

# Update on the Corporate Tax Depreciation Issue

By Frank Meiners

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Each year, the Florida Legislature adopts the current Internal Revenue Code as the starting point for computing Florida's Corporate Income Tax. This "piggyback" of the IRS Code ensures that certain tax definitions and the calculation of adjusted federal income are consistent between the IRS Code and the Florida Income Tax Code in Chapter 220, Florida Statutes.

In 2008, Congress passed Public Law 110-185, which amended the Code to permit 50 percent bonus depreciation for assets placed in service that year and to permit a temporary increase in the limitations on expensing certain depreciable assets also placed in service during 2008. In Chapter 2008-206, Laws of Florida, the Legislature did not incorporate the 50 percent bonus depreciation provisions or the temporary increase in the Section 179 limitations in the calculation of Florida corporate income tax.

Unfortunately for Florida's businesses, the bill did not clearly state the Legislature's intent. Originally issued in June 2008 and revised in August 2008, the Florida Department of Revenue's Tax Information Publication (TIP) addressed the law and explained that the bill's language created a situation whereby taxpayers who elected to take the bonus depreciation on their federal taxes would permanently lose 50 percent of their depreciation deduction from their state taxes. Businesses would also lose state deductions if they chose to take the additional expense allowance. Florida would be the only state to permanently deny those deductions. Left in a no-win situation, taxpayers would have to refuse the federal stimulus tax breaks or face a state tax increase.

AIF started its work on the issue by calling on its members to determine the effects this would have on businesses' bottom lines. A working group of interested companies' tax experts worked with AIF staff to draft a glitch bill to fix the issue. We worked alongside other business groups so the bill could be represented to the Legislature as a consensus of industry and would

be ready if a special session was called to fix the serious, unintended consequences of this glitch.

After many conference calls, legislative contacts and meetings with staff of the Florida Department of Revenue (FDOR), the presiding officers of the Legislature sent a letter to the FDOR which said, "After the legislation passed, it came to our attention that we had not explicitly accomplished our goal, and that the legislation had possibly placed Florida taxpayers who utilize the new federal provisions in a worse situation than they would be in without the federal stimulus provisions. That was not our intent."

When it became clear the Governor or presiding officers were not going to call a special session to make the changes before the December 15 deadline, FDOR Executive Director Lisa Echeverri and her staff met to try and bring resolution to this issue. Knowing the extreme negative impacts this would have on Florida businesses, Director Echeverri asked the Governor and Cabinet to consider an emergency rule at the next Cabinet meeting. Due to the time sensitive nature of the issue, the Governor immediately approved the addition of a Cabinet agenda item addressing the glitch.

All the time and hard work came to fruition on December 9 when the Cabinet approved Emergency Rule 12-CER08-31, which has the effect of law for 90 days. Many of the folks who had worked on the issue were there to thank Director Echeverri for spending the time and effort necessary to arrive at a solution.

However, the Legislature must pass a corporate income tax glitch bill before the 90 days run out. AIF will continue its efforts to work with the Legislature to pass a glitch bill that will remedy an issue that left uncorrected would result in significant financial consequence for Florida employers and aggravate Florida's current economic crisis. ■

Frank Meiners is the president of Frank Meiners Governmental Consultants and AIF consultant (e-mail: frank@chgmail.com)