Bloomberg Tax

Daily Tax Report™: State

VOL. 2018, NO. 5 JANUARY 8, 2018

2018 Legislative Preview

Florida Legislative Preview: Quiet Year for Tax Cuts

Florida's avowed tax-cutting governor is taking a different approach for the 2018 legislative session—a small tax-break proposal and one big plan to shield prior tax cuts from being reversed.

Gov. Rick Scott (R) wants any future tax increases to require a two-thirds supermajority vote of state lawmakers. When the Legislature convenes in January, it will consider Scott's proposal to add the requirement to the state constitution, H.J.R. 7001.

Otherwise, the Legislature seems likely to have a quiet year in terms of tax policy, said Mark E. Holcomb, a tax attorney at Dean Mead in Tallahassee. It could revisit cutting the state's sales tax on commercial real estate leases further, although the timing might be bad.

''It is a tighter budget year. That's reflected in the governor's package,'' Holcomb said. ''That coupled with it being an election year is why I think we won't see a lot of tax changes.''

The Legislature also might respond to the 2017 federal tax law (Pub. L. No. 115-97), signed by President Donald Trump Dec. 22, such as choosing not to fully adopt the new law's accelerated expensing of business investments, which would be costly to the state.

''I expect the Legislature will have to enact some form of state limitation and add-back over an extended period, as it has done in the past,'' Holcomb said. The Legislature also could consider adjustments to other new federal provisions for revenue reasons, he added, such as the interest deduction cap and elimination of the 20-year carryforward limit on net operating losses.

Holidays, Fee Reductions Scott's tax-cut proposals for 2018 amount to $180 million—compared with proposals ranging from $500 million to $1 billion in prior years. His plan consists of sales tax holidays and reductions in driver's license fees.

Beyond this, notable tax cuts might be off the table due to projected budget shortfalls. The state will need $500 million in revenue increases or budget cuts each of the next three years to smooth out expected shortfalls before accounting for the impact of Hurricane Irma, a state budget analyst told senators in October 2017.

''Florida took a big revenue hit from the hurricane this year,'' said James H. Sutton Jr., a tax attorney with Moffa, Sutton & Donnini PA in Tampa. He noted construction activity resulting from the hurricane could counter the cleanup costs with a sales tax revenue boost.

Business Rent Tax Bills have been filed to lower the state's sales tax on commercial real estate leases—similar to proposals that Scott and some Republican lawmakers have advocated in recent years—but trimming or eventually eliminating the tax would cut a large amount of state revenue.

''It's a big chunk of money,'' Sutton told Bloomberg Tax. ''It makes it hard to phase out quickly.''

Florida has the only statewide sales tax on commercial real estate leases, which Sutton said is seen as a disadvantage in recruiting new businesses. The Legislature approved lowering the rate to 5.8 percent from 6 percent in its 2017 session, after consistently rejecting proposals for larger decreases. The 0.2 percent reduction was estimated to cost the state $60 million annually.

Eliminating the tax altogether, which is the long-term goal for some in the Legislature, would cost the state an estimated $2 billion a year, Sutton said.

For the 2018 session, the Legislature will consider S.B. 60, which would lower the rate to 5 percent.

Another perennial proposal returning for 2018 is an increase to the exemption from corporate income taxes. S.B. 58 would raise the exemption to $75,000 from the current level of $50,000.

Two Paths for Constitutional Proposal The governor floated a similar version of his constitutional amendment proposal at the state's 2017-18 Constitution Revision Commission, which only convenes once every 20 years. This gives Scott two possible avenues for getting his proposal in front of voters on the November 2018 ballot. Scott is finishing his second term as governor in 2018 and is widely expected to run for a U.S. Senate seat.

The proposal, which the governor wants to leave as his legacy to the state, seems likely to reach the ballot and receive the necessary 60 percent voter approval, Holcomb said. He questioned whether it's a good policy idea, however.

''I'm not sure you really want that kind of systemic government in place that you can't adapt to unforeseen circumstances,'' Holcomb told Bloomberg Tax.

Scott said in announcing the proposal in August 2017 that it would help protect Florida's recent economic gains and job growth, which he attributes largely to tax cuts and deregulation.

 ISSN 1534-1550

Taxpayer Advocate Revisions A proposal to improve the independence of Florida's taxpayer rights advocate is also up for consideration, Sutton said.

S.B. 826 would require the advocate to report to the chief inspector general and provide that only the inspector general can fire the advocate ''for cause.'' The advocate currently reports to the executive director of the state's Department of Revenue.

Under the current arrangement, Florida's Taxpayer's Bill of Rights ''has no teeth,'' as the advocate is reluctant to look into or publicly report anything that makes the department look bad, Sutton said.

The legislation would also require an annual report from the advocate, including a summary of taxpayer complaints and their resolutions, plus recommendations for policy changes.

Sutton likes the bill's chances for passage, as it's sponsored by Sen. Dorothy Hukill (R), who often carries tax legislation for the governor. Also, it would be popular among taxpayers, and ''it's an election year,'' he said.

BY CHRIS MARR

To contact the reporter on this story: Chris Marr in Atlanta at cmarr@bloomberglaw.com

To contact the editor responsible for this story: Ryan C. Tuck at rtuck@bloombergtax.com