

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 5701	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Finance & Tax Committee; Precourt	114 Y's	0 N's
COMPANION BILLS:	CS/SB 2068	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

HB 5701 passed the House on February 9, 2012. It was subsequently amended as a conference committee report and passed both the House and Senate on March 9, 2012.

Current law allows documentary stamp tax receipts that are dedicated for other uses to be available to pay debt service for bonds issued before January 1, 2010. The bill extends this provision to bonds issued before January 1, 2013.

The bill limits the sales tax dealer's collection allowance to those tax dealers who file returns and pay taxes by electronic means. The dealer collection allowance compensates sales tax dealers up to \$30 per return for keeping records, filing timely tax returns and properly accounting and remitting taxes.

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2012. The change will apply retroactively to January 1, 2012.

The bill also revises the date on which an estimated corporate tax payment is due. Currently estimated payments are due on the last day of the applicable month; if the last day of the month falls on a Saturday, Sunday, or legal holiday these payments are not credited to the state until the next business day. The bill provides that the estimated tax payment due on Sunday, June 30, 2013, must be paid on or before the June 28, 2013.

The Revenue Estimating Conference (REC) estimated that the impact of the one-time estimated corporate income tax "speed up" provision on General Revenue to be a positive \$100 million in FY 2012-13 and a negative \$100 million in FY 2013-14. The REC estimated that the provision related to elimination of the collection allowance for certain sales tax dealers that do not file returns and payments electronically will have positive impact on General Revenue of \$8.1 million in fiscal year 2012-13 (\$8.1 million recurring), a negative impact on state trust revenue of -\$0.2 million (-\$0.2 million recurring), and a positive impact on local government revenues of \$1.9 million (\$1.9 million recurring).

Except as otherwise provided in the bill, the bill is effective July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Documentary Stamp Tax

Current Situation

Section 201.15, F.S., provides for the distribution of documentary stamp taxes collected under ch. 201, F.S. Current law allows documentary stamp tax receipts that are dedicated for other uses to be available to pay debt service for bonds issued before January 1, 2010.

Proposed Change

The bill amends s. 201.15, F.S., to extend this provision to bonds issued before January 1, 2013

Dealer's Collection Allowance

Current Situation

Section 212.12, F.S., provides a credit, referred to as the dealer's collection allowance, against sales tax due, for the purpose of compensating sales tax remitters for keeping prescribed records, filing timely tax returns, and properly accounting and remitting taxes. The amount of the credit, which is taken as a deduction from taxes due, is 2.5 percent of the amount of tax due. However, no credit is allowed for any tax due that exceeds \$1,200, effectively capping the credit at \$30 per reporting period.

Section 213.755, F.S., authorizes the executive director of the Department of Revenue (department) to require certain taxpayers to file returns and remit payments by electronic means. If the taxpayer has paid a tax in the prior state fiscal year of at least \$20,000, including combined returns for two or more places of business, the taxpayer is subject to this requirement. The department may waive the requirement for a taxpayer who is unable to comply despite good faith efforts or due to circumstances beyond the taxpayer's control.

Proposed Changes

The bill amends s. 212.12, F.S., to provide that the dealer's collection allowance applies to only those taxpayers who file returns and pay taxes due on those returns by electronic means. The bill also reenacts s. 723.008, F.S., which contains a reference to s. 212.12, F.S.

Update Florida Income Tax Code to Conform to Internal Revenue Code- "Piggyback"

Current Situation

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida.¹ For simplicity's sake, the determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes.² This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. With federal taxable income as a starting point, Florida law then requires a variety of additions and subtractions to reflect Florida-specific policies to determine Florida taxable income.

Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous

¹ Section 220.11, F.S.

² Sections 220.12 and 220.13, F.S.

year to the determination of federal taxable income. The bill adopting the federal code is commonly referred to as the “piggyback bill.”

Proposed Changes

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2012. The change will apply retroactively to January 1, 2012.

One-Time “Speed Up” for Estimated Corporate Income Tax Payments

Background

Florida imposes a 5.5% tax on the net income of corporations doing business in Florida.³ Every taxpayer that is liable for corporate income tax under ch. 220 or that is required to make a federal income return is required to submit a return to the state of Florida for each taxable year.⁴ If a taxpayer reasonably estimates his or her corporate income tax will be more than \$2,500 for a taxable year, then the taxpayer is required to make a declaration of that estimated amount.⁵ Following the declaration, the taxpayer is required to make payments of the estimated tax, in varying numbers of installments, depending on when the declaration is due.⁶ Although the statutes do not specify specific calendar day due dates⁷ for the estimated payments—stating the taxpayers must pay *before* a given date⁸—the estimated payment “due date” for each installment is, practically speaking, the day immediately preceding the deadline. At least some of these estimated tax payment due dates fall on a Saturday, Sunday, or legal holiday.⁹ Current administrative practice is to allow such payment to be made on the next following day that is not a Saturday, Sunday, or legal holiday.¹⁰

Current Situation

The June 30, 2013, estimated payment “due date” falls on a Sunday. Accordingly, an estimated \$100 million that would normally have been due to be received in FY 2012-2013 if the due date were not a weekend day, will instead be due to be received in FY 2013-14.

³ Section 220.11, F.S.

⁴ Section 220.22, F.S. The Department may prescribe rules and regulations concerning taxpayers making returns and notices. Section 220.21, F.S. Statutes provide that all returns other than those required for a Domestic International Sales Corporation and partnership information are due “on or before the 1st day of the 4th month following the close of the taxable year or the 15th day following the due date, without extension, for the filing of the related federal return for the taxable year.” Additionally, the Department has provided that if the “due date prescribed by law falls on a Saturday, Sunday, or legal holiday, a return will be considered timely if” it is either postmarked or received “on the next succeeding day that is not a Saturday, Sunday, or legal holiday.” Rule 12C-1.0222, F.A.C. “For this purpose, a legal holiday will mean a holiday that is observed by federal or state agencies as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended.” *Id.*

⁵ Section 220.24, F.S.

⁶ A taxpayer is required to file the declaration before the 1st day of the 5th month of each taxable year, unless “the minimum tax requirement of s. 220.24(1) is first met.” Section 220.241, F.S. (detailing the various declaration due dates if the minimum tax requirement is met).

⁷ E.g., “June 30” or “December 31.”

⁸ See Section 220.33, F.S. If the taxpayer is required to file the declaration before 1st day of the 5th month, then the estimated tax shall be paid in four equal installments in the following order: 1) before the 1st day of the 5th month; 2) before 1st day of the 7th month; 3) before the 1st day of the 10th month; and 4) before the 1st day of the next taxable year. *Id.*

⁹ *Id.*

¹⁰ C.f., Rule 12C-1.0222, F.A.C. (providing that if a return is due on a Saturday, Sunday, or legal holiday, then the return will be considered timely if it is electronically filed or postmarked on the “next day succeeding the day that is not a Saturday, Sunday, or legal holiday”). See also [Form F1120N](#), which are the instructions for Form F1120, the Florida corporate income tax return. Form F1120N contains a schedule of due dates for declaration of estimated tax, including dates upon which installments are due based upon the taxable year of the taxpayer. This form indicates that the payment due date in question is July 1, 2013.

Proposed Changes

The bill amends s. 220.33, F.S., to provide that notwithstanding any administrative rule or determination of the department that allows estimated payments otherwise due on a Saturday, Sunday or legal holiday to be paid on the next succeeding day that is not a Saturday, Sunday or legal holiday, any estimated tax payment required under s. 220.33, F.S., that would otherwise be due no later than Sunday, June 30, 2013, shall be paid on or before June 28, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) estimated that the impact of the one-time estimated corporate income tax "speed up" provision on General Revenue to be a positive \$100 million in FY 2012-13 and a negative \$100 million in FY 2013-14. The REC estimated that the provision related to elimination of the collection allowance for certain sales tax dealers that do not file returns and payments electronically will have positive impact on General Revenue of \$8.1 million in fiscal year 2012-13 (\$8.1 million recurring), and a negative impact on state trust revenue of -\$0.2 million (-\$0.2 million recurring).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference (REC) estimated that the provision related to elimination of the collection allowance for certain sales tax dealers that do not file returns and payments electronically will have positive impact on local government revenues of \$1.9 million in FY 2012-13 (\$1.9 million recurring).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.