SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 18-E

SPONSOR: Senators Clary, Pruitt and others

SUBJECT: Corporate Income Tax

DATE: April 29, 2002 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Johansen	FT	Favorable
2.				
3.				
4.				
5.				
6.				

I. Summary:

Senate Bill 18-E updates references to the federal Internal Revenue Code (IRC) in Chapter 220, Florida Statutes, the Florida Income Tax Code, to reflect changes in the U.S. IRC in effect on January 1, 2002. It also specifically adopts the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, codified in the Internal Revenue Code.

This bill amends s. 220.03, Florida Statutes.

II. Present Situation:

Florida's Corporate Income Tax Code follows the Federal Internal Revenue Code by using federal rules and starting with federal taxable income as the tax base for Florida's corporate income tax. Section 220.03, Florida Statutes, defines specific terms as they apply to Florida's corporate income tax code. The term "Internal Revenue Code" is defined to mean those provisions of the United States Internal Revenue Code of 1986, as amended, in effect on January 1, 2001. Florida does not automatically adopt changes to the Internal Revenue Code, and each year the legislature must consider the adoption of these changes and pass a bill to do so, if it wants to accept these changes.

On March 9, 2002, President Bush signed the Job Creation and Worker Assistance Act of 2002 into law. This act, also known as the Economic Stimulus Package, contains a provision known as "bonus depreciation" that could significantly impact Florida's corporate income tax receipts. Bonus depreciation allows a business to claim an immediate additional deduction of 30 percent of the cost of new equipment put into use on or after September 11, 2001, but before September 11, 2004. Without this bonus depreciation provision, the standard accounting procedure is to depreciate the full cost of property over a prescribed period of time. Bonus depreciation is applicable to property depreciated under the Modified Accelerated Cost Recovery System (MACRS) over a period of 20 years or less (plus specified other property types such as utility property and computer software.)

With bonus depreciation, 30 percent of the cost of a new asset is allowed as a first year deduction; then the cost basis of the property is reduced 30 percent and the normal depreciation rules apply to the remaining basis. For example, acquisition of ten-year property costing $1,000,000 would normally create a first year deduction of $100,000. If eligible for bonus depreciation, the total first-year deduction is increased to $370,000: $300,000 of bonus depreciation (which reduces the cost basis to $700,000) and $70,000 deducted under MACRS.

History of Florida Corporate Income Tax and its Relationship to the Internal Revenue Code

On November 2, 1971, the voters of Florida approved a constitutional amendment that authorized the imposition of an income tax on corporations and other artificial entities. On December 8, 1971, the legislature adopted the Florida Income Tax Code, effective January 1, 1972. According to *An Introduction to Florida Corporate Income Taxation:*

> Early in their consideration of income tax legislation, the Senate and House committees both concluded that Florida should look to federal taxable income or one of its numerous equivalents for special industries as the basis for taxing net income in Florida. When the House and Senate committees of the legislature adopted the third staff draft statute as their working model, they thereby adopted for Florida the federal methods and periods of accounting, the federal concepts of realization and recognition, a set of procedures for returns and declarations comparable to and integrated with federal counterpart provisions, and an automatic tie to federal audit adjustments. By far the most significant aspect of this federal "piggyback" for Florida was the adoption of the federal tax concept of "income."[1]

This article goes on to point out that it was not possible for Florida to adopt every provision of the federal income tax. One significant deviation from the federal tax scheme was that the legislature chose not to adopt future changes in the federal code. Indeed, the House and Senate committees defeated a bill to effect automatic adoption for Florida of all future amendments to the Internal Revenue Code. Adoption of such a provision would have raised the question of whether it constituted an improper delegation of legislative power.[2]

Conformity to the federal code confers significant benefits on the state and Florida taxpayers by reducing the costs of tax administration and compliance. It was recognized from the beginning that Florida's corporate income tax statutes would be regularly updated to adopt changes in the federal code.

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[1] Arthur J England, Jr., "Corporate Income Taxation in Florida: Background, Scope, and Analysis," *An Introduction to Florida Corporate Income Taxation*, (Tallahassee: Department of Office Services, The Florida State University, 1972,) p. 10.

[2] ibid. pp. 11-12.

> Since the legislature's failure to conform Florida's tax law to federal law at frequent intervals could produce significant compliance and audit problems, it is reasonable to expect that the legislature will periodically analyze all changes in the corporate tax provisions of the Internal Revenue Code. In fact, this process began at the opening of the 1972 regular session when the Executive Director of the Department of Revenue described to the legislature changes made by Congress subsequent to November 2, in the Revenue Act of 1971, and recommended their immediate adoption in Florida.[3]

Annual adoption of changes to the Internal Revenue Code has been the practice in Florida since enactment of the state's corporate income tax. The sole exception to this practice occurred in 1981 when Florida and 20 other states declined to adopt these IRC changes to avoid revenue losses that would have resulted from such adoption.

III. Effect of Proposed Changes:

This bill updates the Florida Income Tax Code to reflect the changes Congress has made in the past year to the U.S. Internal Revenue Code of 1986. The definition of "Internal Revenue Code" is updated to include those provisions of the 1986 Code, as amended, in effect on January 1, 2002. This definition provides for "piggybacking" each change made during 2001 in the U.S. Internal Revenue Code. It also specifically adopts the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, which was signed into law on March 9, 2002.

The bill shall take effect upon becoming a law and shall operate retroactively to January 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[3] ibid. p.12.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Adoption of the provisions of the Job Creation and Worker Assistance Act of 2002 will result in General Revenue losses for the state of an estimated $428 million spread over 4 fiscal years, as follows:

Fiscal Year	FY 01-02	FY 02-03	FY 03-04	FY 04-05
GR Loss	$116 million	$146 million	$124 million	$42 million

Beginning in FY 05-06 some of these losses will be recovered, with expected recovery of 70 percent of nominal losses by FY 11-12. Additional recoveries will continue through 2024.

B. Private Sector Impact:

This bill ensures that corporations that are subject to Florida corporate income tax can base their calculations on the current IRC, and reduce their Florida taxes through bonus depreciation.

C. Government Sector Impact:

By adopting the current IRC, this bill maintains the low costs of administering the Florida Corporate Income Tax.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.