

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 Finance and Tax Committee

BILL: CS/SB 1680

INTRODUCER: Commerce Committee and Senator Garcia

SUBJECT: Corporate Income Tax

DATE: March 30, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Fav/CS
2.	ODonnell	McKee	FT	Favorable
3.			TA	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Certain types of corporations doing business in Florida must pay tax of 5.5 percent on Florida net income. After additional adjustments, the taxpayer's adjusted federal income is apportioned to Florida. The first \$5,000 of corporate net income is exempt from the tax. An estimated 36,000 Florida companies pay some form of state corporate income tax.

CS/SB 1680 reduces the corporate income and franchise tax rates rate to 4.5 percent on the first \$1 million in net income for the taxable year for taxpayers, and 2.7 percent on the first \$1 million in net income for the taxable year for businesses that compute their taxable income using the alternative minimum tax formula.

These changes are retroactive to January 1, 2010.

CS/SB 1680 amends ss. 220.11 and 220.63, F.S.

II. Present Situation:

In response to a constitutional amendment that authorized the levy of a state corporate income tax, the 1971 Legislature adopted a 5-percent corporate income tax, which became effective on corporate incomes earned after January 1972. In 1984, the Legislature raised the state's corporate income tax rate to 5.5 percent.

Banks and savings institutions, as defined in s. 220.62, F.S., in Florida pay what is called a "franchise tax" that is identical to the corporate income tax.

Florida also levies an alternative minimum tax (AMT) of 3.3 percent against the net income of corporations who have elected to use that system for their federal tax computations.¹ The tax due is whichever amount is greater: the regular Florida corporate income tax or the Florida AMT.

Chapter 220, F.S., is specific about what types of businesses must file corporate income tax forms. Briefly:²

- Corporations and artificial entities that conduct business, or earn or receive income in Florida, including out-of-state corporations, must file a Florida corporate income tax return unless exempt. They must file a return, even if no tax is due.
- Corporations and other artificial entities, including those located in other states, that are partners in a partnership or members of a joint venture doing business in Florida must file.
- Limited liability companies (LLCs) may or may not have to file a Florida corporate income tax return, depending on certain factors:
 - An LLC classified as a corporation for Florida and federal income tax purposes, is subject to the Florida Income Tax Code and must file a Florida corporate income tax return.
 - An LLC classified as a partnership for Florida and federal income tax purposes, must file Form F-1065 if one or more of its owners is a corporation. In addition, the corporate owner of an LLC that is classified as a partnership for Florida and federal income tax purposes must file a Florida corporate income tax return.
 - A single-member LLC, disregarded for Florida and federal income tax purposes, does not have to file a separate Florida corporate income tax return. However, the income of the company is not exempt from tax if a corporation owns the company, whether directly or indirectly. In this case, the corporation must file Form F-1120 reporting its own income, and the income of the single member LLC.
- Sole proprietorships, individuals, estates of decedents, and testamentary trusts are not required to file a return.
- "S" corporations and tax-exempt organizations usually do not have to file a Florida corporate income tax return if they do not have federal taxable income. If they have federal taxable income, however, they must then file a Florida corporate income tax return and pay any tax due.

¹ More information about the AMT for corporations is available from many sources, but one of the most concise yet understandable explanations was prepared by the nonpartisan Tax Policy Center, an affiliate of The Brookings Institute. The article is available at <http://www.taxpolicycenter.org/publications/url.cfm?ID=1000515>. Last visited Feb. 24, 2010.

² The source for this is a primer prepared by the Florida Department of Revenue. Available at <http://dor.myflorida.com/dor/taxes/corporate.html>. Last visited Feb. 25, 2010.

Florida has adopted the federal definition of taxable income. A Florida corporate taxpayer's net income is its adjusted federal income, or the share of its adjusted federal income for the year that is apportioned to Florida, plus non-business income allocated to Florida, less the \$5,000 exemption. Also, a Florida corporation that pays federal AMT must compute its Florida taxes under the AMT system that same tax year.³

In FY 2008-2009, the state collected a net \$1.42 billion in corporate and franchise taxes, which were deposited into the General Fund.⁴ An estimated \$1.56 billion is estimated in net collections for FY 2010-2011.

Information provided by the Governor's Office indicated that Florida has 35,820 corporate taxpayers and 630 AMT taxpayers.

III. Effect of Proposed Changes:

CS/SB 1680 amends the corporate and franchise tax rate, retroactive to January 1, 2010.

Section 1: Amends s. 220.11, F.S., to reduce the corporate income tax rates from 5.5 percent to 4.5 percent on the first \$1 million in net income. In addition, the alternative minimum tax rate is reduced from 3.3 percent to 2.7 percent on the first \$1 million of a taxpayer's Florida net alternative minimum taxable income if applicable.

Section 2: Amends s. 220.63, F.S., to reduce the franchise tax rate to 4.5 percent on the first \$1 million in net income for the taxable year for banks and savings institutions.

Section 3: Provides that this act shall take effect upon becoming law, and shall be applied retroactively to January 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³ Taxpayers that chose to use the AMT system are allowed, in later years, to take a credit equal to the amount of Florida AMT paid over the amount of Florida "regular" tax that would have otherwise been due.

⁴ 2010 Florida Tax Handbook, page 63. Available at <http://edr.state.fl.us/taxhandbooks/taxhandbook2010.pdf>. Last visited Feb. 25, 2010.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) met February 26, 2010, to consider the impact of this proposed legislation. Its estimates are below:

**REC Consensus Estimate of PCS/SB 1680
in \$ millions**

	FY 10-11 Cash	FY 11-12 Cash	FY 12-13 Cash	FY 13-14 Cash
State GR	(\$59.9)	(\$64.0)	(\$68.8)	(\$73.7)
State Trust	0	0	0	0
Total State Impact	(\$59.9)	(\$64.0)	(\$68.8)	(\$73.7)
Total Local Impact	0	0	0	0
Total Impact	(\$59.9)	(\$64.0)	(\$68.8)	(\$73.7)

B. Private Sector Impact:

Indeterminate, but likely positive.⁵ To the extent that a Florida corporation has a corporate tax liability, it will benefit from the tax rollback.

C. Government Sector Impact:

Indeterminate. PCS/SB 1680 may increase DOR’s workload and may require an appropriation to update the agency’s software.

VI. Technical Deficiencies:

The bill provides that the act shall take effect upon becoming law, and shall be applied retroactively to January 1, 2010. The Department of Revenue’s analysis of the bill states that the agency is uncertain as to the proper interpretation of the retroactive effective date provided in the bill. The Revenue Estimating Conference report also noted uncertainty. The issue is whether the bill applies to corporations with fiscal years beginning after January 1, 2010, fiscal years ending after that date, returns due on or after that date, or income earned on or after that date.

VII. Related Issues:

None.

⁵ The Governor’s staff testified at the March 3, 2010, Commerce Committee meeting that the average annual savings per taxpayer was an estimated \$1,800 to \$1,900 a year.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce on March 3, 2010:

At its March 3, 2010, the Commerce Committee adopted a proposed committee substitute to SB 1680 that creates a partial rollback of the state's corporate and franchise tax rates.

Specifically, the proposed committee substitute:

- Reduces the corporate income and franchise tax rates from 5.5 percent to 4.5 percent on the first \$1 million in net income for the taxable year for taxpayers;
- Reduces from 3.3 percent to 2.7 percent the tax rate on the first \$1 million in net income for the taxable year for businesses that compute their taxable income using the AMT formula; and
- Makes these changes retroactive to January 1, 2010.

- B. **Amendments:**

None.