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 Appropriations

BILL: CS/CS/SB 576

INTRODUCER: Appropriations Committee; Finance and Tax Committee; and Senators Perry and Flores

SUBJECT: Corporate Income Tax

DATE: April 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Colton	Diez-Arguelles	FT	**Fav/CS**
2.	Babin	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 576 updates Florida's corporate income tax by adopting the federal Internal Revenue Code in effect on January 1, 2019.

The bill subtracts from the calculation of Florida net income a new federal item of income known as Global Intangible Low-Taxed Income.

The bill repeals a potential, one-year tax rate reduction scheduled for taxable years beginning on or after January 1, 2019, and replaces it with a refund of net collections of corporate income taxes in Fiscal Year 2019-2020 that exceed 107 percent of the estimate adopted by the Revenue Estimating Conference on February 23, 2018.

The bill requires corporate taxpayers to file a new information return for taxable years beginning in calendar years 2018 and 2019. The information includes specific items of income and deduction related to the Tax Cuts and Jobs Act of 2017.

The Revenue Estimating Conference has determined that the bill will reduce General Revenue Fund receipts by an indeterminate amount beginning in Fiscal Year 2019-2020, with an indeterminate, negative recurring impact.

The bill appropriates $120,000 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2019-2020 to implement the bill.

The bill takes effect upon becoming a law.

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] Additional adjustments are then made to determine the corporation's Florida taxable income. By starting with federal taxable income, Florida eases the administrative burden on Florida taxpayers.

Florida maintains its relationship with the federal Internal Revenue Code (IRC) each year by adopting the IRC as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income.

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).[3] The TCJA made significant changes to federal income tax provisions that affect Florida corporations. The unique structure of the TCJA resulted in corporate taxpayers generally having more income subjected to tax (higher taxable income), but ultimately paying less federal tax. This situation occurred because although the TCJA increased federal taxable income by limiting deductions and creating new items of income, the TCJA also lowered the federal corporate tax rate from 35 percent to 21 percent.

Since Florida begins its corporate income tax calculation with federal taxable income, the TCJA has resulted in an increase of Florida taxable income. However, unlike the federal tax rate reduction, Florida's tax rate has remained the same, and thus, the TCJA has resulted in an increase in Florida's corporate income tax collections.

Florida's 2018 Legislation

Recognizing the potential for increased corporate income tax collections, the 2018 Legislature enacted section 220.1105, F.S., to deal with excess tax collections resulting from the federal law changes.[4]

Section 220.1105, F.S., uses the last estimates for net collections of corporate income taxes available to the Legislature during the 2018 legislative session[5] and requires a refund and rate

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[1] Sections 220.11(2) and 220.63(2), F.S.
[2] *See generally* s. 220.13(2), F.S.
[3] Pub. Law. No. 115-97 (Dec. 22, 2017).
[4] *See* s. 220.1105, F.S.
[5] The estimates were adopted by the Revenue Estimating Conference on February 23, 2018. *See* Revenue Estimating Conference, *General Revenue Conference Results*, 27 *available at* http://www.edr.state.fl.us/Content/conferences/generalrevenue/archives/180223gr.pdf (last visited Apr. 16, 2019).

adjustment if the actual net collections[6] for Fiscal Year 2018-2019 exceed the estimate by more than 107 percent.[7] The Office of Economic and Demographic Research is required to determine net collections for Fiscal Year 2018-2019 by September 1, 2019.[8]

If net collections exceed the estimate for Fiscal Year 2018-2019 by more than 107 percent, the Department of Revenue (DOR) is required to calculate the amount of total refund that is to be issued by February 15, 2020, and to issue refunds by March 1, 2020.[9] The refunds are made to each taxpayer[10] in proportion to how much tax the taxpayer paid.[11]

In addition to the automatic refund, if net collections in Fiscal Year 2018-2019 exceed the estimate by more than 107 percent, the Florida corporate income tax rate is automatically reduced in proportion to the amount that net collections exceeded 107 percent of the estimate.[12] The reduced tax rate applies for one taxable year, which is the taxpayer's taxable year beginning on or after January 1, 2019, and before January 1, 2020.[13]

Global Intangible Low-Taxed Income

The TCJA created a new type of federal income, Global Intangible Low-Taxed Income (GILTI), which relates to a U.S. company's share of earnings of a controlled foreign corporation.[14] Global Intangible Low-Taxed Income is contained within Subpart F, which is the portion of the IRC that addresses the use of foreign corporations to defer taxation of income at the federal level.[15]

The TCJA provides a temporarily reduced tax rate on GILTI by granting a 50 percent deduction for taxable years beginning before January 1, 2026.[16] The partial deduction for GILTI will decrease from 50 percent to 37.5 percent for taxable years beginning on or after January 1, 2026.[17]

Importantly, GILTI is a *deemed return* of income from the foreign corporation to the U.S. shareholder;[18] GILTI is included in federal taxable income, and as such, is included in Florida taxable income.

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[6] "Net collections" is the amount of taxes collected under chapter 220, F.S., by the Department of Revenue in Fiscal Year 2018-2019, including interest and penalties, minus the refunds of taxes levied under chapter 220, F.S, and issued by the department in Fiscal Year 2018-2019. Section 220.1105(1)(a), F.S.
[7] Section 220.1105(4), F.S.
[8] Section 220.1105(1)(a), F.S.
[9] Section 220.1105(4)(c), F.S.
[10] "Eligible taxpayers" are defined to mean taxpayers 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. Section 220.1105(4)(a)1., F.S.
[11] *See* s. 220.1105(4), F.S.
[12] *See* s. 220.1105(2), F.S.
[13] *See* s. 220.1105(2) and (5), F.S.
[14] *See* s. 951A, IRC.
[15] *See* Internal Revenue Service, *LB&I International Practice Service Concept Unit, Subpart F Overview available at* https://www.irs.gov/pub/int_practice_units/DPLCUV_2_01.PDF (last visited Apr. 16, 2019).
[16] *See* s. 250(a)(1)(B) and (a)(2), IRC.
[17] *See* s. 250(a)(3)(B), IRC.
[18] *See* s. 951(b)(1)(B), IRC.

For domestic corporations that pay dividends to their domestic corporate shareholders, the IRC provides a dividends received deduction for the receiving corporation.[19] The dividends received deduction is equal to either 50 percent or 100 percent of the dividend amount.[20] If a Florida corporation claims the dividend received deduction on its federal return, the deduction is included in federal taxable income, and as such, it is included in Florida taxable income.

In *Kraft General Foods, Inc., v. Iowa Department of Revenue and Finance,*[21] the U.S. Supreme Court analyzed Iowa's income tax system, which was structured such that the state did not tax dividends received from domestic corporations by recognizing the dividends received deduction for domestic dividends, but imposed tax on dividends from foreign corporations to U.S. shareholders.[22] The U.S. Supreme Court concluded that the Iowa tax structure violated the Foreign Commerce Clause of the U.S. Constitution[23] because it discriminated against foreign commerce.[24] While GILTI is a new type of income and has not specifically been addressed by the courts, the *Kraft* decision, in a broad sense, indicates that a state tax structure that treats income from foreign sources less favorably than income from domestic sources may not be constitutional.

For other deemed foreign income captured by Subpart F of the IRC,[25] Florida avoids the constitutional issue by allowing that income to be subtracted from taxable income.[26] The current subtraction does not apply to GILTI.

III. Effect of Proposed Changes:

Sections 1 and 2 of the bill adopt the IRC in effect on January 1, 2019, and applies the adoption to taxable years beginning on or after January 1, 2019. By adopting the updated code, Florida corporate taxpayers use the same calculation in determining the starting point of their state taxable income as they use to determine their federal taxable income.

Section 3 amends s. 220.1105, F.S., to repeal the potential, one year corporate income tax rate reduction that would apply to taxable years beginning on or after January 1, 2019, and before January 1, 2020, and replaces it with another round of refunds if Fiscal Year 2019-2020 net collections exceed the estimate for that fiscal year by more than 107 percent.

The bill also extends, from February 1 to April 15, the date by which the DOR must determine the total amount of corporate tax liability that must be refunded. The bill also extends, from March 1 to May 1, the date by which the DOR must issue refunds. Lastly, the bill requires the DOR to only consider tax returns filed through February 1 following the applicable fiscal year in its calculation.

[19] *See* s. 243, IRC.
[20] Section 243(a), IRC.
[21] *Kraft General Foods, Inc., v. Iowa Department. of Revenue and Finance*, 505 U.S. 71 (1992)
[22] *Kraft General Foods, Inc., v. Iowa Department of Revenue and Finance,* 505 U.S. at 73-74.
[23] U.S. Const. art. I, s. 8, cl. 3.
[24] *Kraft General Foods, Inc., v. Iowa Department of Revenue and Finance,* 505 U.S. at 82.
[25] The income is included by s. 951, IRC.
[26] *See* s. 220.13(1)(b)2.b., F.S.

Sections 4 and 5 requires a taxpayer to subtract GILTI in the calculation of the taxpayer's Florida taxable income, but limits the subtraction amount to the extent that the amount was not deductible in calculating federal taxable income. As a result, the subtraction amount is equal to the amount of the taxpayer's GILTI minus the related partial deduction for GILTI in the federal return. The bill applies the subtraction to taxable years beginning on or after January 1, 2018.

Section 6 creates a new 2 year reporting requirement for taxpayers that are required to file Florida corporate income tax returns. Taxpayers are required to provide information related to specific items of income and deduction related to the TCJA. For taxable years beginning in calendar years 2018 and 2019, a taxpayer is required to provide:

- The taxpayer's name; federal taxpayer identification number; taxable year beginning date; taxable year ending date; whether a consolidated return for the taxpayer is required or elected under s. 220.131, F.S.
- The taxpayer's NAICS code for business activity that generates the greatest proportion of gross receipts of the taxpayer.[27]
- The taxpayer's "taxable income" as that term is defined in s. 220.13(2), F.S., and the Florida apportionment fraction pursuant to s. 220.15, F.S., for the taxable year.
- The amount of GILTI included in federal taxable income under s. 951A, IRC, and the amount of the related s. 250, IRC, deduction as it pertains to s. 951A, IRC.
- The amount of Foreign Derived Intangible Income computed for the federal return for the taxable year and the amount of the related s. 250, IRC, deduction as it pertains to foreign derived intangible income.
- The amount of business interest expense deducted on the federal return under s. 163, IRC, including any carryover; the amount of current year business interest expense, including any carryover, that was not deducted due to the limitation in s. 163(j), IRC; and the amount of business interest expense carried over from previous taxable years.
- The amount of federal net operating loss deduction under s. 172, IRC, applied in determining federal taxable income and the amount of federal net operating loss carryover that was not applied due to the limitation in s. 172(a)(2), IRC.
- The total amount of Florida net operating loss carryover available after the filing of the return for the taxable year.
- The total amount of the Florida alternative minimum tax credit carryover available after the filing of the return for the taxable year.

The bill requires the DOR to create, by September 3, 2019, a secure online application for taxpayers to submit the required information.

The taxpayer must submit the required information the earlier of 10 days after the extended due date of the Florida corporate income tax return, or 10 days after the date the Florida corporate income tax return is filed, but not earlier than September 3, 2019. The information submitted must be certified as true and correct by an officer of the taxpayer or one duly authorized to act on the taxpayer's behalf.

[27] The term "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

Taxpayers who fail to provide the information by the required submission date, are subject to a penalty of $1,000 or one percent of the taxpayer's corporate income tax due for the most recent taxable year, whichever is greater. However, the DOR is authorized to settle or compromise any such penalty if the DOR determines that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud.

In addition to the DOR's existing audit and investigation authority, the bill provides that the DOR may perform any additional financial and technical audits and investigations which are necessary to verify the accuracy of the information submitted by the taxpayer, including examining the accounts, books, and financial records of the taxpayer.

For Fiscal Year 2019-2020, the bill appropriates $120,000 in nonrecurring funds from the General Revenue Fund to the DOR for the purpose of implementing the act.

The bill authorizes the DOR to adopt emergency rules to implement the bill.

The bill takes effect upon becoming a law. The provision that adopts the IRC operates retroactively to January 1, 2019, and the provision that subtracts GILTI applies retroactively to January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

The mandates provisions do not apply because the bill does not require counties or municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill appears to remove a potential constitutional infirmity with Florida's treatment of GILTI under current law.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that the bill will reduce General Revenue Fund receipts by an indeterminate amount beginning in Fiscal Year 2019-2020, with an indeterminate, negative recurring impact.

B. Private Sector Impact:

By adopting recent changes to the IRC, Florida provides consistent tax treatment for Florida corporate taxpayers. Corporations will not receive the potential corporate tax rate reduction for taxable years beginning on or after January 1, 2019, and before January 1, 2020, but will receive potential refunds in Fiscal Year 2019-2020.

C. Government Sector Impact:

The DOR is required to develop an online application to receive information remitted by corporate taxpayers.

The bill appropriates $120,000 in nonrecurring funds from the General Revenue Fund to the DOR in Fiscal Year 2019-2020 to implement the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 220.03, 220.13, and 220.1105.

The bill creates section 220.27 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/CS by Appropriations on April 18, 2019:
The committee substitute:
- Adopts the IRC as of January 1, 2019.
- Repeals the automatic, potential corporate tax rate reduction scheduled for taxable years beginning on or after January 1, 2019, and before January 1, 2020.

- Creates potential refunds of corporate income taxes received in Fiscal Year 2019-2020.
- Changes the dates by which the DOR must determine and issue refunds under s. 220.1105, F.S.
- Requires corporate taxpayers to file information returns for taxable years beginning in calendar years 2018 and 2019.
- Appropriates $120,000 in Fiscal Year 2019-2020 to the DOR to administer the bill.

CS by Finance and Tax on April 5, 2019:
The CS:
- Allows a business to not participate in the holiday if less than 5 percent of the business's gross sales of tangible personal property in the prior calendar year consist of items that would be exempt.
- Increases the appropriation amount from $225,000 to $237,000 and appropriates the funds in Fiscal Year 2018-2019 instead of Fiscal Year 2019-2020.

Amendments:

None.