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Tax Refunds And Rate Reductions Ahead For Florida Cos.

By **H. French Brown** (May 15, 2019, 2:54 PM EDT)


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The passage of the 2017 Tax Cuts and Jobs Act caught Florida flat-footed. The 2018 regular legislative session started just two weeks after the TCJA's passage and concluded 62 days later. During that time, many of the state's policymakers were unable to contemplate how the TCJA's changes would flow down to Florida's corporate taxpayers. However, some had the foresight to put in protections to minimize any substantial tax increase in this fiscally conservative state. These 2018 protections and 2019 changes are forecast to result in hundreds of millions of dollars in refunds and rate reductions to corporations.

A Brief Background of Florida's Corporate Income Tax

Currently, certain corporations conducting business in Florida are subject to the corporate income tax at the rate of 5.5%. Florida annually "piggybacks" the federal income tax code in its determination of taxable income. Generally, a corporation's Florida calculation begins with the federal taxable income entered on Line 30 of the federal return. If a corporation earns taxable income earned by operating in more than one state, a traditional three-factor apportionment formula with double weighted sales is generally applied. Additionally, the state exempts the first $50,000 of net income, which historically provides a full exemption to more than 40,000 corporations annually.

From 2013 through 2017, Florida's corporate income tax collections remained steady bringing in between $1.97 billion to $2.18 billion in net revenue each year.

The 2018 Corporate "Piggyback" Bill

For tax years beginning on or after Jan. 1, 2018, the Florida Legislature adopted the Internal Revenue Code in effect on that date. H.B. 7093 included TCJA base broadening provisions into the Florida tax base such as the global intangible low-taxed income, or GILTI, the limitation on net interest deductions under Section 163(j), and limitations on net operating loss deductions and carryovers.

However, the 2018 legislation did decouple from bonus depreciation under Sections 167 and 168(k), thereby requiring corporations take any federal deduction over a straight seven-year period. Florida historically elects this seven-year treatment for bonus depreciation, and in some years, provides the same treatment for excess deductions under Section 179.

To address the unknowns associated with the TCJA, the 2018 legislation focused on researching the impacts and minimizing any potential revenue increases. First, the bill created a Department of Revenue working group to examine the TCJA's effects. The group took public comment from taxpayers and associations and created a report to the Legislature on Feb. 1, 2019.[1] The report focused on 14 topics with significant impacts on the state.

Second, the legislation created an innovative automatic refund and rate reduction if the net corporate income tax collections from July 1, 2018, through June 30, 2019, exceed the estimated collections by more than 7%. Therefore, if the net collections for the period exceed $2,325,752,000 (estimate of $2.173 billion times 107%), any additional amount will be paid back to Florida corporations based on the proportionate amount they paid into the state. Additionally, the corporate income tax rate for 2019 will be reduced proportionately by the same amount. The automatic refund and rate reduction were limited to one time in the 2018 legislation.

Meanwhile, Corporate Collections Soar

Florida's latest official revenue forecast assumes $166 million in 2018 refunds will be paid out proportionally to taxpayers, and a corresponding 0.367% 2019 rate reduction will occur. However, since that forecast, collections have shattered previous records. That estimate assumed that the state would collect $432 million in corporate income tax revenues in the month of April. In actuality, $633 million in April revenues were collected. These collections exceeded the actual 2018 April collections by more than $200 million (46%), and significantly surpassed collections in any single month, which have never exceeded $500 million.

Meanwhile, the state is forecast to collect another $750 million or more in corporate income tax revenues through the remaining two months of the measurement period. Once complete, the resulting 2018 refunds and corresponding 2019 rate reduction may be between $300 and $500 million.

Another Year, Still Searching for Impacts — The 2019 "Piggyback" Bill

Two weeks ago, the 2019 Florida Legislature passed H.B. 7127. This bill adopted the Internal Revenue Code in existence on Jan. 1, 2019. Many members of the state's business community urged lawmakers to strategically decouple from the TCJA provisions impacting them the most, including: GILTI, Section 163(j), and a like-kind exchange issue adversely impacting certain automobile leasing companies. Ultimately, the policymakers choose only to decouple from GILTI due to its constitutional concerns. Thankfully, however, Florida removed this previously taxable income retroactive to Jan. 1, 2018. This was a significant win.

The 2019 legislation also recognized that the Department of Revenue report still left unanswered questions. The bill created a new corporate information return in the 2018 and 2019 years which requests data specific to other changes in the 2017 Tax Cuts and Jobs Act, including: foreign-derived intangible income, Section 163(j), net operating loss deductions, net operating loss carryovers, and alternative minimum tax credit carryovers. If a corporation fails to provide the required information, it will be subject to financial penalties. This return is designed to provide the Legislature with more information necessary to make a well-informed decision regarding potential future impacts from the TCJA.

Lastly, in an effort to recognize that there is additional attention needed on remaining TCJA impacts, H.B. 7127 extended the automatic refund and rate reduction provisions for two more state fiscal years (until 2020-2021). Like the 2018 legislation, these subsequent automatic provisions are triggered in any year that the actual corporate income tax collections exceed the February 2018 official revenue forecast by more than 7%. Time will tell whether any of these additional triggers are reached. The one certainty is the Florida corporate income tax rate will increase back to 5.5% on Jan. 1, 2022, thus setting up additional work for the Florida Legislature.

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[1] http://floridarevenue.com/taxes/Documents/CIT%20Report%20Final%202019.pdf.