

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 7059 PCB WMC 21-02 Corporate Income Tax

**SPONSOR(S):** Ways & Means Committee, Payne

**TIED BILLS:** **IDEN./SIM. BILLS:**

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**FINAL HOUSE FLOOR ACTION:** 107 Y's 5 N's **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

HB 7059 passed the House on April 23, 2021, and subsequently passed the Senate on April 26, 2021.

Florida generally imposes a 5.5 percent tax on certain income of corporations doing business in Florida. Florida uses federal taxable income from federal tax returns as a beginning point to calculate corporate income tax owed to Florida. Florida updates its utilization of the federal Internal Revenue Code by adopting the code as it exists on January 1 in any given year. Adopting the code on an annual basis ensures the Florida tax code reflects any relevant changes to the Internal Revenue Code that were made during the prior year.

In 2020, the federal government passed two major pieces of legislation that contained significant temporary and permanent changes to corporate taxation under the Internal Revenue Code. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020, and the Consolidated Appropriations Act, 2021 (CAA), was signed into law December 27, 2020.

The bill adopts the Internal Revenue Code as in effect on January 1, 2021, with four exceptions.

First, the bill does not adopt (decouples from) temporary federal provisions in the Internal Revenue Code that were included in the CARES Act that provide for an increase in the allowable deduction of business interest expense from 30% to 50% of adjusted taxable income for taxable years beginning in 2019 and 2020.

Second, the bill decouples from temporary federal provisions in the Internal Revenue Code that were included in the CAA increasing from 50% to 100% the amount of meal expenses paid or incurred in 2021 or 2022 that are deductible.

Third, the bill decouples from provisions in the Internal Revenue Code that were included in the CARES Act that change the depreciable life of certain qualified improvement property from 39 years to 15 years.

Fourth, the bill decouples from temporary federal provisions in the Internal Revenue Code that were included in the CAA, that extended through December 31, 2025, the ability for certain film productions to expense costs up to \$15 million per year in the year incurred.

The Revenue Estimating Conference estimated that the provisions of the bill will have a -\$2.2 million impact (zero recurring) on General Revenue in FY 2021-22.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming law.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Present Situation**

##### ***Federal Tax Code Conformance***

Florida generally levies a 5.5 percent tax<sup>1</sup> on the taxable income of corporations and financial institutions doing business in Florida.<sup>2</sup> Florida utilizes the taxable income determined for federal income tax purposes as a starting point to determine the total amount of Florida corporate income tax due.<sup>3</sup> This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed when determining taxable income for federal tax purposes as it does when determining taxable income for state taxation purposes.

Florida maintains its relationship with the federal Internal Revenue Code by annually adopting the Internal Revenue Code as it exists on January 1.<sup>4</sup> By doing this, Florida adopts any changes to the Internal Revenue Code related to determining federal taxable income that were made during the previous year. However, a state may choose to not adopt or to “decouple” from particular changes made to the Internal Revenue Code in the prior year, and instead specify its own treatment of the issue, or allow the previous Internal Revenue Code treatment to continue for Florida tax purposes.

##### ***The Coronavirus Aid, Relief, and Economic Security (CARES) Act***

On March 27, 2020, the federal government passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) “to provide emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic.”<sup>5</sup> The CARES Act made a number of temporary and permanent changes to individual and corporate income tax provisions in the Internal Revenue Code, including:

- A temporary increase in the allowable deduction for business interest expenses, from 30% to 50% of a corporation’s adjusted taxable income, for 2019 and 2020;<sup>6</sup>
- A retroactive amendment to Internal Revenue Code provisions first enacted in the Tax Cuts and Jobs Act of 2017 (TCJA)<sup>7</sup> that required certain qualified improvement property costs to be depreciated over 39 years instead of 15 years;<sup>8</sup>
- A temporary increase in net operating loss provisions, allowing net operating losses created in 2018 through 2020 to offset 100% of income if used in taxable years beginning before January 1, 2021, (instead of 80%), and allowing those NOLs to be carried back five years from the year of creation;<sup>9</sup> and
- A temporary increase in the allowable charitable deduction, from 10% to 25% of a corporate taxpayer’s taxable income for 2020.

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<sup>1</sup> The tax rate was adjusted downward to 4.458 percent pursuant to s. 220.1105, F.S., for taxable years beginning on or after January 1, 2019. Pursuant to s. 220.1105(5), F.S., the rate will return to 5.5 percent for taxable years beginning on or after January 1, 2022.

<sup>2</sup> s. 220.11(2), F.S.

<sup>3</sup> s. 220.12, F.S.

<sup>4</sup> ss. 220.03(1)(n) and (2)(c), F.S.

<sup>5</sup> Public Law No. 116-136.

<sup>6</sup> Section 2306, Public Law No. 116-136. This provision also allows the 2020 50% limitation to be calculated based on 2019 income, which may allow for a larger deduction than would otherwise have been available.

<sup>7</sup> Section 13204, Public Law No. 115-97.

<sup>8</sup> Section 2307, Public Law No. 116-136.

<sup>9</sup> Section 2303, Public Law No. 116-136. Note that the state impact from these changes will be very different from the federal impact, as Florida disallows all carryback of NOLs at the state level. This provision may lead to large federal refunds, but the impact on Florida is expected to be minimal.

### Business Interest Expense Deduction

The business interest expense (BIE) provisions of the Internal Revenue Code provide a tax deduction for interest expenses or other borrowing costs incurred in a trade or business or in the production of rental or royalty income.<sup>10</sup> The deduction is generally applied in the year the expenses are paid or accrued, depending on the taxpayer's method of accounting. Florida currently conforms to the Internal Revenue Code on the BIE deduction and does not decouple from any provision.

Before the enactment of the TCJA, taxpayers could generally fully deduct their BIE, subject to some restrictions and exceptions. The TCJA limited, except for certain taxpayers<sup>11</sup>, the BIE deduction for taxable years beginning after 2017 to the sum of the taxpayer's business interest income for the taxable year, 30 percent of the taxpayer's adjusted taxable income for the taxable year, and the taxpayer's floor plan financing interest for the taxable year.<sup>12</sup> The amount of business interest not allowed as a deduction because of this limitation generally may be carried forward indefinitely.<sup>13</sup> The CARES Act temporarily increased this limit for taxable years beginning in 2019 and 2020, raising the 30 percent limit on a taxpayer's adjusted taxable income in the above formula to 50 percent.<sup>14</sup>

### Depreciation of Qualified Improvement Property

Generally, the Internal Revenue Code allows a depreciation deduction from taxable income, which is a reasonable allowance for the exhaustion and wear and tear (including a reasonable allowance for obsolescence) of property used in a trade or business or property held for the production of income.<sup>15</sup> An allowance (deduction) is set aside each taxable year in accordance with a reasonably consistent plan, starting when the property is placed in service.<sup>16</sup> The aggregate amount of the allowances plus the salvage value, at the end of the estimated useful life of the property, should equal the cost or other specified basis of the property.<sup>17</sup> Over time, the Internal Revenue Code has adopted different systems for computing depreciation. The current system, the Modified Accelerated Cost Recovery System (MACRS), applies to most tangible property generally placed in service after 1986.<sup>18</sup> Under MACRS, the cost of eligible property is recovered over a 3-, 5-, 7-, 10-, 15-, 20-, 27.5-, 31.5-, or 39-year period, depending on the type of property, by applying statutory recovery methods and conventions.

Starting in 2001 with the federal Job Creation and Worker Assistance Act of 2002, Congress implemented, reinstated, and expanded a "bonus depreciation" allowance for qualifying property, which was created to spur increased business investment during periods of negative or sluggish economic growth by lowering the cost of capital for investment in certain assets.<sup>19</sup> Bonus depreciation allows a taxpayer to deduct up to 100 percent of the cost of the property in the taxable year it is placed in service. The bonus depreciation provision has been extended or expanded 10 times since 2002, including by the TCJA.<sup>20</sup> The TCJA generally increased the bonus rate for property acquired and placed in service after September 27, 2017, to 100 percent for property placed in service in 2017 through 2022, 80 percent in 2023, 60 percent in 2024, 40 percent in 2025, and 20 percent in 2026.<sup>21</sup>

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<sup>10</sup> 26 U.S.C. s. 163.

<sup>11</sup> Taxpayers with average annual gross receipts in the prior three taxable years of \$25 million or less are exempted from the limitation, as well as certain trades or businesses. *See* 26 U.S.C. s. 163(j)(3) and (7).

<sup>12</sup> 26 U.S.C. s. 163(j).

<sup>13</sup> 26 U.S.C. s. 163(j)(2).

<sup>14</sup> 26 U.S.C. s. 163(j)(10).

<sup>15</sup> 26 U.S.C. s. 167(a).

<sup>16</sup> 26 C.F.R. ss. 1.167(a)-1(a), 1.167(a)-10(b).

<sup>17</sup> 26 C.F.R. s. 1.167(a)-1(a).

<sup>18</sup> 26 U.S.C. s. 168; 26 C.F.R. 1.168(a)-1, *et seq.*

<sup>19</sup> 26 U.S.C. s. 168(k). *See* Congressional Research Service, *The Section 179 and Section 168(k) Expensing Allowances: Current Law and Economic Effects* (Updated May 1, 2018), available at <https://crsreports.congress.gov/product/pdf/RL/RL31852> (last visited April 11, 2021).

<sup>20</sup> *Id.* at 10.

<sup>21</sup> 26 U.S.C. s. 168(k)(6)(A).

The TCJA also made changes to the depreciation deduction of certain improvements that leaseholders or owners make to the interior space of nonresidential buildings. Improvement property can take many forms, with some examples being: installing new lighting and carpet in a leased office, adding new woodwork and windows to the dining room of a restaurant, and painting the walls and upgrading the sound system of a retail store.<sup>22</sup> Before the TCJA, the Internal Revenue Code contained four categories of such improvement property, each with different criteria and cost recovery requirements.<sup>23</sup> Three of the four categories had a 15-year cost recovery period, and the other was eligible for bonus depreciation even though it had a 39-year cost recovery period. The TCJA combined the four categories into a single category called qualified improvement property (QIP).<sup>24</sup>

The TCJA left QIP off the list of assets eligible for a 15-year cost recovery period under the MACRS.<sup>25</sup> As a result, the cost of all QIP had to be recovered over 39 years under MACRS (or 40 years under an alternative depreciation system), and was ineligible for the bonus depreciation allowance because such improvement property must have a recovery period of 20 years or less to qualify for bonus depreciation.<sup>26</sup> The CARES Act retroactively designated QIP as 15-year property under the MACRS and 20-year property under the alternative depreciation system, to take effect as if included in the TCJA.<sup>27</sup>

Florida has decoupled from federal bonus depreciation since 2008.<sup>28</sup> Since 2009, Florida requires a taxpayer to add back to its taxable income the full amount deducted for bonus depreciation for federal purposes and then apply a straight-line seven-year depreciation schedule beginning with the year of the addback.<sup>29</sup> The schedule applies notwithstanding any sale or disposition of the property that is the subject of the adjustments and regardless of whether such property remains in service in the hands of the taxpayer.<sup>30</sup>

### Net Operating Loss Deduction

The net operating loss (NOL) provisions of the Internal Revenue Code provide a tax deduction for most taxpayers whose deductible expenses for a taxable year exceed their gross income, subject to certain adjustments.<sup>31</sup> When a firm has a loss (i.e., an NOL), its federal income taxes are not reduced immediately beyond zero; rather, the business owes no income tax in that taxable year and its loss is carried to other years.<sup>32</sup> An NOL is “carried back” when applied to taxable years before the loss year and “carried over” or “carried forward” when applied to taxable years after the loss year. A carryback of losses yields immediate tax reductions in the form of a refund or credit, while a carryforward reduces future tax liabilities.<sup>33</sup> The Internal Revenue Code requires that NOLs be applied starting with the earliest taxable year to which the loss may be carried.<sup>34</sup> Generally, Florida currently follows the Internal Revenue Code with respect to the computation and handling of an NOL for Florida corporate income

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<sup>22</sup> See Congressional Research Service, *Tax Depreciation of Qualified Improvement Property: Current Status and Legislative History* (updated June 24, 2020), available at <https://crsreports.congress.gov/product/pdf/IF/IF11187> (last visited April 14, 2021).

<sup>23</sup> Qualified leasehold improvement property, qualified restaurant improvement property, qualified retail improvement property, and qualified improvement property. *See id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Supra* note 39.

<sup>26</sup> *Id.*

<sup>27</sup> Pub. L. No. 116-136, s. 2307(b) (2020).

<sup>28</sup> Ch. 2008-206, ss. 1-2, Laws of Fla.

<sup>29</sup> Section 220.13(1)(e)1., F.S.; ch. 2009-18, s. 2, Laws of Fla.

<sup>30</sup> Section 220.13(1)(e)1., F.S.

<sup>31</sup> 26 U.S.C. s. 172.

<sup>32</sup> See Congressional Research Service, *Tax Treatment of Net Operating Losses (NOLs) in the Coronavirus Aid, Relief, and Economic Security (CARES) Act* (Updated Oct. 6, 2020), available at <https://crsreports.congress.gov/product/pdf/IN/IN11296> (last visited April 14, 2021).

<sup>33</sup> *Id.*

<sup>34</sup> 26 U.S.C. s. 172(b)(2).

tax purposes, except that for Florida purposes, an NOL may be carried forward only and may not be carried back to taxable years before the loss year.<sup>35</sup>

Before the enactment of the TCJA, a taxpayer could, for federal income tax purposes, use the aggregate amount of NOLs carried back or carried forward from other loss years to fully offset its taxable income for a taxable year and owe no income tax for that year.<sup>36</sup> The TCJA limited the percentage of taxable income that NOLs generated in taxable years after 2017 could offset to 80 percent of the taxable income for a taxable year.<sup>37</sup> The CARES Act temporarily suspends this limitation for taxable years beginning in 2018, 2019, and 2020, allowing a taxpayer to use NOLs generated in those years to fully offset taxable income when used for taxable years beginning before January 1, 2021.<sup>38</sup>

The TCJA generally prohibited the carryback of NOLs generated in taxable years after 2017 while allowing such NOLs to be carried forward indefinitely, a change from a general 2-year carryback period and a 20-year carryover period.<sup>39</sup> The CARES Act temporarily lifted the carryback restriction, providing a 5-year carryback period for NOLs generated in taxable years 2018, 2019, and 2020. However, the carryback change does not affect Florida because, as described above, Florida has decoupled from NOL carryback provisions and does not allow NOLs to be carried back.

### Charitable Contribution Deduction

The CARES Act raised the limitation on deductions for charitable contributions by corporations who made cash contributions in 2020, from 10 percent of taxable income to 25 percent of taxable income.<sup>40</sup> To qualify for the increased limit, contributions must be made to a public charity or private operating foundation<sup>41</sup>, but does not include contributions to a supporting organization or a donor-advised fund. In addition, the deduction limitation for certain donations of food inventory in 2020 was increased from 15 percent to 25 percent.

### **Consolidated Appropriations Act, 2021**

On December 27, 2020, the federal government passed the Consolidated Appropriations Act, 2021 (CAA).<sup>42</sup> The annual appropriations act set forth the budget for the federal government, but also included additional tax relief provisions for individuals and businesses. Some of the changes in the CAA included a temporary increase in the deduction for business meal expenses, an extension of an expensing provision for certain film, television, and life performances, as well as an extension through 2021 for the increased charitable deduction found in the CARES Act.

Other changes were made in the CAA to the Internal Revenue Code which appear to have limited or no impact on Florida taxpayers. These include tax extenders and other miscellaneous provisions.

### Deduction for Business Meal Expenses

Under the Internal Revenue Code, taxpayers are generally limited to a 50% deduction on the cost of business meal expenses.<sup>43</sup> The deduction is limited to food and beverage expenses,<sup>44</sup> must be

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<sup>35</sup> Section 220.13(1)(b)1., F.S., and Fla. Admin. Code R. 12C-1.013(15)(a).

<sup>36</sup> 26 U.S.C. s. 172(a) (2016).

<sup>37</sup> 26 U.S.C. s. 172(a) (2018).

<sup>38</sup> 26 U.S.C. s. 172(a) (2021).

<sup>39</sup> 26 U.S.C. s. 172(b)(1) (2018).

<sup>40</sup> Pub. L. No. 116-136, s. 2205 (2020)

<sup>41</sup> See 26 U.S.C. s. 170(b)(1)(A) for the list of eligible entities.

<sup>42</sup> Public Law No. 116-260.

<sup>43</sup> 26 U.S.C. s. 274(n) (2018).

<sup>44</sup> *Id.*

separate from any entertainment,<sup>45</sup> cannot be lavish or extravagant,<sup>46</sup> and must be furnished when the taxpayer is present.<sup>47</sup> The primary change in the CAA to the Internal Revenue Code is a temporary increase in the allowable deduction for corporate meal expenses. For meal expenses paid or incurred in 2021 or 2022, 100% of otherwise allowable expenses can be deducted, instead of the standard 50% deduction for federal income tax purposes.<sup>48</sup>

### Expensing of Certain Production Costs

First enacted in 2004, section 181 of the Internal Revenue Code created an allowance for expensing costs related to qualified film and television productions.<sup>49</sup> This provision allowed taxpayers to treat the cost of any qualified production as a deductible expense in the year the expense was incurred, up to \$15,000,000.<sup>50</sup> The original provision was scheduled to sunset December 31, 2008,<sup>51</sup> but was renewed and expanded over time.<sup>52</sup> Prior to the CAA, the program was scheduled to sunset December 31, 2020. Under the CAA, the program is extended through December 31, 2025.<sup>53</sup>

### Tax Extenders and Miscellaneous Provisions

The CAA extended or modified a number of tax provisions relating to the federal income tax for corporations, including:

Providing 5-year extensions for:

- The “look-thru” treatment of dividends, interest, rents, and royalties received or accrued from related controlled foreign corporations.<sup>54</sup>
- The 7-year recovery period for motorsports entertainment complexes.<sup>55</sup>
- Empowerment zone designations under s. 1391(d) of the Internal Revenue Code.<sup>56</sup>

Providing a 1-year extension for:

- The classification of certain race horses as 3-year property.<sup>57</sup>
- Accelerated depreciation for business property on Indian reservations.<sup>58</sup>
- The increased limitation on deductions for charitable contributions by corporations under the CARES Act.<sup>59</sup> The increased limitation applies for 2021.

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<sup>45</sup> 26 U.S.C. s.274(a)(1) (2018).

<sup>46</sup> 26 U.S.C. s. 274(k)(1)(A) (2018).

<sup>47</sup> 26 U.S.C. s. 274(k)(1)(B) (2018).

<sup>48</sup> Public Law No. 116-260, Div. EE, title II, s. 210 (2020).

<sup>49</sup> Public Law No. 108-357, title II, Sec. 244(a), Oct. 22, 2004.

<sup>50</sup> 26 U.S.C. s. 181(a)(2) (2005). The original program only applied to productions under \$15 million.

<sup>51</sup> 26 U.S.C. s. 181(f) (2005).

<sup>52</sup> In 2018, the program was expanded to apply to the first \$15 million of costs, and extended through December 31, 2009 (Pub. L. 110-343, div. C, title V, s. 502, Oct. 3, 2008), It was further extended through December 31, 2011 (Pub. L. 111-312, s. 744, Dec. 17, 2010); through December 31, 2013 (Pub. L. 112-240, title III, s. 317, Jan. 2, 2013); and through December 31, 2014 (Pub. L. 113-295, Div. A, title I, s. 129(a), Dec. 19, 2014). In 2015, the program was expanded to include live theatrical performances and renewed through December 31, 2016 (Pub. L. 114-113, Div. Q, title I, s. 169, Dec. 18, 2015). Those provisions were again extended through December 31, 2017 (Pub. L. 115-123, Div. D, title I, s. 40308(a), Feb. 9, 2018), and through December 31, 2020 (Pub. L. 116-94, Div. Q, title I, s. 117(a), Dec. 20, 2019).

<sup>53</sup> Pub. L. 116-260, Div. EE, title I, s. 116(a), Dec. 27, 2020. The REC estimate of the fiscal impact of adopting this provision is a negative 2.6 million recurring in FY 2021-22. The adopted impact is available at

[http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/\\_pdf/page250-275.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page250-275.pdf) (last visited May 10, 2021).

<sup>54</sup> Pub. L. 116-260, Div. EE, title I, s. 111 (2020).

<sup>55</sup> Pub. L. 116-260, Div. EE, title I, s. 115 (2020).

<sup>56</sup> Pub. L. 116-260, Div. EE, title I, s. 118 (2020).

<sup>57</sup> Pub. L. 116-260, Div. EE, title I, s. 137 (2020).

<sup>58</sup> Pub. L. 116-260, Div. EE, title I, s. 138 (2020).

<sup>59</sup> Pub. L. 116-260, Div. EE, title II, s. 213 (2020).

The CAA also extended or modified a number of federal tax credits affecting the federal corporate income tax.<sup>60</sup>

### **Paycheck Protection Program**

The Paycheck Protection Program (PPP), established by the CARES Act, is implemented by the Small Business Administration with support from the United States Department of the Treasury.<sup>61</sup> This program provides small businesses with funds to pay up to eight weeks of payroll costs including benefits.<sup>62</sup> Funds can also be used to pay interest on mortgages, rent, and utilities.<sup>63</sup> The funds were provided in the form of loans guaranteed under the federal Small Business Act, which are fully forgivable if the borrower maintains employee and compensation levels, spends loan proceeds on eligible expenses, and spends at least 60 percent of the proceeds on payroll costs.<sup>64</sup> The CARES Act provided that for purposes of the Internal Revenue Code, any amount of PPP loans which would otherwise be included as gross income of the eligible recipient by reason of forgiveness is excluded from gross income.<sup>65</sup>

The exclusion of forgiven PPP loans from gross income under the CARES Act raised a related question as to whether a taxpayer could deduct otherwise allowable expenses that were paid with PPP loan proceeds. On May 2, 2020, the Internal Revenue Service (IRS) released a notice stating that an existing prohibition against deductions that are allocable to tax-exempt income<sup>66</sup> applied, and therefore a taxpayer could not claim a deduction for otherwise allowable expenses when payment of the expense results in forgiveness of a PPP loan and the income associated with such forgiveness is excluded from gross income.<sup>67</sup>

The CAA, clarifying congressional intent, expressly provides that “no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income” for both original and subsequent PPP loans,<sup>68</sup> meaning that a taxpayer may deduct PPP-funded expenses from their income.<sup>69</sup>

The provisions in the CARES Act and the CAA related to the PPP program were not made to the Internal Revenue Code, but were made elsewhere in federal law. Thus, the federal treatment of these loans, including exclusion from gross income for forgiven amounts and the allowance of deductions for expenses paid with forgiven loans, applies for Florida corporate income tax purposes, both under current law and under the bill (under the Internal Revenue Code in effect as of January 1, 2020, and the Internal Revenue Code in effect as of January 1, 2021).<sup>70</sup>

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<sup>60</sup> See Pub. L. 116-260, Div. EE, title I, ss. 102, 105, 112, 113, 119, 121, 131, 132, 135, 136, 139, 140, 142, 143, 144, and 145; title II, ss. 203 and 204; and title III, s. 305 (2020).

<sup>61</sup> United States Department of the Treasury, *The CARES Act Provides Assistance to Small Businesses*, available at <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses> (last visited April 19, 2021).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> United States Small Business Administration, *PPP Loan Forgiveness*, available at <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/ppp-loan-forgiveness> (last visited April 19, 2021).

<sup>65</sup> Pub. L. No. 116-136, s. 1106(i) (2020)

<sup>66</sup> 26 U.S.C. s. 265(a)(1).

<sup>67</sup> Internal Revenue Service, Notice 2020-32, available at <https://www.irs.gov/pub/irs-drop/n-20-32.pdf> (last visited April 19, 2021). It reaffirmed its conclusion on June 29, 2020, in IRS Revenue Ruling 2020-27, available at <https://www.irs.gov/pub/irs-drop/rr-20-27.pdf> (last visited April 19, 2021).

<sup>68</sup> Pub. L. 116-260, division N, title II, subtitle B, s. 276 (2020).

<sup>69</sup> The IRS subsequently issued IRS Revenue Ruling 2021-2, obsoleting the Notice and Revenue Ruling referenced in *supra* note 65. Available at <https://www.irs.gov/pub/irs-drop/rr-21-02.pdf> (last visited April 19, 2021).

<sup>70</sup> The Revenue Estimating Conference did adopt a fiscal impact for the federal treatment of PPP loans; however, that impact was not attributed to this bill. As an underlying federal change separate from the Internal Revenue Code, the impact was used as a consensed adjustment to the General Revenue forecast for Corporate Income Tax in April 2021. For more information, see the Revenue Estimating Conference analysis available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/\\_pdf/page250-275.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page250-275.pdf) (last visited May 10, 2021).

## **Effect of Proposed Changes**

The bill updates the Florida corporate income tax code by adopting the Internal Revenue Code as in effect on January 1, 2021, with four exceptions:

- First, the bill decouples from temporary federal provisions in the Internal Revenue Code included in the CARES Act that provide for an increase in the allowable deduction of business interest expense from 30% to 50% of adjusted taxable income for taxable years beginning in 2019 and 2020.
- Second, the bill decouples from temporary federal provisions in the Internal Revenue Code included in the Consolidated Appropriations Act, 2021, increasing from 50% to 100% the amount of business meal expenses paid or incurred in 2021 or 2022 that are deductible.
- Third, the bill decouples from temporary federal provisions in the Internal Revenue Code included in the CAA that extend certain expensing rules for film, television, and live theatrical productions through 2025.
- Fourth, the bill decouples from the provisions in the Internal Revenue Code included in the CARES Act that change the depreciable life of certain qualified improvement property from 39 years to 15 years.

By adopting the Internal Revenue Code as in effect January 1, 2021, the following provisions, among others, will be adopted for Florida corporate income tax purposes:

- The bill adopts the CARES Act's suspension of the 80 percent NOL limitation, meaning that for NOLs created in taxable years beginning in 2018, 2019, and 2020, a Florida taxpayer may use those NOLs in 2018, 2019, or 2020 to fully offset its taxable income, rather than up to 80 percent of its taxable income.
- The bill adopts the CARES Act's increased federal limitation on the charitable contribution deduction from 10% to 25% of a corporation's taxable income for 2020, and the CAA's extension of that increase for 2021.
- The bill adopts the tax extenders and miscellaneous provisions described in the present situation section of the analysis.

The bill provides express rulemaking authority to the Department of Revenue to administer the provisions in the bill related to decoupling from:

- Temporary federal provisions increasing from 50% to 100% the amount of business meal expenses paid or incurred in 2021 or 2022 that are deductible;
- Temporary federal provisions that extend certain expensing rules for film, television, and live theatrical productions through 2025; and
- Changes to the depreciable life of certain qualified improvement property.

The bill also provides emergency rulemaking authority to the Department of Revenue to implement the provisions of the bill.

The bill is effective upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The Revenue Estimating Conference estimated the provisions of the bill will have a -2.2 million cash impact (zero recurring) on General Revenue in FY 2021-22.

#### **2. Expenditures:**

None.



**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

By adopting recent changes to the Internal Revenue Code, Florida maintains the linkage between the federal and Florida tax codes which simplifies compliance for Florida corporate income taxpayers.

**D. FISCAL COMMENTS:**

None.