



Executive Director
Lisa Echeverri

Child Support Enforcement
Ann Coffin
Director

General Tax Administration
Jim Evers
Director

Property Tax Oversight
James McAdams
Director

Administrative Services
Nancy Kelley
Director

Information Services
Tony Powell
Director

December 5, 2008

RECEIVED
OFFICE OF THE GOVERNOR

2008 DEC -5 P 1:54

The Honorable Charlie Crist
Governor
Plaza Level 02, The Capitol
400 South Monroe Street
Tallahassee, FL 32399-0100

Dear Governor Crist:

The purpose of this letter is to request that you place a good cause item on the Department of Revenue agenda for the December 9, 2008, Cabinet meeting. As you know, Chapter 2008-206, Laws of Florida, sought to stabilize Florida's Corporate Income Tax revenues after passage of the Economic Stimulus Act of 2008, Pub. L. No. 110-185. The legislative intent of the law, according to the attached letter from Senate President Jeff Atwater and Speaker of the House Ray Sansom, "was to simply neutralize" the effect of the Stimulus Act by decoupling from the provisions that allowed accelerated first-year depreciation deductions and additional first-year expensing.

Unfortunately, it became apparent after the legislation became law that it had not clearly provided for adjustments to ensure that Florida corporate taxpayers would retain the same depreciation and expensing deductions in 2008 and subsequent years that they had been entitled to under previous versions of the Internal Revenue Code and Florida's Corporate Income Tax laws. It is our understanding that the Legislature did not intend to prohibit taxpayers from fully depreciating or expensing assets purchased in 2008 and that the Legislature did not consider any revenue increase associated with an interpretation of the law that results if taxpayers cannot fully depreciate assets. Legislative leaders have expressed a commitment to correct this issue explicitly with subsequent legislation no later than regular session 2009.

Businesses will need to complete asset purchases, elect their method of depreciation and complete financial reporting statements by December 31, 2008. Additionally, businesses will need to make estimated payments of corporate income tax to the Internal Revenue Service by December 15, 2008, based upon depreciation and expensing elections made on asset purchases. It has been indicated by the business community that regardless of the belief that this issue will ultimately be resolved by the legislature, the current uncertainty will result in immediate adverse impacts to their financial statements and their ability to obtain capital.

Tallahassee,
Florida
32399-0100
www.myflorida.com/dor

The Honorable Charlie Crist, Governor
Page Two

Given the recent developments in the national and state economic environments, I believe it is in the best interest of the State for the Governor and Cabinet to consider an emergency rule giving Chapter 2008-206, Laws of Florida, the full effect of the intent of the Legislature until such time as the Legislature is able to clarify the issue. I believe that the immediacy of the harm resulting from this issue, the very short time frame under which businesses have to make decisions regarding asset purchases and methods for depreciation and expensing, make estimated tax payments, and complete financial reporting statements create the potential for an adverse impact to Florida's economy if this issue is not immediately corrected and provide a sufficient basis for you to consider the enclosed proposed emergency rule for adoption.

Again, I respectfully request that you place a good cause item on the Department of Revenue's agenda for the December 9, 2008 meeting. The purpose of this item is to consider a proposed emergency rule to ensure that Florida corporate taxpayers would retain the same depreciation and expensing deduction in 2008 and subsequent years as they have in the past. I have attached a copy of a proposed emergency rule for consideration by the Cabinet. If there are additional questions regarding this issue I can be reached at 850-251-8146.

Sincerely,



Lisa Echeverri

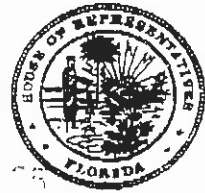
Attachments: November 18, 2008 letter from The Honorable Jeff Atwater, Senate President, and The Honorable Ray Sansom, Speaker of the House
Emergency Rule; Economic Stimulus Act of 2008 Additions;
Rule 12CER08-31 Florida Administrative Code

cc: The Honorable Bill McCollum, Attorney General
The Honorable Alex Sink, Chief Financial Officer
The Honorable Charles H. Bronson, Agriculture Commissioner

THE FLORIDA LEGISLATURE



JEFF ATWATER
President of the Senate



RAY SANSON
Speaker of the House of Representatives

November 18, 2008

Ms. Lisa Echeverri, Executive Director
Department of Revenue
5050 West Tennessee Street, Building L
Tallahassee, Florida 32399

Dear Director Echeverri:

This letter is to advise you of our plan to address the uncertainty for corporate taxpayers created by Chapter 2008-206, Laws of Florida. As you know, the legislative intent behind this legislation was to simply neutralize, for Florida tax purposes, the provisions of the Federal Stimulus Bill that allowed accelerated first-year depreciation deductions and additional first-year expensing. After the legislation was 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.

With assistance from your department and others, the legislature is drafting legislation to correct this situation. This legislation will be considered at the first available opportunity, but no later than the 2009 Session. We hope that taxpayers will make decisions and elections that affect their Florida taxes in anticipation of the legislation becoming law, particularly after this communication with you.

Please take whatever steps you feel are appropriate to publicize our commitment to taxpayers affected by this issue. Given the uncertainty created by Chapter 2008-206, Laws of Florida, we also request that you use existing statutory discretion to waive penalties for any taxpayer that takes action in good faith reliance on our plan, but would otherwise be subject to penalties.

Regards,

Jeff Atwater
Senate President

Ray Sanson
Speaker of the House

NOTICE OF EMERGENCY RULEMAKING

DEPARTMENT OF REVENUE

RULE TITLE:

RULE NUMBER:

Economic Stimulus Act of 2008 Additions

12CER08-31

SPECIFIC FACTS AND REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY, OR WELFARE: Section 120, Florida Statutes, permits agencies to promulgate emergency rules when there is an immediate danger to the public health, safety, or welfare of Florida citizens. Chapter 2008-206, Laws of Florida, sought to stabilize Florida's Corporate Income Tax revenue after passage of the Economic Stimulus Act of 2008, Pub. L. No. 110-185. The legislative intent behind Chapter 2008-206, Laws of Florida, apparently was to permit corporate taxpayers to retain the same depreciation and expensing deductions in 2008 that taxpayers had under the Internal Revenue Code in effect on January 1, 2007, and for any remaining business expenses, including depreciation deductions, to be recognized in future years. Legislative leaders have made clear their intent to address technical deficiencies in the language of Chapter 2008-206, Laws of Florida, by the close of the 2009 regular legislative session. Florida corporate taxpayers are likely to suffer significant economic impacts resulting from the uncertainty in current Florida law created by Chapter 2008-206, Laws of Florida, which may result in the loss of Florida jobs, decisions not to make investments in capital assets located in Florida, and negative impacts on market capitalization of Florida businesses. Given the recent developments in the national and state economic environments, Florida's corporate taxpayers require certainty in the tax effects of Chapter 2008-206, Laws of Florida, in order to not further harm the welfare of Florida's economic environment.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: Emergency rulemaking is fair under the circumstances because, without the certainty required by Florida corporate taxpayers, immediate and unintended financial impacts will be felt by these taxpayers before the technical deficiencies in the language of Chapter 2008-206, Laws of Florida, can be addressed as indicated by Legislative leaders. Such impacts will present further harm to the welfare of Florida's economic environment.

SUMMARY OF THE RULE: Emergency Rule 12C08-31, F.A.C., (Economic Stimulus Act of 2008 Additions): (1) provides that taxpayers subject to the add-back provisions in Sections 220.13(1)(a)14. and 15., F.S., are required to add-back 2008 federal deductions under Sections 168(k) and 179 of the Internal Revenue Code caused by changes passed in the Economic Stimulus Act of 2008, Pub. L. No. 110-185, adjusted by the difference between depreciation deductions taken and depreciation deduction that could have been taken if deductions under Sections 168(k) and 179 permitted by the Economic Stimulus Act of 2008, Pub. L. No. 110-185, had not been taken; (2) provides that taxpayers are allowed to make an adjustment in tax years following 2008 for the difference between depreciation deductions taken and depreciation deduction that could have been taken if deductions under Sections 168(k) and 179 permitted by the Economic Stimulus Act of 2008, Pub. L. No. 110-185, had not been taken; (3) requires that additions and adjustments shall be reported on a schedule included with returns filed .

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Robert Babin, Deputy Director, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 922-4842.

THE FULL TEXT OF THE EMERGENCY RULE IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CORPORATE INCOME TAX
EMERGENCY RULE 12CER08-31

12CER08-31 2008 Federal Stimulus Package Additions.

(1) Scope. This rule only applies to taxpayers subject to additions under Section 220.13(1)(a)14. or Section 220.13(1)(a)15., F.S.

(2) For purposes of the addition required by Sections 220.03(3) and 220.13(1)(a)14., Florida Statutes, taxpayers are required to add-back the amount of the federal deduction claimed under Section 179 of the Internal Revenue Code, that exceeds \$125,000.

(3) For purposes of the addition required by Sections 220.03(3) and 220.13(1)(a)15., Florida Statutes, taxpayers are required to add-back an amount equal to:

(a) the total depreciation claimed under Sections 167 and 168 of the Internal Revenue Code on the related federal return, minus

(b) the depreciation deductions that would have been allowable under Sections 167 and 168 of the Internal Revenue Code if the 50% bonus depreciation deduction under section 103 of the Economic Stimulus Act of 2008, Public Law 110-185, had not been claimed with respect to such property.

(4) In tax years beginning after December 31, 2008, taxpayers shall make an adjustment to their Florida taxable income by an amount equal to:

(a) the amount of depreciation deduction that would have been allowable under Sections 167 and 168 of the Internal Revenue Code as in effect on January 1, 2007, if the taxpayer had not expensed any amounts in excess of \$125,000 under Section 179 of the Internal Revenue Code, or taken bonus depreciation under Section 168(k) of the Internal Revenue Code, minus

(b) the amount of depreciation deduction taken under Sections 167 and 168 of the Internal Revenue Code on the related federal return.

(5) Upon the sale or disposition of property for which an addition was required under Subsections (2) or (3), the gain for Florida purposes is the same as the gain for federal purposes. However, the taxpayer shall adjust its Florida taxable income by an amount equal to:

(a) the Florida depreciation taken on the asset, taking into account Subsections (2), (3), and (4), minus

(b) the total federal depreciation taken on the asset under Sections 167 and 168.

(6) The total amount of adjustments claimed for property for all years may not exceed the respective additions under Sections 220.13(1)(a)14. and 220.13(1)(a)15., F.S., for the same property. A schedule reflecting the additions and all subsequent adjustments must be attached to the return.

Specific Authority: Sections 1, 2, and 5, Chapter 2008-206, Laws of Florida. Law Implemented Sections 1, 2, and 5, Chapter 2008-206, Laws of Florida. History-New 12-10-08.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE
UNLESS A LATER TIME AND DATE ARE SPECIFIED IN THIS RULE.