of the taxpayer's real and tangible personal property owned or rented and used in Florida by the average value of such property owned or rented and used everywhere (s. 220.15(2), F.S.). The payroll factor is calculated by dividing the total amount paid in Florida by the taxpayer for employee compensation by the total employee compensation paid everywhere (s. 220.15(4), F.S.).

Under s. 240.241, F.S., each state university is authorized to create divisions of sponsored research to administer and promote the research programs of the university. Such a division shall be under the supervision of the university president, who is "authorized to negotiate, enter into, and execute research contracts; to solicit and accept research grants and donations; and to fix and collect fees, other payments, and donations that may accrue by reason thereof" (s. 240.241(4), F.S.). Each university is required to submit to the Board of Regents an activities report on each division and an estimated budget for the next fiscal year. In turn, the board is required to submit to the chairmen of the legislative appropriations committees a compiled report and a compiled estimated budget request (s. 240.241(8), F.S.).

III. Effect of Proposed Changes:

This committee substitute amends s. 220.15, F.S., relating to the adjusted federal income that must be apportioned to Florida under the state's corporate income tax code by a taxpayer doing business within and without the state. The committee substitute provides that a taxpayer's real or tangible property in Florida that is certified to be dedicated exclusively to research and development activities under a sponsored research contract conducted in conjunction with and through a state university shall not be counted in the formula to determine how much of that taxpayer's federal income will be apportioned to Florida for state corporate income tax purposes. In addition, compensation that is certified as paid to employees in Florida dedicated exclusively to such research and development activities shall not be counted in the apportionment formula.

The Board of Regents must make the respective certifications to the Department of Revenue. The committee substitute specifies that research and development activities certified by the board shall not cause a corporation to become subject to Florida corporate income taxes if the corporation would not otherwise be subject to such taxes. The property and payroll eliminated from the apportionment formula may be eliminated only for the duration of the contractual period for the sponsored research. In addition, the tax reduction caused by the elimination of eligible property and payroll from the apportionment formula may not exceed the amount paid to the state university for the conduct of the sponsored research. Further, the provisions of the committee substitute do not apply to sponsored research contracts in existence prior to July 1, 1997.

The committee substitute authorizes the department to adopt rules, pursuant to the Administrative Procedure Act, to implement the provisions of the measure. The committee substitute also requires the Board of Regents to monitor the contracts and to report to the Legislature by February 1, 2000, on the effect of these provisions in attracting additional sponsored research contracts.

The committee substitute does not define the term “state university.” However, the measure’s assignment of certification, monitoring, and reporting responsibilities to the Board of Regents suggests that the measure may apply solely to the public universities within the State University System, as defined in s. 240.2011, F.S.

The committee substitute provides that the act shall take effect July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This committee substitute has not been reviewed by the Revenue Impact Conference. However, provisions similar to those contained in this committee substitute were included in Committee Substitute for Committee Substitute for Senate Bill 1660, which was adopted by the Legislature during the 1997 session and subsequently vetoed by the governor. The 1997 provisions were estimated to result in a first-year and a recurring fiscal year general revenue loss of \$2.3 million.

B. Private Sector Impact:

A taxpayer that conducts business inside and outside Florida will be able to exclude certain property and payroll associated with sponsored research activities with state universities from the formula that is used to calculate what portion of the taxpayer’s adjusted federal income will be apportioned to Florida for state corporate income tax purposes.

C. Government Sector Impact:

The committee substitute authorizes the Department of Revenue to adopt implementing rules. The department does not anticipate a need for additional resources as a result of this measure.

The committee substitute requires the Board of Regents to certify to the department that the property and compensation to be excluded from the corporate income tax apportionment formula are dedicated to research and development activities performed pursuant to eligible sponsored research contracts. The measure also requires the board to monitor the contracts and to report to the Legislature by February 1, 2000, on the effect of the provisions in generating additional sponsored research contracts. The board noted that the certification, monitoring, and reporting requirements may necessitate additional administrative funding. However, the board also noted that increased indirect revenues sufficient to cover the additional costs may be generated if the committee substitute results in an increase in the sponsored contract and grant activities of the universities.

VI. Technical Deficiencies:

The Department of Revenue noted that administration of the measure's provisions, including the rule-making authority, may be complicated by the fact that the committee substitute does not contain definitions or provide specific guidance relating to the terms: "certified," "research and development activities," "sponsored research contracts," or "state university." The department also noted that statutory guidance would prove helpful on the relationship that must exist between the corporation and the state university.

The committee substitute specifies that its provisions do not apply to sponsored research contracts in existence prior to July 1, 1997. However, the committee substitute does not specify how its provisions might affect a corporation that entered into an eligible contract on or after July 1 during the 1997 taxable year and paid its 1997 state corporate income taxes *prior to* the July 1, 1998, effective date of the measure. According to the Department of Revenue, it is possible that such a corporation might seek to amend its 1997 tax return, or that a corporation might seek an extension of the deadline for filing 1997 taxes in anticipation of the measure taking effect.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
