

Florida Legislative Update

Overview

On June 28, 2019, Florida Governor Ron DeSantis signed House Bill 7127 (“H.B. 7127”) which amended Florida’s tax laws affecting the corporate income tax.¹ Notable provisions of the new law include:

- Updating Florida’s federal tax conformity date to the Internal Revenue Code (“IRC”) as in effect on January 1, 2019;
- Retroactively establishing a Florida subtraction from federal taxable income for global intangible low-taxed income (“GILTI”);
- Extending the current automatic tax rate adjustment and refund mechanism for an additional two years to include calculations based on revenue collections in fiscal years 2019-2020 and 2020-2021;
- Requiring corporate income taxpayers with taxable years beginning during 2018 or 2019 calendar years to submit certain information from their federal tax returns to the Florida Department of Revenue (“Department”) and to certify the accuracy of the information; and
- Requiring the Department to create a secure online application for taxpayers to submit the required information beginning September 3, 2019, and imposing a penalty upon taxpayers who fail to timely provide the information.

This Tax Alert provides a brief overview of some of the more significant provisions of H.B. 7127.

Conformity to IRC in effect on January 1, 2019

H.B. 7127 updates the Florida Income Tax Code definition of “Internal Revenue Code” to mean the IRC “as amended and in effect on January 1, 2019.”² The update to the federal tax conformity date takes effect upon H.B. 7127 becoming a law (*i.e.* June 28, 2019) and generally applies retroactively to January 1, 2019.³

Retroactive Florida Subtraction Modification for GILTI

H.B. 7127, in response to the Tax Cuts and Jobs Act of 2017, creates a Florida subtraction for GILTI (“GILTI subtraction”). The GILTI subtraction is retroactive to January 1, 2018.⁴

H.B. 7127 amends Florida Statute section 220.13(1)(b)2.b to provide that income included in the computation of federal taxable income pursuant to IRC section 951A is subtracted “only to the extent such amount is not deductible in determining federal taxable income.”⁵ It is not clear, however, based on a plain reading of the bill, whether the GILTI subtraction is on a gross basis or net of the related IRC section 250 deduction.⁶

Automatic Refunds and Tax Rate Reduction

H.B. 7127 extends the current temporary and contingent tax rate reduction and refund mechanism for an additional two years to provide for rate reductions and refunds based on net collections in fiscal years 2019-2020 and 2020-2021.⁷ H.B. 7127 amends Florida Statute section 220.1105 to provide that “[f]or fiscal years 2018-2019 through 2020-2021 any amount by which net collections for a fiscal year exceed adjusted forecasted collections for that fiscal year shall only be used” to provide refunds to eligible taxpayers.⁸ For this purpose, eligible taxpayer means:

¹ H.B. 7127 is available [here](#).

² H.B. 7127, sec. 1, amending Fla. Stat. § 220.03(1)(n). Prior to the enactment of H.B. 7127, the Florida definition of “Internal Revenue Code” referenced the IRC as amended and in effect on January 1, 2018.

³ H.B. 7127, sec. 7, amending Fla. Stat. § 220.03(1)(n).

⁴ H.B. 7127, sec. 3, amending Fla. Stat. § 220.13(1)(b)2.b; H.B. 7127, sec. 7, amending Fla. Stat. § 220.13(1)(b)2.b.

⁵ H.B. 7127, sec. 3, amending Fla. Stat. § 220.13(1)(b)2.b.

⁶ *Id.*

⁷ See Deloitte Tax Alert dated March 30, 2018 discussing contingent rate reduction, available [here](#).

⁸ H.B. 7127, sec. 2, amending Fla. Stat. § 220.1105(4).

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For fiscal year 2018-2019, a taxpayer whose taxable year begins between April 1, 2017, and March 31, 2018, and whose final tax liability for such taxable year is greater than zero;

For fiscal year 2019-2020, a taxpayer whose taxable year begins between April 1, 2018, and March 31, 2019, and whose final tax liability for such taxable year is greater than zero; and

For fiscal year 2020-2021 a taxpayer whose taxable year begins between April 1, 2019, and March 31, 2020, and whose final tax liability for such taxable year is greater than zero.⁹

In addition, H.B. 7127 amends Florida Statute section 220.1105 to provide that the current Florida corporate income tax rate reduction mechanism for taxable years beginning on or after January 1, 2019 and before January 1, 2020, which is contingent upon net collections of Florida corporate income tax exceeding adjusted forecasted collections for the 2018-2019 fiscal year, is extended to apply the same mechanism for taxable years beginning on or after January 1, 2019 and before January 1, 2022.¹⁰ For taxable years beginning on or after January 1, 2022, the tax rate adjustments pursuant to this section are repealed and the Florida statutory corporate income tax rate returns to 5.5%.¹¹

Submission of Tax Return Information to the Department of Revenue

H.B. 7127 also requires every Florida corporate income taxpayer who is required to file a tax return for taxable years beginning during the 2018 or 2019 calendar years, to submit to the Department the following information:

- The taxpayer's name, federal taxpayer identification number, taxable year beginning date, taxable year ending date, and whether a consolidated return for the taxpayer is required or elected under Florida Statute section 220.131;¹²
- The taxpayer's NAICS¹³ code for the taxpayer's business activity which generates the greatest proportion of gross receipts;¹⁴
- The taxpayer's "taxable income" as that term is defined in Florida Statute section 220.13(2) and the taxpayer's Florida apportionment fraction pursuant to Florida Statute section 220.15 for the taxable year;¹⁵
- The amount of GILTI included in federal taxable income under IRC section 951A, and the amount of the related IRC section 250 deduction as it pertains to IRC section 951A;¹⁶
- The amount of foreign-derived intangible income computed for the federal return for the taxable year and the amount of the related IRC section 250 deduction as it pertains to foreign-derived intangible income;¹⁷
- The amount of business interest expense deducted on the federal return under IRC section 163 including any carryover; the amount of current year business interest expense, including any carryover, that was not deducted due to the limitation in IRC section 163(j); and the amount of business interest expense carried over from previous taxable years;¹⁸
- The amount of federal net operating loss deduction under IRC section 172 applied in determining federal taxable income and the amount of federal net operating loss carryover that was not applied due to the limitation in IRC section 172(a)(2);¹⁹
- The total amount of Florida net operating loss carryover available after the filing of the return for the taxable year; and²⁰

⁹ H.B. 7127, sec. 2, amending Fla. Stat. § 220.1105(4)(a)(1).

¹⁰ H.B. 7127, sec. 2, amending Fla. Stat. § 220.1105(2).

¹¹ *Id.*

¹² H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(a)1.

¹³ The term "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

¹⁴ H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(a)2.

¹⁵ H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(a)3.

¹⁶ H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(a)4.

¹⁷ H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(a)5.

¹⁸ H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(a)6.

¹⁹ H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(a)7.

²⁰ H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(a)8.

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- The total amount of the Florida alternative minimum tax credit carryover available after the filing of the return for the taxable year.²¹

The required information is to be submitted using an online application on the Department's website and is due the earlier of 10 days after the extended due date of the Florida corporate income tax return, or 10 days after the date the Florida corporate income tax return is filed, but not earlier than September 3, 2019.

H.B. 7127 requires the Department to create a secure online application for taxpayers to submit the required information by September 3, 2019.²² A taxpayer that files a Florida corporate income tax return prior to September 3, 2019, is required to file the online application by September 3, 2019.

The information submitted must be certified as true and correct by an officer of the taxpayer or one duly authorized to act on the taxpayer's behalf.²³ In addition to its existing audit and investigation authority, the Department may perform any additional financial and technical audits and investigations, including examining the accounts, books, and financial records of the taxpayer, which are necessary to verify the accuracy of the information submitted.²⁴ Taxpayers who fail to provide the information by the required submission date, will be subject to a penalty of \$1,000 or one percent of the taxpayer's corporate income tax due for the most recent taxable year, whichever is greater.²⁵ However, the Department is authorized to settle or compromise any such penalty if the Department determines that the noncompliance is due to reasonable cause and not willful negligence, willful neglect, or fraud.²⁶

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²¹ H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(a)9.

²² H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(b).

²³ H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(c).

²⁴ H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(d).

²⁵ H.B. 7127, sec. 4, creating Fla. Stat. § 220.27(1)(e).

²⁶ *Id.*

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